THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.75 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 petitioners/A.3 and A.4 in Crime No.1172 of 2011 of Banjara Hills Police Station, Hyderabad, who allegedly committed offences punishable under Sections 420 and 506 read with 34 of Indian Penal Code, 1860 (for short, 'I.P.C.').

The case of the prosecution, in brief, is that A.1-Gundla Arun Kumar allegedly offered to sell a diamond worth Rs.5.00 crores by showing various documents. Believing his version, on 19.07.2011 the *de- facto* complainant paid Rs.1,50,000/- to A.1 and on 20.07.2011 he deposited an amount of Rs.3,50,000/- in the account of A.1. Thus, he paid an amount of Rs.5,00,000/- as advance, but he did not handover the diamond. Thus he allegedly committed offences punishable under Sections 420 and 506 read with 34 of I.P.C.

The main contention raised before this court, in the petition as well as in the argument, is that no overt acts have been attributed to the petitioners in the entire complaint dated 27.12.2011 and they have nothing to do with the offences alleged, but apprehending arrest in connection with the above crime and hence sought for pre-arrest bail.

Whereas the Public Prosecutor for the State of Telangana would contend that A.1 withdrew the amount from the Bank account and he took an amount of Rs.2,00,000/- while the petitioners took an amount of Rs.1,00,000/- each and he drawn the attention of this court to the contents of the remand report of A.1, which discloses that the petitioners are avoiding their arrest in connection with the above crime successfully, on account of their absconding, the investigation could not be completed and some more witnesses have to be examined.

No doubt, there are absolutely no allegations in the complaint against the petitioners regarding their participation in the crime, the *de facto* complainant to part with the amount of Rs.5,00,000/- to A.1 as advance to sell the diamond worth Rs.5.00 crores, but, during investigation, it is found that the petitioners also shared the amount along with A.1 with dishonest intention and made the *de-facto* complainant parted with such huge amount and whereby deceived. It is also clear from the remand report that the petitioners shared the amount of Rs.1,00,000/- each, out of Rs.5,00,000/- received by A.1 as advance from the *de facto* complainant, and successfully avoiding their arrest in connection with the above crime. When the petitioners absconding themselves and not co-operating with the investigating agency, they do not deserve sympathy to grant pre-arrest bail and that apart in case the petitioners are enlarged, there is every possibility of avoiding trial and fleeing away from the bail since their conduct is reprehensible.

Grant of pre-arrest bail is not a matter of course, it is a matter of exception. Unless the petitioners have shown exceptional circumstances, the court cannot grant pre-arrest bail and such discretion is only in exceptional circumstances as per the law declared by the Apex Court in **STATE OF MAHARASHTRA VS. MOHD. SAJID HUSAIN**[1]. Wherein 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.

Similarly, in **SIDDHARAM SATLINGAPPA MHETRE VS. STATE OF MAHARASHTRA AND OTHERS**[2]**,** 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

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[1] AIR 2008 SC 155
[2] 2011 Crl.L.J. 3905

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.

If the guidelines laid down in the Judgments referred to above are applied to the present facts of the case, the petitioners do not deserve any sympathy and mere failure to make allegations against the petitioners in the complaint lodged with the police is not a ground to grant pre-arrest bail. However, it is one of the circumstances to consider the request of the petitioners while deciding the application for grant of pre-arrest bail, but during investigation, it is found that the petitioners shared the amount received by A.1, which attracts the offence punishable under Section 420 read with 34 of I.P.C. since the criminal act was done by several persons in furtherance of common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.

Therefore, I find *prima facie* material against the petitioners, more particularly, about the sharing of the amount which was received by A.1 by making dishonest representation to the *de facto* complainant. Hence, applying the guidelines laid down by the

Apex Court to the present facts of the case, I find no ground to grant pre-arrest bail, consequently the criminal petition deserves to be dismissed.

In the result, the criminal petition is dismissed, however, the petitioners are at liberty to renew their request after completion of investigation.

M. SATYANARAYANA MURTHY, J

Date:17.01.2017
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