

CRIMINAL PETITION No. 2705 of 2017

ORDER:

This Criminal Petition under Section 438 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.'), is filed to enlarge the petitioners/accused on pre-arrest bail since they are apprehending arrest in connection with Crime No.13 of 2017 of Station House Officer, Doma Police Station, Ranga Reddy District, registered for the offences punishable under Section 379 of IPC, and Section 21(4) of MMDARA Act and Section 3 of PDPP Act.

One K. Venkat Reddy, Police Constable of Police Station, Doma lodged a complaint on 21.03.2017 at about 5.30 P.M. while he was coming to Police Station, he acrossed one lorry bearing No. AP-23-V-9317 loaded with sand, then he stopped the lorry and questioned him about the contents of the lorry, it is stated that the lorry is carrying sand and on verification, the body of the lorry was found with full of sand and on further questioning about the permission, they informed that they did not obtain any permission, immediately the said lorry was seized and shifted to the police station. On the strength of the complaint of K. Venkat Reddy, the above crime was registered and issued F.I.R.

The main contention of the petitioners is that even if the petitioners contravened any provisions of the Act referred above, the petitioners are entitled to compound the offence and thereby the very registration of the crime against these petitioners is illegal and in contravention of G.O.Ms.No.15 dt.19.02.2015, on this ground alone, the petitioners are entitled to be enlarged on pre-arrest bail.

During hearing, the learned counsel for the petitioners drawn the attention of this Court to Para 12(2) of aforesaid G.O.Ms.No.15 which permits the persons who contravenes and found transporting sand by various vehicles, specified the compounding fee for first and second offences.

On the strength of the said G.O., the petitioners' counsel contended that the petitioners are liable to be enlarged on pre-arrest bail as the very registration of a crime is illegal.

Whereas, the learned Public Prosecutor for the State of Telangana State contended that as long as the offence is not compounded, the investigating agency is competent to investigate into the offence and arrest the accused, if the investigating agency found that arrest is necessary as it is a part of investigation and on that sole ground G.O.Ms.No.15 was passed, the petitioners cannot be allowed to enlarge on pre-arrest bail.

The main endeavour of the learned counsel for the petitioners is that on account of G.O.Ms.No.15, the petitioners are entitled to compound the offences, but the registration of crime is illegal.

Section 378 of IPC defines with theft and Section 379 of IPC deals with punishment for theft. According to Section 379 of IPC, "whoever commits theft shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both." At the same time, Sections 21(4) of MMDARA and Sec.3 of PDPP Act deals with punishment for offences, which are compoundable and as long as those provisions are in the statute, the authorities who found the commission of the offence can bring it to the notice of concerned police having jurisdiction over the area to set the law in motion so as to enable the police to register the crime.

Learned counsel for the petitioners further contended that if the compounding of offence is permitted, the question of registration of crime does not arise. This contention is without any substance for the reason that the various offences under Indian Penal Code are compoundable, but still the police can register a case and issue F.I.R. Merely because, the offences allegedly committed by the petitioners, is compoundable, there is ample power to the police to register a crime as long as the offence is not compounded, the police can arrest the accused as part of investigation. Therefore, on this ground, the petitioners cannot be enlarged on pre-arrest bail.

When there is no prima facie material against the petitioners to conclude that they committed offences, pre-arrest bail can be granted as the per the principles laid down in *Gurbaksh Singh Sibbia v. State of Punjab*¹.

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 Constitutional Bench of the Apex Court in *Gurbaksh Singh Sibbia v. State of Punjab* (referred supra), 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" that 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

¹ AIR 1980 SC 1632

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 grant 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 v. State of Punjab* (referred supra).

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*"² 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;

² AIR 2011 SC 312

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;

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.

In view of the law declared by the Apex Court in Gurbaksh Singh Sbbia v. State of Punjab and “Sddharam Satlingappa Mhetre v State Of Maharashtra, the petitioners are not entitled for pre-arrest bail.

In the result, this Criminal Petition is dismissed.

Miscellaneous petitions, if any, pending in this criminal petition, shall stand closed.

M. SATYANARAYANA MURTHY, J

Date:07.04.2017
ccm



THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY



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