

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.1366 of 2017

ORDER:

The petitioner/A.2 filed the present application under Section 438 Cr.P.C. to release him in the event of his arrest in connection with Crime No.37 of 2017 of Vanasthalipuram Police Station, Rachakonda, registered for the offences punishable under Sections 420 and 408 IPC and Section 7 of the Essential Commodities Act (for short, 'the Act').

2. It is the case of the prosecution that the petitioner along with other another illegally dumped blue colour kerosene that is being supplied to fair price shops. The petitioner is a fair price dealer of shop No.187 situated at Sachivalayanagar, Vanasthalipuram. According to the prosecution, by the time of inspection 6000 liters of blue colour kerosene worth Rs.23,410/- was dumped illegally by the petitioner and another thereby committed an offence punishable under Sections 408 and 402 IPC and Section 7 of the Act.

3. The main contention of learned counsel for the petitioner is that the petitioner was not present at the time of inspection while admitting that A.2 is the supervisor, who is dealing with the business, was present at the time of inspection; that the petitioner is a physically handicapped person and he never committed any offence for the last 25 years, therefore, requested the Court to grant pre-arrest bail to the petitioner.

4. On the other hand, learned Additional Public Prosecutor for the State of Telangana would contend that A.1, who is Supervisor of the petitioner shop, allegedly dumped 6000 litres of blue kerosene for the

benefit of the petitioner alone and merely because the petitioner was not present at the time of inspection, he cannot escape from the liability and prayed to dismiss the petition.

5. Undisputedly A.1, who is an employee of the petitioner and under whose direction he is working, was present at time of dumping 6000 litres of blue kerosene illegally. When A.1 is supervising the fair price shop on behalf of petitioner, A.1 and the petitioner (A.2) are equally liable for the offences punishable under Sections 408 and 402 IPC and Section 7 of the Act.

6. Undoubtedly, the offence punishable under Section 7 of the Act is a bailable offence, whereas the offences punishable under Sections 408 and 402 IPC are non-bailable. But, the material on record and relationship between the A.1 and A.2, *prima facie* establishes that the petitioner is also responsible for the alleged offence i.e., dumping of 6000 litres of blue kerosene worth Rs.23,410/- illegally.

7. Grant of pre-arrest bail is not a matter of course, it is matter of exception. Unless the petitioner shows certain exceptional circumstances, the Court cannot exercise its discretion and grant pre-arrest bail.

8. The power of the Court under Section 438 Cr.P.C is purely discretionary and this Court has to exercise its power judiciously based on settled principles. But, the circumstances to exercise such jurisdiction may vary from case to case. The law regarding grant of anticipatory bail is elaborately discussed by the Constitution Bench of the Apex Court in **Gurbaksh Singh Sibbia and Ors. v. State of Punjab**¹ case, as the power of granting 'anticipatory bail' is somewhat

¹ AIR 1980 SC 1632

extraordinary in character and it is only in exceptional cases where it appears that a person might be falsely implicated, or a frivolous case might be launched against him, or "there are reasonable grounds for holding that a person accused of an offence is not likely to abscond, or otherwise misuse his liberty while on bail" that such power is to be exercised. No hard and fast rule can be laid down in discretionary matters like grant or refusal of bail whether anticipatory or regular bail. The Apex Court further held that, it cannot be laid down as an inexorable rule that anticipatory bail cannot be granted unless the proposed accusation appears to be actuated by mala fides; told, equally, that anticipatory bail must be granted if there is no fear that the applicant will abscond. There are several other considerations, too numerous to enumerate, the combined effect of which must weigh with the court while granting or rejecting anticipatory bail. The nature and seriousness of the proposed charges, the context of the events likely to lead to the making of the charges, a reasonable possibility of the applicant's presence not being secured at the trial, a reasonable apprehension that witnesses will be tampered with and "the larger interests of the public or the state" are some of the considerations which the court has to keep in mind while deciding an application for anticipatory bail. Therefore, anticipatory bail can be granted even in serious cases like economic offences and States should have no consideration for grant or refusal of grant of anticipatory bail, as there can be no presumption that the wealthy and the mighty will submit themselves to trial and that the humble and the poor will run away from the course of justice, any more than there can be a presumption that the former are not likely to commit a crime and the latter are more likely to commit it. Therefore, while dealing with the application for grant of pre-arrest bail or anticipatory bail, the Court must take

into consideration the guidelines issued in **Gurbaksh Singh Sibbia**⁵ case. Though, according to the judgment of the Supreme Court, even in economic offences, the Court can grant anticipatory bail, subject to satisfaction of other grounds.

9. In the present case, the petitioner allegedly dumped the blue colour kerosene being actually supplied to the cardholders by the fair price shop dealers. The very scheme of distribution of the blue kerosene is for the benefit of poor. But depriving those poor persons, who utilize the facility of supply of kerosene by fair price shop dealer, the petitioner diverted the stock for illegal gain with the help of his employer, A.1 in the said crime, would directly effect the interest of public at large. Therefore, it is difficult to strike the balance between the right of the liberty of the petitioner and the public interest at liberty, in such a case the Court cannot grant pre-arrest bail to the petitioner at this stage.

10. The other contention raised by the learned counsel for the petitioner that the petitioner is a handicapped person. But, that by itself is not a ground to grant pre-arrest bail to the petitioner.

11. Accordingly, the Criminal Petition is dismissed.

M.SATYANARAYANA MURTHY, J

21.02.2017

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