

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL PETITION No.7797 of 2017

ORDER:

This petition is filed, by the petitioner-accused No.1, under Section 438 Cr.P.C., seeking anticipatory bail in Crime No.362 of 2017 on the file of the Station House Officer, Sanjeevareddy Nagar Police Station, Hyderabad City, registered for the offences punishable under Sections 420, 468 and 471 I.P.C.

2. The learned counsel for the petitioner submitted that the petitioner is arrayed as an accused basing on the confession of the co-accused. He further submitted that even if the allegations made in the complaint are *ex facie* taken to be true and correct, no *prima facie* case is made out against the petitioner for the offences punishable under Sections 420, 468 and 471 I.P.C.

3. The learned Additional Public Prosecutor submitted that the petitioner involved in more than ten cases; therefore, it is not a fit case to grant pre-arrest bail to the petitioner. He further submitted that the petitioner is running an institution and creating false and fake educational certificates and selling the same to the needy people.

4. The case of the prosecution is that on 09.05.2017 the Sub-Inspector of Police, S.R.Nagar Police Station, intercepted one Unicorn Bike bearing No.AP 27 BM 1214 driven by one B.Venkata Rao. On suspicion, he seized various documents from the said Venkata Rao, which are fake and false educational certificates. During interrogation, the said Venkata Rao discloses that he is selling fake certificates to various persons along with the petitioner

and other accused. After completion of necessary formalities, the Sub-Inspector of Police, S.R.Nagar Police Station, registered the above case and produced the said Venkata Rao before the concerned Court for judicial custody.

5. The petitioner filed CrI.M.P.No.2116 of 2017 on the file of the Court of the Additional Metropolitan Sessions Judge for the trial of JHCBBC-cum-Additional Family Court-cum-IX Additional Metropolitan Sessions Judge, Hyderabad, and the same was dismissed on 24.07.2017.

6. A perusal of the record reveals that the petitioner has been running an institution in the name and style of 'Hyder.Com' at Panjagutta. The record further reveals that the petitioner is preparing fake educational certificates and selling the same through different agents to the needy people.

7. A perusal of the counter reveals that the petitioner is an accused in the following cases:

- “1. Crime No.461 of 2015 on the file of the Station House Officer, S.R.Nagar Police Station, for the offences punishable under Sections 420, 468, 471 and 473 I.P.C.
2. Crime No.465 of 2015 on the file of the Station House Officer, S.R.Nagar Police Station, for the offences punishable under Sections 420, 468, 471 and 473 I.P.C.
3. Crime No.467 of 2015 on the file of the Station House Officer, Panjagutta Police Station, for the offences punishable under Sections 420, 468, 471 and 473 I.P.C.
4. Crime No.211 of 2015 on the file of the Station House Officer, Langerhouse Police Station, for the offences

punishable under Sections 420, 468, 471 and 473 I.P.C.

5. Crime No.1094 of 2014 on the file of the Station House Officer, K.P.H.B.Police Station, for the offences punishable under Sections 420, 468, 471 and 473 I.P.C.
6. Crime No.162 of 2008 on the file of the Station House Officer, CCS, DD, for the offences punishable under Sections 420, 468, 471 and 473 I.P.C.
7. Crime No.165 of 2009 on the file of the Station House Officer, S.R.Nagar Police Station, for the offences punishable under Sections 420, 468, 471 and 473 I.P.C.
8. Crime No.917 of 2010 on the file of the Station House Officer, S.R.Nagar Police Station, for the offences punishable under Sections 420, 468, 471 and 473 I.P.C.
9. Crime No.120 of 2011 on the file of the Station House Officer, Begumpet Police Station, for the offences punishable under Sections 420, 468, 471 and 473 I.P.C. and
10. Crime No.407 of 2017 on the file of the Station House Officer, Panjagutta Police Station, for the offences punishable under Sections 406 and 420 I.P.C.”

A perusal of the record reveals that the petitioner is involved in similar type of offences.

