

**HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY**

**CRL.P.No.1960 OF 2017**

**ORDER:**

This criminal petition is filed under Section 438 of Cr.P.C to enlarge the petitioner/A2 on bail in the event of his arrest in connection with Crime No.164 of 2016 of Devarakonda Police Station, Mahaboobnagar District, registered for the offences punishable under Sections 366(a), 376(2)(N)(I) of IPC and Section 5(i) read with 6 of the Protection of Children from Sexual Offences Act, 2012 (for short 'the Act') and Section 190 of IPC.

2. The case of the prosecution is that A1 along with A2 and others kidnapped the victim girl and later they kept the victim girl in a room and A1 had sexual intercourse with her. The victim is child within Section 2(d) of the Act. The petitioner played key role in kidnapping the victim girl and keeping in a room to have sexual intercourse against her consent.

3. The main contention of the learned counsel for the petitioner is that A1 is already enlarged on bail after his arrest and 13 witnesses were examined under Section 161(3) of Cr.P.C. during the course of investigation. Therefore, interference with the investigation does not arise in the event of granting pre-arrest bail and prayed to enlarge the petitioner on pre-arrest bail.

4. Per contra, learned Additional Public Prosecutor would contend that the petitioner successfully avoided his arrest and did not cooperate with the investigation. Therefore, he is disentitled to claim bail under Section 438 of Cr.P.C. and prayed to dismiss the petition.

5. As seen from the material on record, the petitioner played major role in kidnapping of the victim girl and obtained a room on rent and accommodated A1 to have sexual intercourse with the victim child against her consent and that apart he did not cooperate for completion of investigation, successfully avoiding his arrest by the police. Where the petitioner played key role in such a heinous offence of rape against a child, he is not entitled for discretionary relief.

6. The power of the Court under Section 438 Cr.P.C is purely discretionary and this Court has to exercise its power judiciously based on settled principles. But, the circumstances to exercise such jurisdiction may vary from case to case. The law regarding grant of anticipatory bail is elaborately discussed by the Constitution Bench of the Apex Court in “**Gurbaksh Singh Sibbia v. State of Punjab**”, as the power of granting 'anticipatory bail' is somewhat extraordinary in character and it is only in exceptional cases where it appears that a person might be falsely implicated, or a frivolous case might be launched against him, or "there are reasonable grounds for holding that a person accused of an offence is not likely to abscond, or otherwise misuse his liberty while on bail" but such power is to be exercised. No hard and fast rule can be laid down in discretionary matters like grant or refusal of bail whether anticipatory or regular bail. The Apex Court further held that, it cannot be laid down as an inexorable rule that anticipatory bail cannot be granted unless the proposed accusation appears to be actuated by *mala fides*; that anticipatory bail must be granted if there is no fear that the applicant will abscond. There are several other considerations, too numerous to enumerate, the combined

effect of which must weigh with the court while granting or rejecting anticipatory bail. The nature and seriousness of the proposed charges, the context of the events likely to lead to the making of the charges, a reasonable possibility of the applicant's presence not being secured at the trial, a reasonable apprehension that witnesses will be tampered with and "the larger interests of the public or the State" are some of the considerations which the Court has to keep in mind while deciding an application for anticipatory bail. Therefore, anticipatory bail can be granted even in serious cases like economic offences and States should have no consideration for grant or refusal of anticipatory bail, as there can be no presumption that the wealthy and the mighty will submit themselves to trial and that the humble and the poor will run away from the course of justice, any more than there can be a presumption that the former are not likely to commit a crime and the latter are more likely to commit it. Therefore, while dealing with the application for grant of pre-arrest bail or anticipatory bail, the Court must take into consideration the guidelines issued in "**Gurbaksh Singh Sibbia** (supra).

7. For granting pre-arrest bail under Section 438 of Cr.P.C. the Apex Court laid down 10 guidelines in "**Siddharam Satlingappa Mhetre v State Of Maharashtra**<sup>1</sup>" which are as follows:

- i. The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;
- ii. The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;
- iii. The possibility of the applicant to flee from justice;

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<sup>1</sup> AIR 2011 SC 312

iv. The possibility of the accused's likelihood to repeat similar or the other offences.

v. Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her.

vi. Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people.

vii. The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which accused is implicated with the help of Sections 34 and 149 of the Indian Penal Code, the court should consider with even greater care and caution because over implication in the cases is a matter of common knowledge and concern;

viii. While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;

ix. The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;

x. Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.

8. Thus, in view of the law declared by the Apex Court the offence committed by the petitioner being heinous in nature and there is every possibility of interfering with the investigation, who successfully avoided his arrest without co-operating with investigating agency, the Court cannot exercise discretion to come to conclusion that the petitioner did commit no offence. Here the material on record *prima facie* establish that the petitioner also played major role in commission of offence. Therefore, he is not entitled to claim pre-arrest bail, which is discretionary.

9. Accordingly, the criminal petition is dismissed.

Pending miscellaneous petitions in the petition, if any, shall stand closed.

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**M.SATYANARAYANA MURTHY,J**

21.03.2017

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