

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

**CRIMINAL PETITION No.2896 of 2017**

**ORDER :**

This criminal petition is filed under Section 438 of the Code of Criminal Procedure, 1973 (for short, 'the Cr.P.C.') to enlarge the petitioners/A.2 and A.3 on bail in the event of their arrest in connection with Crime No.189 of 2017 of Pet Basheerabad Police Station, Cyberabad, registered for the offences punishable under Section 498-A IPC and Sections 3 and 4 of the Dowry Prohibition Act, 1961, apprehending their arrest.

2. The case of the prosecution, in brief, is that the marriage of Maddula Chamanthi-*de facto* complainant was performed on 06.12.2014 with the son of the petitioners/A.2 and A.3 and at the time of marriage her parents paid Rs.10,00,000/- as dowry besides presentation of 55 tolas of gold and 1000 sq.yards of plot and after marriage husband of the *de facto* complainant i.e., A.1 took her to USA on dependent visa, where her husband allegedly did not allow her to work and scolded her to look after the dumb child of her sister-in-law and used her as a maidservant, which was supported by the petitioners and that they used to harass her physically and mentally and demanding to bring additional dowry of Rs.2.0 crores from her parents and forced to obtain a registered document conveying the plot in their name. On 28.09.2016 when the *de facto* complainant failed to meet the illegal demand, she was necked out from the house. Having no alternative, she went to her parents' house. For the last five

months prior to 208.09.2016 the *de facto* complainant is trying to talk to her husband/A.1, but the petitioners did not allow her to talk with A.1. Thus, the petitioners allegedly subjected the *de facto* complainant to cruelty.

3. The main contention of the learned counsel for the petitioners is that the alleged offence committed outside India and thereby without prior sanction of the Central Government, the Station House Officer cannot investigate or enquire into the offence in view of the bar under Section 188 Cr.P.C. and placed reliance on judgment of this Court in **Rajesh Gutta v. State of Andhra Pradesh and another**<sup>1</sup>. Learned counsel for the petitioners further submitted that the petitioners are senior citizens and they did commit no such offence and therefore prayed to enlarge the petitioners on bail in the event of their arrest.

4. Learned Additional Public Prosecutor for the State of Andhra Pradesh would draw the attention of this Court to a specific instance, dated 28.09.2016, where she was subjected to cruelty by these two petitioners in India when she was brought to India or in India. When the offence took place both in India and outside India, no permission is required under Section 188 of Cr.P.C. to enquire or to investigate the crime. Therefore, the decision has no application and prayed to dismiss the petition.

5. The specific allegation in the compliant would *prima facie* shows that on 28.09.2016 when the *de facto* complainant was brought

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<sup>1</sup> 2011 (1) ALD (Crl.) 885 (AP)

to India for want of stamp on visa, the petitioners demanded Rs.2.0 crores or obtain registered document conveying the property of her father in the name of the petitioners and necked out her from the house. This specific incident took place in India, it is sufficient to constitute offence, prima facie, if proved. Therefore, no permission under Section 188 of Cr.P.C. is required to investigate into the offences or enquire into the allegations made in the complaint. Thereby, the principle laid down in *Rajesh Gutta* (1 supra) has no application to the present facts of the case.

6. The other contention raised before this Court is that when the dispute is with regard to the matrimonial issue when all members are roped into the offences irrespective of role, the proceedings are liable to be quashed and placed reliance on a judgment of the Apex Court in **G.V.Rao v. L.H.V.Prasad**<sup>2</sup>. The Apex Court while considering the application under Section 482 Cr.P.C. concluded that when the dispute relates to matrimonial issue where all the members of the family were roped irrespective or role, the proceedings are liable to be quashed.

7. The scope of Section 482 Cr.P.C. is different from the scope of Section 438 Cr.P.C. However, in the present case, the specific role played by these petitioners is that on 28.09.2016 they demanded the *de facto* complainant to bring additional amount of Rs.2.0 crores and get the document registered conveying the property stood in the name

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<sup>2</sup> 2000 (3) SCC 693

of her father and necked out her from the house. This instance *prima facie* falls within the explanation to Section 489-A I.P.C. Therefore, the principle laid down in the above judgment has no application to the present facts as the petitioners played specific role i.e., they necked out the *de facto* complainant from the house for her failure to meet the illegal demand *prima facie*.

