

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL PETITION No.3606 OF 2017

ORDER:

The present petition is filed under Section 438 of the Code of Criminal Procedure, 1973, requesting to grant anticipatory bail in Crime No.32 of o2017 of Pendlimarri Police Station, Kadapa District.

2. The petitioner is arraigned as accused No.2. Admittedly, he is owner of the tractor, in which the sand was loaded. At the time when the same was intercepted by the police party, the driver, who is accused No.1, made a confession to the effect that for the past one month the sand was being transported without any licence and he has been doing it at the instructions of the petitioner and that has been the confession made available in the material papers.

3. Sri V.R.Reddy Kovvuri, learned counsel for the petitioner, would submit that without the knowledge of the petitioner, the driver himself went to the sand-reaches and got loaded and the confession made by the driver cannot be used to show the complicity of the petitioner herein. It is also his submission that there has been some sort of lapses in the F.I.R. and it is with ambiguity. It is according to him, the sand was not transported and interception was not at the time the sand was being transported and the confession of co-accused cannot be used against the petitioner. The learned counsel also places reliance on G.O.Ms.No.42 dated 29.03.216. It is also his submission that accused No.1 was already enlarged on bail and, therefore, urges to grant anticipatory bail.

4. The confessional statement of co-accused can be construed as relevant. The provision of Section 31 of the Indian Evidence Act, 1872, would not impose any bar to use the same. On the other hand, basing solely on the confessional statement of a co-accused conviction cannot be recorded and the confession of a co-accused is a weak piece of evidence. But, however, there cannot be any prohibition in using it when there is sufficient evidence on record in proving the guilt of the accused and these principles are well settled. Therefore, it cannot be said that the confession of co-accused has to be totally excluded from the record.

5. Therefore, in view of the confessional statement, it cannot be said that the petitioner herein has no knowledge as to transportation of sand when the driver's statement would make it clear that for the past one month on the instructions of the petitioner himself, the sand was transported from the reach. Therefore, it is not a fit case to grant anticipatory bail at this stage. Hence, the petitioner is directed to surrender and avail appropriate remedy.

6. Accordingly, the criminal petition is dismissed.

7. As a sequel thereto, Miscellaneous Petitions, if any, pending in the Criminal Petition stand closed.

A. SHANKAR NARAYANA, J

5th July 2017

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