

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO. 260, 261 & 262 OF 2017

COMMON ORDER:

These criminal petitions are filed under Section 438 of Cr.P.C to enlarge the petitioners on bail, apprehending their arrest in connection with unnumbered crime on the file of Women Police Station, Kadapa.

The facts in CrI.P.No.261 of 2017 are dealt with, for better appreciation of the cases.

The present facts of the case are that the 2nd respondent/wife of the petitioner allegedly lodged a complaint under Section 498-A of IPC & Sections 3,4 & 6 of Dowry Prohibition Act. But the police neither registered any crime nor issued any F.I.R against the petitioner. But, still, the petitioner is apprehending his arrest in connection with the above crime.

During hearing, the learned Public Prosecutor for the State of Andhra Pradesh submits that, as on today there is no complaint received either from the wife of the petitioner or anybody complaining against the petitioner. Therefore, the apprehension of the petitioner about his arrest in connection with the offences punishable under Section 498-A of IPC & Sections 3,4 & 6 of Dowry Prohibition Act is misconceived and prayed for dismissal of the criminal petition.

The petitioner sought for pre-arrest bail, apprehending his arrest for the offences punishable under Section 498-A of IPC & Sections 3,4 & 6 of Dowry Prohibition Act. But, this apprehension must be based on reasonable material and as on today, as per the

submissions of the learned Public Prosecutor for the State of Andhra Pradesh, no crime was registered and no complaint was received, against the petitioner from anybody to attract the offences punishable under Section 498-A of IPC & Sections 3,4 & 6 of Dowry Prohibition Act.

In **Shri Gurbaksh Singh Sibbia and Ors. v. State of Punjab**¹, discussed on the scope of granting anticipatory bail and in **Savitri Agarwal and ors v. State of Maharashtra**², the Supreme Court laid felt that wide discretionary power conferred by the Legislature on the higher echelons in the criminal justice delivery system cannot be put in the form of straight-jacket rules for universal application as the question whether to grant bail or not depends for its answer upon a variety of circumstances, the cumulative effect of which must enter into the judicial verdict. A circumstance which, in a given case, turns out to be conclusive, may or may not have any significance in another case. While cautioning against imposition of unnecessary restrictions on the scope of the Section, because, in its opinion, over generous infusion of constraints and conditions, which were not to be found in Section 438 of the Code, could make the provision constitutionally vulnerable, since the right of personal freedom, as enshrined in Article 21 of the Constitution, cannot be made to depend on compliance with unreasonable restrictions, the Constitution Bench laid down the following guidelines, which the Courts are required to keep in mind while dealing with an application for grant of anticipatory bail:

¹ AIR 1980 SC 1632

² AIR 2009 SC 3173

i) Though the power conferred under Section 438 of the Code can be described as of an extraordinary character, but this does not justify the conclusion that the power must be exercised in exceptional cases only because it is of an extraordinary character. Nonetheless, the discretion under the Section has to be exercised with due care and circumspection depending on circumstances justifying its exercise.

ii) Before power under Sub-section (1) of Section 438 of the Code is exercised, the Court must be satisfied that the applicant invoking the provision has reason to believe that he is likely to be arrested for a non-bailable offence and that belief must be founded on reasonable grounds. Mere "fear" is not belief, for which reason, it is not enough for the applicant to show that he has some sort of vague apprehension that some one is going to make an accusation against him, in pursuance of which he may be arrested. The grounds on which the belief of the applicant is based that he may be arrested for a non-bailable offence, must be capable of being examined by the Court objectively. Specific events and facts must be disclosed by the applicant in order to enable the Court to judge of the reasonableness of his belief, the existence of which is the *sine qua non* of the exercise of power conferred by the Section.

iii) The observations made in ***Balchand Jain v. State of M.P.***³ regarding the nature of the power conferred by Section 438 and regarding the question whether the conditions mentioned in Section 437 should be read into Section 438 cannot be treated as conclusive on the point. There is no warrant for reading into Section 438, the conditions subject to which bail can be granted under Section 437(1) of the Code and therefore, anticipatory bail cannot be refused in respect of offences like criminal breach of trust for the mere reason that the punishment provided for is imprisonment for life. Circumstances may broadly justify the grant of bail in such cases too, though of course, the Court is free to refuse anticipatory bail in any case if there is material before it justifying such refusal.

iv) No blanket order of bail should be passed and the Court which grants anticipatory bail must take care to specify the offence or the offences in respect of which alone the order will be effective.