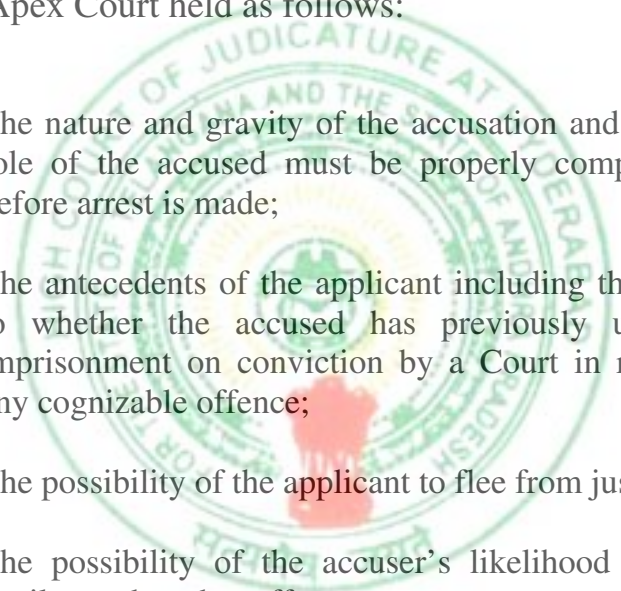
8. The other ground urged by the petitioners is that there is abnormal delay in lodging the complaint and placed reliance on the judgment of Apex Court in **State of Andhra Pradesh v. M. Madhusudhan Rao**<sup>3</sup>, where the appeal was preferred against order dated 12.04.2006 passed by the High Court of Judicature, Andhra Pradesh, setting aside the conviction of the respondent/accused No.1 in S.C.No.129 of 1998 from the charge of the offence under Section 498-A IPC and the Apex Court held that delay is fatal, if not explained, since there is possibility of consultation to implicate persons who did not actually participate in the offence. But, in the present case, the same is not applicable, since the delay can be explained during trial and if it remains unexplained, it is ground, but not for granting bail to the petitioners. Therefore, the decision of the Apex Court for granting pre-arrest bail is not relevant.

9. Grant of pre-arrest bail is purely discretion of the court, negation of the bail is a matter of routine and grant is an exception. Unless the court found that there is no, *prima facie*, material to

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<sup>3</sup> (2008) 15 SCC 582

conclude that the petitioners did commit no offence and there are no chances of the accused fleeing away from justice and interfering with further investigation, the court cannot grant pre-arrest bail as a matter of routine as held by the Apex Court in **Gurbaksh Singh Sibbia V. State of Punjab**<sup>4</sup>, wherein the Supreme Court reiterated certain guidelines to be followed by the Court while considering the application under Section 438 Cr.P.C. Later, in the judgment in **Siddharam Satlingappa Mhetre v. State Of Maharashtra and others**<sup>5</sup>, the Apex Court held as follows:

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- 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 facts 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;
  - 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 case 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 case in which accused is implicated with the help of Section 34 and 149 of IPC, the Court should consider with even greater care and caution because over implication in the cases is a matter of common

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<sup>4</sup> AIR 1980 SC 1632

<sup>5</sup> 2011 Cr.L.J. 3905

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 witnesses 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.

10. But, here in this case, though the husband of the petitioner is a Doctor working at USA, the parents of A.1 and in-law of the *de facto* complainant allegedly subjected her to cruelty when she is in India and for her failure to get Rs.2.0 crores and obtain registered document conveying the property of her father in the name of the petitioners and necked out her from the house, are serious offences against the society and therefore, it is not a ground to grant pre-arrest bail to the petitioners, certainly, the petition is liable to be dismissed.

11. At the end of arguments, learned counsel for the petitioners requested this Court to direct the S.H.O. to follow the procedure under Section 41A and also follow the guidelines issued by the Hon'ble Apex Court in **Arnesh Kumar v. State of Bihar**<sup>6</sup>

12. It is needless to mention here that this Court need not given any direction as it is mandate to follow the guidelines of the Apex Court

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<sup>6</sup> (2014) 8 SCC 273

issued in Arnesh Kumar's case supra, otherwise it would amount to contempt of Court being filed before High Court of concerned State. Hence, the Investigating Agency is bound to adhere to the guidelines issued by the Apex Court in Arnesh Kumar's case supra.

13. With this observation, the criminal petition is dismissed.

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**M. SATYANARAYANA MURTHY, J**

20<sup>th</sup> April 2017.

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