8. The contention of the learned counsel for the petitioner is that except the confession of co-accused, there is no other material to implicate the petitioner in this case. He further submitted that the confession of co-accused is not admissible under law.

9. In order to appreciate the contention of the learned counsel for the petitioner, this Court is placing reliance on the decision in

State of U.P. Through CBI v. Amarmani Tripathi¹, wherein the

Hon'ble apex Court held at paragraph Nos.18 and 22 as follows:

“18. It is well settled that the matters to be considered in an application for bail are (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) nature and gravity of the charge; (iii) severity of the punishment in the event of conviction; (iv) danger of the accused absconding or fleeing, if released on bail; (v) character, behaviour, means, position and standing of the accused; (vi) likelihood of the offence being repeated; (vii) reasonable apprehension of the witnesses being tampered with; and (viii) danger, of course, of justice being thwarted by grant of bail (see *Prahlad Singh Bhati v. NCT, Delhi* (2001) 4 SCC 280) and *Gurcharan Singh v. State (Delhi Admn.)* (1978) 1 SCC 118). While a vague allegations that the accused may tamper with the evidence or witnesses may not be a ground to refuse bail, if the accused is of such character that his mere presence at large would intimidate the witnesses or if there is material to show that he will use his liberty to subvert justice or tamper with the evidence, then bail will be refused. We may also refer to the following principles relating to grant or refusal of bail stated in *Kalyan Chandra Sarkar v. Rajesh Ranjan* ((2004) 7 SCC 528) (SCC PP.535-36, PARA 11).

“11. The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a

¹ (2005) 8 SCC 21

serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the court granting bail to consider among other circumstances, the following factors also before granting bail; they are:

(a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.

(b) Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.

(c) Prima facie satisfaction of the court in support of the charge. (See *Ram Govind Upadhyay v. Sudarshan Singh* ((2002) 3 SCC 598) and *Puran v. Rambilas* ((2001) 6 SCC 338).”

22. While a detailed examination of the evidence is to be avoided while considering the question of bail, to ensure that there is no prejudging and no prejudice, a brief examination to be satisfied about the existence or otherwise of a prima facie case is necessary. An examination of the material in this case, set out above, keeping in view the aforesaid principles, disclose prima facie, the existence of a conspiracy to which Amarmani and Madhumani were parties. The contentions of the respondents that the confessional statement of Rohit Chaturvedi is inadmissible in evidence and that should be excluded from consideration, for the purpose of bail is untenable. This Court had negated a somewhat similar contention in *Kalyan Chandra Sarkar*⁸ ((2004) 7 SCC 528) thus: (SCC p. 538, para 19)

“19. The next argument of learned counsel for the respondent is that prima facie the prosecution has failed to produce any material to implicate the respondent in the crime of conspiracy. In this regard he submitted that most of the witnesses have already turned hostile. The only other evidence available to the prosecution to connect the respondent with the crime is an alleged confession of the co-accused which according to the learned counsel was inadmissible in evidence. Therefore, he contends that the High Court

was justified in granting bail since the prosecution has failed to establish even a *prima facie* case against the respondent. From the High Court order we do not find this as a ground for granting bail. Be that as it may, we think that this argument is too premature for us to accept. The admissibility or otherwise of the confessional statement and the effect of the evidence already adduced by the prosecution and the merit of the evidence that may be adduced hereinafter including that of the witnesses sought to be recalled are all matters to be considered at the stage of the trial.””

10. As per the principle enunciated in the case cited *supra*, the Court cannot exclude the confession of the co-accused while deciding the bail petitions.

11. A perusal of the record *prima facie* reveals the role played by the petitioner in the commission of the offences.

12. Taking into consideration the facts and circumstances of the case and also the principle enunciated in the case cited *supra*, this Court is of the considered view that it is not a fit case to grant pre-arrest bail to the petitioner.

13. Accordingly, the Criminal Petition is dismissed. Consequently, Miscellaneous Petitions, if any, pending in this Criminal Petition shall stand closed.

T.SUNIL CHOWDARY, J

Date: 09.10.2017
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