

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

Criminal Petition No.123 of 2017

ORDER:

This petition is filed under Section 438 of Cr.P.C. for grant of pre-arrest bail in Crime No.165 of 2016 of Police Station, Hanumakonda, Warangal District registered for the offences punishable under Sections 143, 447, 302, 506 r/w 149 of IPC, Sections 3(ii)(v)(va) of SC/ST (POA) Act, 1989 r/w SC/ST (POA) Amendment Act,2015 apprehending her arrest in connection with the above crime.

The case of the prosecution is that the de facto complainant lodged a complaint stating that on 22.05.2016 at about 1930 hours there was no electric power, he was present along with his wife and co-brother chit-chatting each other in front side verandah in his house, in the meantime at first two male persons, behind them two female persons came there and trespassed the premises of his house through the main gate and raising harsh voice asked him to call his son Prudhviraaj, the first two persons also visited the house in the last week and showed one Md.Sajid Pasha and that his son was at Hyderabad and not there, then they alleged that his son was in the house and asked to call and marry her daughter, otherwise, threatened to kill his son and see their end and at that time suddenly caught fire to his wife Vijayalaxmi and due to power cut, they were unable to identify the cause of fire, but they came to know that his wife was burning due to the involvement of the above

six persons and tried to extinguish fire and sustained burns to his hands and on 23.05.2016 she died.

The main contention of the petitioner is that she is prosecuting her studies B.Ed. and appeared to TET examination conducted by the Government of Telangana State which is two hours prior to the incident on the same day and that she did commit no offence and there is absolutely no material to connect the petitioner with the offence punishable under Section 302 I.P.C. and the other provisions of IPC referred to above. He also pointed out that there was a love affair between the son of the deceased and the de facto complainant and the petitioner herein, produced bunch of EMails, photos etc. to prove the affair between the son of the de facto complainant and the petitioner herein.

During hearing, Sri Nageshwar Rao Pujari, the learned counsel for the petitioner contended that there is any amount of suspicion in the allegation made against the petitioner as there is abnormal delay in lodging the complaint though the incident took place at 730 hours on 22.5.2016 but lodged the complaint on 24.10.2016 and apart from that there is discrepancy in the M.L.C. report and dying declaration regarding the substance used in causing the burn injuries on the body of wife of the de facto complainant. Therefore, in view of the discrepancy, the involvement of the petitioner can be excluded and sought for pre-arrest bail.

Whereas, the learned Public Prosecutor for the State of Telangana opposed the petition on various grounds and one among them is that there is a direct evidence more particularly the

dying declaration, recorded by the Magistrate within two hours after the occurrence of the incident which directly establish the prima facie involvement of the petitioner in the said incident of pouring petrol or kerosene and setting fire to the body of the wife of the de facto complainant i.e. Vijayalaxmi, later she succumbed to injuries while undergoing treatment in the hospital on 23.05.2016.

No doubt, the learned counsel for the petitioner drawn the attention of this Court to various documents including the messages, EMails, letters which discloses the love affair between the petitioner and the son of Vijayalaxmi and the de facto complainant. That is the reason for approaching the parents of Prudhviraaj with whom she developed love affair and while Vijayalaxmi, de facto complainant along with his brother-in-law chit-chatting sitting in the front verandah, all these persons came and asked them to call Prudhviraaj son of the de facto complainant and the deceased but when they did not call him while showing that he was at Hyderabad, they threatened with dire consequences including killing of Prudhviraaj, in the meanwhile flames spread over the body of Vijayalaxmi who sustained severe burn injuries over her body. But, due to power cut, they could not identify the persons who poured the flammable substance on the body of Vijayalaxmi merely because there is a love affair, the commission of the offence by the petitioner cannot be eliminated. Moreover, the dying declaration recorded by the magistrate within two hours after the incident clearly discloses that Naseen, the petitioner herein came to her house and when she was threatening her by Vijayalaxmi, she poured petrol and lit fire to her body. Thus, these specific allegations made in the statement

recorded by the magistrate prima facie establish direct involvement of the petitioner in the commission of such serious offence of murder punishable under Section 302 I.P.C. but the discrepancy with regard to flammable substance used in the commission of the offence alone is not a ground at this stage. Even otherwise, while granting bail, detailed examination of the evidence and elaborate documentation of the merits should be avoided. This requirement tends from desirability that no party should have the impression that his case has been prejudiced. To be satisfied about a prima facie case is needed but it is not the same as an exhaustive exploration of the merits in the order itself. Elaborate analysis or elaborate expression of merits is not required. In *NIRAJAN SINGH AND ANOTHER v. PRABHAKAR RAJARAM KHAROTE AND OTHERS*¹ it is held that where the offence is of a serious nature, the question of grant of bail has to be decided keeping in view the nature and seriousness of the offence and character of the offence.

Though there are discrepancies as pointed out by the learned counsel for the petitioner, they cannot be meticulously discussed while deciding an application for grant of bail and those discrepancies are explained during trial, the court can pass appropriate order but at this stage, those discrepancies can be insignificant in view of the principles laid in the above judgments. Moreover, grant of pre-arrest bail is not a matter of course and it is the matter of exception unless some exceptional circumstances are shown, the petitioner who allegedly committed a grave offence

¹ 1980 CrI.L.J. 426

punishable under Section 302 of IPC cannot be enlarged on pre-arrest bail.

Grant of pre-arrest bail is a matter of exception unless exceptional circumstances are shown, the petitioners cannot be enlarged on bail as per decision reported in *State of Maharashtra Vs. Mohd. Sajid Husain*², the Hon'ble Apex Court laid down the following guidelines laid down 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 another decision reported in *Siddharam Satlingappa Mhetre Vs. State of Maharashtra and others*³ the Hon'ble Apex Court held as follows:

“The following factors and parameters can be taken into consideration while dealing with the anticipatory bail:

- 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*

² AIR 2008 SC 155

³ 2011 CrI.LJ. 3905

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, 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.*

Keeping in mind the guidelines laid down by the Apex Court to grant pre-arrest bail, the Court must record prima facie satisfaction that the petitioner did not involve in such a crime. Here, the material on record shows prima facie about the direct involvement of the petitioner in the crime.

In view of the guidelines laid down by the Apex Court, the main consideration is that the court has to satisfy that the petitioner did not involve in the commission of such a serious offence. Further, the statement of the injured Vijayalaxmi while she was coherent and conscious recorded by the magistrate directly disclose that the petitioner poured kerosene and lit fire to her body prima facie. Thus, her participation in the incident cannot be ruled out at this stage. Moreover, the deceased Vijayalaxmi was a member of scheduled caste and the crime was registered for the offences punishable under Sections 143, 447, 302, 506 r/w 149 of IPC, Sections 3(ii)(v)(va) of SC/ST (POA) Act, 1989 r/w SC/ST (POA) Amendment Act, 2015 where anticipatory bail is impermissible in view of the specific law under the provisions of the Act. In those circumstances grant of pre-arrest bail to the petitioner is an illegal exercise of discretion that conferred on the court in contravention of the specific bar contained in SC & ST(POA) Act. Therefore, I find no ground to grant pre-arrest bail at this stage and consequently the petition is liable to be dismissed.

In the result, the petition is dismissed.

JUSTICE M. SATYANARAYANA MURTHY

Date: 19.01.2017
Ccm

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY



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