

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.689 OF 2017

ORDER:

This petition is filed under Section 438 of Criminal Procedure Code (for short "Cr.P.C.") for grant of pre-arrest bail to the petitioner – Accused, in the event of his arrest in Crime Nos.189 of 2016 of Women Police Station, Rr. Dt, AR HQ, Cyberabad, registered for the offences punishable under Sections 498-A, 324, 506 of Indian Penal Code (for short "I.P.C.") and Sections 3 and 4 of the Dowry Prohibition Act (for short "D.P.Act").

The case of the prosecution, in brief, is that the marriage of the defacto complainant with petitioner/accused No.1 was performed on 24.08.2008 at Tyallur Village, Pedakurapadu Mandal, Guntur District and at the time of marriage, brother and sister of accused No.1 demanded for dowry, accordingly parents of the defacto complainant conveyed 150 square yards plot, gave 50 Tulas of Gold and paid Rs.5,00,000/- cash and performed rituals. Brother of accused No.1 demanded an amount of Rs.1,00,000/- and accused demanded Rs.2,00,000/- to be gifted to his sister. After marriage, they lived happily for sometime. Later, they started harassing the defacto complainant for not giving birth to child. However, defacto complainant gave birth to a female child on 11.09.2013, but the child was never taken care of by the petitioner. On the eve of Diwali i.e. on 11.11.2015 defacto complainant and her husband were invited by her relatives by name B.Bala Swamy and B.Balarju to their house. On the next day i.e. on 12.11.2015 petitioner/accused No.1 started questioning the

defacto complainant that as to why her own brother and father did not invite them for Diwali to their home. On that defacto complainant told that her father and brother are not celebrating any festival as one year has not passed after the death of her mother and that the particular festival is not part of their community. Thereupon, the petitioner/accused No.1 started shouting at defacto complainant, which is as follows:

“you don’t have proper relations with your own father’s family. If you have any guts, go there and stay in your father’s home for one month. Your father is a useless fellow and your brother is another useless fellow. They don’t know how to treat daughter and her husband. Even though your brother’s wife scolded me, he is not asking her to apologize to me without shame.”

Thereafter, the petitioner/accused No.1 abused defacto complainant in filthy language and started beating with roti roller (wooden roller) and caused injury. In the said incident, her upper front tooth were broken and upper lip got cut and blood started oozing and got swelling on her hands and cheeks. Due to severe pain, defacto complainant called her father on phone; thereafter her father came and took her to the hospital for treatment. Later, she lodged compliant with the police on 19.09.2016. On the strength of the said complaint, police registered the crime and issued F.I.R.

Learned counsel for the petitioner contended that the receipt of dowry etc., allegedly taken place in the year 2008 and whereas the alleged incident of beating and causing injury allegedly taken place on 12.11.2015, whereas the complaint was lodged with the police on 19.09.2016. Therefore, there is improbability in the allegations made against the petitioner and he is apprehending his

arrest in the said crime, sought a direction to the concerned police to release him on pre-arrest bail, in the event of his arrest.

Whereas, learned Public Prosecutor for the State of Telangana contended that the defacto complainant received grievous injuries and she lost two incisor; causing such injuries by the defacto complainant would amount to an offence punishable under Section 324 of I.P.C..

Section 3 of the D.P.Act prescribes penalty for giving or taking dowry and the minimum punishment prescribed under the Act is 5 years imprisonment with fine, which shall not be less than Rs.15,000/- subject to certain conditions contained in clause (2) of Section 3 of the Act.

Section 4 of the D.P.Act deals with penalty for demanding dowry and the minimum punishment prescribed under the Act is 6 months imprisonment, which may extend to 2 years, with fine of Rs.10,000/- subject to proviso appended thereto.

Here, the offence allegedly committed on 24.08.2008 when the marriage of the defacto complainant with the petitioner was performed as the parents of the defacto complainant conveyed 150 square yards of plot and presented 50 Tulas of Gold and paid cash of Rs.5,00,000/- besides payment of other amounts as gift to her sister-in-law. Payment of dowry would attract, *prima facie*, the offence punishable under Section 3 of D.P.Act and demanding Rs.2,00,000/- as gift to the sister-in-law of the defacto complainant would fall within the ambit of Section 4 of the D.P.Act, but the minimum punishment prescribed under Section 3 of the D.P.Act is imprisonment for 5 years with fine. Therefore,

there is no limitation to lodge complaint against such incident. However, in normal course of events, as the parents of the defacto complainant paid Rs.5,00,000/- and presented 50 Tulas of gold etc., she would not lodge the complaint when she is residing in her matrimonial house, hence, the delay in lodging the complaint is not a ground to grant bail to the petitioner. As the defacto complainant was subjected to cruelty, the same would not attract the offence punishable under Section 498-A of I.P.C. The incident of causing grievous injury to the defacto complainant had taken place on 12.11.2015 on the occasion of Diwali. Causing grievous injury is defined under Section 320 of I.P.C. the same is punishable under Section 324 of I.P.C. Wound certificate issued by Department of Oral Medicine and Radiology, Government Dental College and Hospital, Afzal Gunj, Hyderabad shows that the defacto complainant sustained grievous injury, which is as follows:

“Replaced left maxillary central incisor with metal ceramic denture fixed to adjust teeth 11 and 22. Root canal filling in maxillary right central incisor.”

In the incident took place on 12.12.2015 petitioner beat the defacto complainant with roti roller (wooden block), as a result of which she lost her tooth. Fracture or dislocation of a bone or tooth is a grievous hurt as per Clause No.7 of Section 320 of I.P.C., which is punishable under Section 324 of I.P.C.

As family prestige is involved in lodging the complaint, the delay in lodging the same cannot be a ground to grant pre-arrest bail.

For grant of pre-arrest bail, the Court has to record its satisfaction that there is no material against the petitioner to

conclude that he committed such offences.

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 and Ors. 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 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

¹ AIR 1980 SC 1632

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 and Ors. v. State of Punjab"** (referred supra) case. Though, according to the judgment of the Supreme Court, even in economic offences, the Court can grant anticipatory bail, subject to satisfaction of other grounds.

While dealing with a petition for grant of pre-arrest bail, the Apex Court formulated 10 guidelines in **Siddharam Satlingappa Mhetre vs 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;
- 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.

² AIR 2011 SC 312

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.

On the strength of the same principles, in “**Jai Prakash Singh v. State of Bihar**”³, the Supreme Court held that Anticipatory bail can be granted only in exceptional circumstances where the court is prima facie of the view that the applicant has falsely implicated in the crime. The Courts are expected to deal with very serious matters seriously, but not in casual and cavalier manner and grant of anticipatory bail by extending unwarranted sympathy towards accused by exercising discretion. Court might not exercise its discretion in derogation of established principles of law, rather it had to be in strict adherence to them. Discretion had to be guided by law, duly governed by rule and could not be arbitrary, fanciful or vague and Court must not yield to spasmodic sentiment to unregulated benevolence. Any order *dehors* grounds provided in Section 438 of Cr.P.C is illegal.

In view of the law declared in the above judgments, the Courts shall not extend undeserved sympathy to the accused and

³ AIR 2012 SC 1676

that the Court while exercising discretion has to follow the settled principles and at the stage of consideration of anticipatory bail while dealing with application for pre-arrest bail, the Court is under obligation to indicate in the order, reasons for *prima facie* coming to the conclusion as to why bail was being granted, particularly, where the accused was charged for having committed serious offences. It is necessary for the Courts dealing with the applications for pre-arrest bail to consider several circumstances, though the points urged by the petitioner is not accepted by the Court, considering the bail applications, yet, giving reasons, is different from discussing merits or demerits. At the stage of granting bail, a detailed examination of evidence and elaborate documentation on merits of the case is not to be undertaken, but that does not mean that while granting bail, some reasons for *prima facie* conclusions as to why bail was being granted is required to be indicated.

Thus, it is clear from the law declared by the Apex Court that while granting pre-arrest bail the Court has to exercise its discretion based on the settled legal principles and record its *prima facie* opinion that there is no material against the petitioner to conclude that he committed such offences.

Keeping in mind, various principles laid down in various judgments, I adverted to the material on record to record my *prima facie* conclusion to deny the pre-arrest bail, in the earlier paragraphs.

The allegations made in the complaint coupled with the medical report shows that defacto complainant received grievous

injuries and lost her tooth in the incident took place on 12.11.2015, which is punishable under Section 324 of I.P.C. and there is a material to show that the petitioner received dowry at the time of marriage, which is punishable under Section 3 of the D.P.Act and demanding additional dowry is punishable under Section 4 of the D.P.Act.

Learned counsel for the petitioner mainly contended that there is abnormal delay in lodging the complaint, but that itself is not a ground to grant pre-arrest bail in view of the existing relationship between the parties.

Consequently, I find no ground to enlarge the petitioner on pre-arrest bail by exercising power under Section 438 of I.P.C. Therefore, the petition is liable to be dismissed.

In the result, the petition is dismissed. No costs.

The miscellaneous petitions pending, if any, shall also stand closed.

JUSTICE M. SATYANARAYANA MURTHY

06.02.2017
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