³ (1976) 4 SCC 572

While granting relief under Section 438(1) of the Code, appropriate conditions can be imposed under Section 438(2) so as to ensure an uninterrupted investigation. One such condition can even be that in the event of the police making out a case of a likely discovery under Section 27 of the Evidence Act, the person released on bail shall be liable to be taken in police custody for facilitating the recovery. Otherwise, such an order can become a charter of lawlessness and a weapon to stifle prompt investigation into offences which could not possibly be predicated when the order was passed.

v) The filing of First Information Report (FIR) is not a condition precedent to the exercise of power under Section 438. The imminence of a likely arrest founded on a reasonable belief can be shown to exist even if an FIR is not yet filed.

vi) An anticipatory bail can be granted even after an FIR is filed so long as the applicant has not been arrested.

vii) The provisions of Section 438 cannot be invoked after the arrest of the accused. After arrest, the accused must seek his remedy under Section 437 or Section 439 of the Code, if he wants to be released on bail in respect of the offence or offences for which he is arrested.

viii) An interim bail order can be passed under Section 438 of the Code without notice to the Public Prosecutor but notice should be issued to the Public Prosecutor or to the Government advocate forthwith and the question of bail should be re-examined in the light of respective contentions of the parties. The ad-interim order too must conform to the requirements of the Section and suitable conditions should be imposed on the applicant even at that stage.

ix) Though it is not necessary that the operation of an order passed under Section 438(1) of the Code be limited in point of time but the Court may, if there are reasons for doing so, limit the operation of the order to a short period until after the filing of FIR in respect of the matter covered by the order. The applicant may, in such cases, be directed to obtain an order of bail under Section 437 or 439 of the Code within a reasonable short period after the filing of the FIR.

In **State of Madhya Pradesh v. Pradeep Sharma**⁴, the Supreme Court held that Section 438 is a procedural provision which is concerned with the personal liberty of an individual who is entitled to plead innocence, since he is not on the date of application for exercise of power under Section 438 of Code convicted for the offence in respect of which he seeks bail. The applicant must show that he has “reason to believe” that he may be arrested in a non-bailable offence. Use of the expression “reason to believe” shows that the belief that the applicant may be arrested must be founded on reasonable grounds. Mere “fear” is not “belief” for which reason it is not enough for the applicant to show that he has some sort of vague apprehension that someone is going to make an accusation against him in pursuance of which he may be arrested. Grounds on which the belief of the applicant is based that he may be arrested in non-bailable offences must be capable of being examined. If an application is made to the High Court or the Court of Session, it is for the court concerned to decide whether a case has been made out for granting of the relief sought. The provisions cannot be invoked after arrest of the accused. A blanket order should not be generally passed. It flows from the very language of the section which 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. Normally a direction should not issue to the effect that the applicant shall be released on bail “whenever arrested for

⁴ 2014 (1) RCR (Cri) 269

whichever offence whatsoever". Such "blanket order" should not be passed as it would serve as a blanket to cover or protect any and every kind of allegedly unlawful activity. An order under Section 438 is a device to secure the individual's liberty, it is neither a passport to the commission of crimes nor a shield against any and all kinds of accusations likely or unlikely. On the facts of the case, considered in the background of the legal position set out above, this does not *prima facie* appear to be a case where any order in terms of Section 438 of the Code can be passed.

Furthermore, the petitioners in Crl.P.Nos.260 & 262 of 2017 are also connected with the offences punishable under Section 498-A of IPC & Sections 3,4 & 6 of Dowry Prohibition Act.

Recording the submissions of the learned Public Prosecutor for the State of Andhra Pradesh, I find no basis for apprehension of arrest of the petitioners in Crl.P.Nos.260, 261 & 262 of 2017 in connection with the offences punishable under Section 498-A of IPC & Sections 3,4 & 6 of Dowry Prohibition Act on the file of Women Police Station, Kadapa. Therefore, all the three criminal petitions are dismissed, since a blanket order cannot be granted.

Consequently, miscellaneous applications pending if any, shall also stand dismissed.

JUSTICE M. SATYANARAYANA MURTHY

Date:23.01.2017

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