

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.748 of 2017

ORDER:

The petitioner/A.4 filed the present application under Section 438 Cr.P.C. to release him in the event of his arrest in connection with Crime No.517 of 2016 of Muvvalavanipalem Police Station, Visakhapatnam, registered for the offences punishable under Sections 353 and 324 read with 34 IPC.

2. The case of the prosecution is that the *de facto* complainant is a police constable. While discharging his official duties, at about 12:30 PM, near Satyam junction a quarrel took place at Geetha Bar. On seeing the same, he along with Home Guard rushed to the spot and found four persons attacking the Bar boy and causing bleeding injuries. On noticing the same, the neighbours also gathered there and thereupon the *de facto* complainant and Home guard made an attempt to separate them. Out of four persons, two persons beat the *de facto* complaint and Home guard with hands and pushed them while abusing in filthy language. Thereafter, the *de facto* complainant enquired the persons present at the bar, they disclosed their names and identity who are the customers of Geetha Bar. The *de facto* complainant informed the incident to the police concerned and lodged a complaint.

3. It is the case of the petitioner, who is A.4, that he is not the person who beat the *de facto* complaint and Home guard. One Kurma Reddy and Kolli Bharat Kumar are the persons who beat the *de facto* complaint and Home Guard. On enquiry made by police, it disclosed that one Kurma Reddy and Kolli Bharat Kumar caused injuries and

pushed the *de facto* complainant and Home guard and other two persons viz., Sarath and Saikumar are A.3 and A.4. On the strength of this allegation, it is contended that the petitioner was not present, but caused injury on the body of the *de facto* complaint. Thus, the offences allegedly committed by them are punishable under Sections 353 and 323 read with 34 IPC. Therefore, the persons, who were present along with A.1 and A.2, are also equally liable in view section 34 IPC as they caused injury on the body of Bar boy though Kurma Reddy and Kolli Bharat Kumar alone obstructed the *de facto* complainant in discharging his duties and beat him while abusing in filthy language.

4. The public prosecutor for the state of A.P. drawn the attention of this Court to the statements recorded by police and on the strength of such statements, it is contended that there is *prima facie* material to conclude that the petitioner also participated in the above incident and beat the *de facto* complainant.

5. The statement of P.W.1, who is *de facto* complainant, disclosed that he was beaten by the petitioner and statements of other witnesses were also disclosed about participation of the petitioner in the above crime. The statement recorded by police is subsequent to the incident and F.I.R. need not directly attributing anything about causing injuries on the body of P.W.1. Moreover, even if the allegations in the complaint are taken into consideration, the petitioner and three others caused injury on the body of the Bar boy and A.1 and A.2 also obstructed the *de facto* complainant from discharging his duties as police constable, who are under obligation to take care of law and problem and thereby liable for the offences punishable under Sections 353 and 324 read with 34 IPC. The police

constable while discharging his duties, more particularly when they made an attempt to secure the accused persons and the Bar boy, which is a serious matter of concern and if such persons are enlarged on bail, certainly it would have its impact on the society at large.

6. Grant of pre-arrest bail is not a matter of course and it is a matter of exception and unless the petitioner shows special circumstances to grant pre-arrest bail, the Court cannot normally grant pre-arrest bail to the petitioner. In **GURBAKSH SINGH SIBBIA ETC., V. STATE OF PUNJAB**¹ the Apex Court held as follows:

“We have said that there is one proposition formulated by the High Court with which we are inclined to agree. That is proposition No. (2). We agree that a ‘blanket order’ of anticipatory bail should not generally be passed. This flows from the very language of the section which, as discussed above, requires the applicant to show that he has "reason to believe" that he may be arrested. A belief can be said to be founded on reasonable grounds only if there is something tangible to go by on the basis of which it can be said that the applicant's apprehension that he may be arrested is genuine. That is why, normally, a direction should not issue under Section 438(1) to the effect that the applicant shall be released on bail "whenever arrested for whichever offence whatsoever." That is what is meant by a 'blanket order' of anticipatory bail, an order which serves as a blanket to cover or protect any and every kind of allegedly unlawful activity, in fact any eventuality, likely or unlikely regarding which, no concrete information can possibly be had. The rationale of a direction under Section 438(1) is the belief of the applicant founded on reasonable grounds that he may be arrested for a non-bailable offence. It is unrealistic to expect the applicant to draw up his application with the meticulousness of a pleading in a civil case and such is not requirement of the section. But specific events and facts must be disclosed by the applicant in order to enable the court to judge of the reasonableness of his belief,

¹ AIR (1980) SC 1632

the existence of which is the sine qua non of the exercise of power conferred by the section.”

7. 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**⁵ case, 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 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 status 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's** 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. The Apex Court laid down 10 guidelines laid down 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.
- 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

² AIR 2011 SC 312

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.

As per the above guidelines, the Court has to take into consideration the nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made etc.

8. In the present case, the petitioner along with other accused with a common intention obstructed the police constable, who is a public servant while discharging his duties and when the petitioner is not in a position to get who are under obligation, protect the law and order, there is any amount of doubt as to the manner to commit such offence which is serious in nature. Therefore, keeping in mind, the guidelines referred to above and considering the facts and circumstances of the case, it is difficult for Court to conclude that there is no prima facie material against the petitioner for the offence punishable under Section in such a case the petitioner is disentitled to claim pre-arrest bail and consequently, the petition is liable to be dismissed.

9. Accordingly, the Criminal Petition is dismissed.

M.SATYANARAYANA MURTHY, J

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