

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.2125 OF 2017

ORDER:

This criminal petition is filed under Section 438 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') to grant pre-arrest bail to the petitioner/A6 in C.C. No.806 of 2010 pending on the file of the Chief Metropolitan Magistrate, Vijayawada, who allegedly committed the offence punishable under Section 420 read with 34 of IPC.

It is the case of the prosecution that the *de facto* complainant paid a sum of Rs.1,00,000/- and after some time paid another sum of Rs.1,00,000/- to A1, who agreed to pay interest at Rs.2/- per hundred and paid interest till March, 2017 and thereafter committed default in payment of interest. When the *de facto* complainant demanded for return of entire amount, the accused issued a cheque on 10.07.2007 for a sum of Rs.1,08,000/- and another cheque for a sum of Rs.1,00,000/- on the same day. On presentation of the said cheques, they were dishonoured. Thus, the petitioner along with others committed the above offence.

The police after completion of investigation filed charge sheet before the Chief Metropolitan Magistrate, Vijayawada, but the petitioner and other accused successfully avoided their arrest during investigation and even after filing charge sheet, they did not appear before the Court. Therefore, the Chief Metropolitan Magistrate, Vijayawada has issued NBWs against A1 to A6 and they are pending execution.

When the charge sheet was filed after completion of investigation showing the petitioner along with others as absconding

and NBW was issued by the Magistrate, the petitioner has to file a petition under Section 70 (2) Cr.P.C. to recall warrant, but instead of filing such application before the Magistrate, circumventing the provisions of Cr.P.C., filed the petition under Section 438 Cr.P.C. claiming pre-arrest bail as if she is apprehending her arrest. But, she was found absconding and did not respond to the notice issued under Section 41-A Cr.P.C., that itself shows the conduct of the petitioner that she avoided arrest successfully and absconded during the investigation. When the petitioner was absconding and did not co-operate with the investigation, she is disentitled to claim pre-arrest bail under Section 438 Cr.P.C.

Therefore, I find no ground to enlarge the petitioner on pre-arrest bail, however the petitioner is at liberty to file appropriate application after issuing notice to the other side before the trial court either under Section 70(2) Cr.P.C. or under any other provision of Cr.P.C. and the trial Court is requested to decide the said application on the same day in accordance with law.

In the result, the criminal petition is disposed of.

M.SATYANARAYANA MURTHY,J

20.03.2017
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