

HONOURABLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.1428 OF 2017

ORDER:

This Criminal Petition is filed under Section 438 of Cr.P.C. to enlarge the petitioner in the event of his arrest on bail in Crime No.18 of 2017 of Penugonda Police Station, West Godavari District, registered for the alleged offences punishable under Sections 354 and 348 of I.P.C., apprehending his arrest in the above crime.

The case of the prosecution, in brief, is as follows:

One Midathani Ramalingeswara Rao lodged a complaint with the police alleging that he obtained finance for purchase of scooter from Krishna Surya Chaitanya Chits Private Limited of Siddantham and obtained signatures on blank promotes. He discharged the debt due to Manne Venkata Sitarama but he did not return the signed papers to the defacto complainant on one pretext or the other and later, he closed the premises and left the place and later he came back and got filed suits taking advantage of blank signed promissory notes from his relative Parvataneni Pattabhi Ramarao of Kurmapuram village of Rayavaram Mandal and when questioned, he did not respond properly. While the matter stood thus, taking advantage of the absence of the defacto complainant, the petitioner along with others went to the house of defacto complainant and informed his wife that if they do not pay the amount and settle the matter they will occupy the house and that there are still many promissory notes with them and by saying so, abused her using filthy

language, also placed his hand on her chest, caught hold of her tuft of hair and pushed her.

The main contention of the petitioner is that the petitioner obtained a decree in O.S.No.779 of 2009 on the file of Senior Civil Judge, Rajahmundry and thereafter, the matter ended in dismissal and filed execution proceedings for recovery of amount due under the decree and obtained attachment order which is challenged before this court in C.R.P.No.678 of 2016 but by order dated 7-12-2016, the C.R.P. was dismissed. Therefore, to avoid payment of debt due to the petitioner, the defacto complainant falsely foisted this case and that no offence occurred and therefore, prayed to enlarge the petitioner on bail.

Whereas the learned Public Prosecutor for the State of Andhra Pradesh contended that there is clear material including statement recorded by police during investigation under Section 161 (3) Cr.P.C., more particularly, the victim and two other persons who witnessed the incident and they are L.Ws.4 and 5. In the statement of victim, she narrated the incident and presence of L.Ws.4 and 5 who rescued her but L.Ws.4 and 5 specifically disclosed the names of the persons.

However, since the material on record would show that the petitioner, prima facie, committed the offences punishable under Sections 354 and 348 of I.P.C., there is every possibility of interference with the investigation in the event of enlarging the petitioner on bail as he being financier and influential person and when I find prima facie material against the petitioner to conclude

that the petitioner committed the offences referred supra, this court cannot grant pre-arrest bail exercising jurisdiction under Section 438 of Cr.P.C.

Grant of pre-arrest bail is purely discretionary in nature and grant of pre-arrest bail is not a matter of course, it is a matter of exception. Unless the petitioner show that there are exceptional circumstances entitling him to claim pre-arrest bail, the court cannot grant pre-arrest bail. In *GURU BAKSH SINGH SIBIA VS. STATE OF PUNJAB*¹ the Apex Court laid down certain guidelines for grant of pre-arrest bail and the main ground to grant pre-arrest bail is that the court has to satisfy that there is no *prima facie* material to conclude that the petitioner did commit no offence, that he will not interfere with further investigation and will not tamper any evidence.

In such case, it is difficult for me to conclude, *prima facie*, that he did commit no offence. Consequently, the petitioner is disentitled to pre-arrest bail.

For granting pre-arrest bail under Section 438 of Cr.P.C. the Apex Court laid down 10 guidelines in *SIDDHARAM SATLINGAPPA MHETRE V STATE OF MAHARASHTRA*² which are 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;

¹ AIR 1980 SC 1632

² AIR 2011 SC 312

- ii. The antecedents of the applicant including the fact 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 accused'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 cases 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 cases in which accused is implicated with the help of Sections 34 and 149 of the Indian Penal Code, 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 witness 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.

So the prime requirement for grant of pre-arrest bail is that the court has to satisfy itself that the petitioner committed no offence, but the material on record including statement recorded by police under Section 161 (3) of Cr.P.C. substantiated the contention of the defacto complaint and that too there is every possibility of interference with further investigation and in such a case, this court cannot exercise any discretion to grant pre-arrest bail and as such, this petition is liable to be dismissed.

Accordingly, this Criminal Petition is dismissed.

As a sequel to the disposal of this petition, the Miscellaneous Petitions, if any, pending, shall stand dismissed.

JUSTICE M.SATYANARAYANA MURTHY

Dated 23-2-2017.

Dvs.

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