

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.735 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 petitioner/ A.72 apprehending his arrest in connection with Cr.No.18 of 2016 of CID P.S., Hyderabad, registered for the offences punishable under Sections 420, 406, 408 read with 120-B of the Indian Penal Code, 1860 (for short 'I.P.C.') and Section 8 of Andhra Pradesh Public Examinations (Prevention of Malpractices and Unfair Means) Act, 1974 (for short 'the Act, 1974').

The complaint was registered against several persons alleging that the petitioner and others leaked the TS EMCET-II 2016 question paper by adopting illegal means and played fraud on the Government and other persons collecting huge amount from different persons. The petitioner is A.72 in the above crime. The role played by the petitioner is that he indulged in leaking TS EAMCET-II 2016 question paper Examinations in collusion with parents of the students, coaching centers and staff of the JNTUH and printing press people to enable some of the students to have illegal merit/rank in the above examination and that he took all the students to a particular place and arranged question bank to them so as to enable them to prepare, after collection of huge amount ranging from Rs.30,00,000/- to Rs.35,00,000/- for securing illegal rank in the examination.

The specific role played by the petitioner in leaking the EMCET question paper enabling some of the candidates, who paid amount to him to get through the examination is a serious offence.

Learned counsel for the petitioner mainly contended that the allegations made in the complaint would not attract the offences punishable under Sections 420, 406, 408 read with 120-B of I.P.C. and Section 8 of the Act, 1974 and when there is no material against the petitioner, the petitioner can be enlarged on pre-arrest bail. He placed reliance on the Judgment of the Apex Court in **Bhadresh Bipinbhai Sheth v. State of Gujarat and Another**¹ and on the Judgment of the Orissa High Court in **Afjal Baig v. State of Orissa**² in support of his contention and contended that the material on record is not sufficient, *prima-facie*, to conclude that the petitioner committed the offence under sections referred above, but the principles laid down in the above decisions cannot be applied at this stage.

Here the material on record shows that the petitioner and others procured students and handed over the question papers so as to enable them to secure higher rank in the EMCET examination of Telangana State. Such act would not only effect in near future of medical profession, but also effect the lives of the human, if these persons are likely to treat after they obtaining their degrees i.e., medicine etc.

The petitioner is apprehending his arrest in connection with the above crime and sought for a pre-arrest bail. Grant of pre-arrest bail is not a matter of course and it is a matter of exception.

¹ 2016 (1) SCC 152

² BLAPL No.2002 of 2015

In **State Of Maharashtra V. Mohd. Sajid Husain**³ the Apex Court

laid down the following guidelines for grant of anticipatory bail:

- 1.The nature and gravity or seriousness of accusation as apprehended by the applicant;
- 2.The antecedents of the applicant including the fact as to whether he has, on conviction by a Court, previously undergone imprisonment for a term in respect of any cognizable offence;
- 3.The likely object of the accusation to humiliate or malign the reputation of the applicant by having him so arrested; and
- 4.The possibility of the appellant, if granted anticipatory bail, fleeing from justice.

In **Siddharam Satlingappa Mhetre v. State Of Maharashtra**

and Others⁴ the Apex Court held 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 facts 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 accuser'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 case 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 case in which accused is implicated with the help of Section 34 and 149 of IPC, 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,

³ AIR 2008 SC 155

⁴ 2011 CrL.J. 3905

humiliation and unjustified detention of the accused;

- ix) The Court to consider reasonable apprehension of tampering of the witnesses 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 principles laid down in the above judgments, granting of pre-arrest bail is not a matter of course, unless court satisfied that the petitioner did commit no offence prima facie and had no connection with the offence. Committing of offences punishable under sections referred supra will have its own impact on the society at large.

Therefore, considering the facts and circumstances of the case, it is difficult to grant pre-arrest bail at this stage. More so, there is every possibility to commit similar offences in future in the event of enlarging the petitioner on pre-arrest bail.

Taking into consideration the facts and circumstances of the case and the material on record, I find no ground to enlarge the petitioner on pre-arrest bail in connection the offences referred supra and as such, this petition is liable to be dismissed.

Accordingly, this Criminal Petition is dismissed.

M. SATYANARAYANA MURTHY, J

21.02.2017
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