

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.1321 OF 2017

ORDER:

This criminal petition, under Section 438 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.'), is filed to grant pre-arrest bail to the petitioners/ A.1 to A.3 apprehending their arrest in connection with Cr.No.90 of 2016 of Damargidda Police Station, Mahabubnagar District, registered for the offences punishable under Sections 341, 324 read with 34 of the Indian Penal Code, 1860 (for short 'I.P.C.').

The case of the prosecution, in brief, is that the *de facto* complainant while coming back after dropping his children, he saw one car and bike parking on the road near Kethanpalli Village Rayappa Cheruvu katta. He went to Kethanpalli bus stop after got boarding his children into Narayanpet school bus, on the way at about 8.30 a.m. three unknown persons stopped him near Rayappa Cheruvu katta, one of them sprinkled pepper spray on the *de facto* complainant, the other persons beat him with iron rod and caused bleeding injuries. He raised cries. On hearing his cries, one person belongs to Kethanpalli Village came there, the said three persons skulk away on their motor cycle from the scene of offence. He was shifted to Government Area Hospital, Narayanpet, Mahabubnagar, and lodged the present complaint.

During hearing, learned counsel for the petitioners would contend that non-disclosure of the names of the persons creates any suspicion of the involvement of these petitioners in the crime, there was a criminal litigation between A.4 - father-in-law of the *de-facto* complainant and his wife etc., three cases were registered

earlier in Cr.Nos.81 and 83 of 2016 and 52 of 2014 against one another on account of matrimonial disputes, and hence these persons are falsely implicated. A.4 is already enlarged on regular bail and in the absence of *prima-facie* case against these petitioners, the court cannot conclude that the petitioners committed any such offence and prayed to enlarge the petitioners in the event of their arrest.

Whereas the learned Public Prosecutor for the State of Telangana would contend that section of law was altered from 324 to 326 by following the necessary procedure and that the confession of A.4, who was already enlarged on regular bail, that the petitioners are the assailants, who sprinkled pepper spray and caused injuries on the body of the *de facto* complainant and that apart investigation is in the midway, the petitioners are not entitled to claim pre-arrest bail and prayed to dismiss the criminal petition.

Undoubtedly, there is no reference of the names of the petitioners in the report lodged with the police by the *de facto* complainant and in fact when pepper spray sprinkled on his face, it is difficult to identify, in normal course of event till he regained his normal sense. But during investigation, he disclosed the identity of these persons, who skulk away from the scene of offence on arrival of a person from Kethanpalli on hearing cries of the *de facto* complainant, they can be identified either by the *de facto* complainant or by the person who came there on hearing cries of the *de facto* complainant. Therefore, failure to refer the names of the petitioners in the complaint by itself would not entitle them to claim pre-arrest bail. The other ground raised before this court is

that due to registration of three crimes against one another and A.4 herein is one of the accused in those complaints, but nothing was alleged in those complaints filed by the *de facto* complainant against A.4. Therefore, he allegedly foisted this case without occurrence of any incident. But, at best, filing of complaints one another shows motive of the *de facto* complainant or the petitioners and A.4 in commission of the offence. Motive is the doubled edged weapon, which can be used either to foist a false case or to commit offence. It is only an additional piece of evidence, but not substantive evidence.

Therefore, on the basis of pendency of criminal litigation, it is difficult for this court to enlarge the petitioners on bail. It is not his case that there were any differences between the petitioners and the *de facto* complainant in connection with any matter. In such case, there is no need for him to foist the false case in normal course of event.

No doubt the petitioners are the relatives of A.4 - father of Patel Sandya. But there were no differences, as per the allegations made in the petition, between the *de facto* complainant and the petitioners. In such case, question of implicating them unnecessarily in such offence would not arise.

According to the Public Prosecutor, the section of law was altered from 324 to 326, but no steps were taken to amend the petition, appropriately. However, the material on record would show that the petitioners committed *prima-facie* offence punishable under Sections 341, 326 read with 34 I.P.C.

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**¹, 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 an inexorable rule that anticipatory bail cannot be granted unless the proposed accusation appears to be actuated by malafides;

In the present case, absolutely no *mala fides* are attributed against the *de facto* complainant to foist a false case against these petitioners except contending that they are supporters of A.4 father of the Patel Sandhya. Therefore, in the absence of any *mala fides* in lodging the complaint, this court cannot exercise jurisdiction under Section 438 Cr.P.C. to enlarge the petitioners, in the event of their arrest. As observed by me in earlier paragraphs, it is difficult, *prima facie*, to conclude that the petitioners did commit no offence, there is every possibility to interfere with further investigation, since the investigation is in the mid way. Therefore, I find no

¹ AIR 1980 SC 1632

ground to grant pre-arrest bail to the petitioners, consequently the criminal petition is liable to be dismissed.

In the result, the criminal petition is dismissed.

M. SATYANARAYANA MURTHY, J

22.02.2017
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