

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRL.P.No.1223 OF 2017

ORDER:

This criminal petition under Section 438 of Cr.P.C is filed by the petitioner/accused in Crime No.630 of 2015 of Hayathnagar Police Station to direct the Station House Officer to enlarge him on bail in the event of his arrest in connection with the said crime registered for the offences punishable under Sections 420, 468 and 471 IPC, apprehending his arrest.

The petitioner is the sole accused by name Jalagam Ram Chander Rao, who allegedly forged the signatures of the de facto complainant, A. Narender and Narsibhai Patel and also affixed photos, obtained a registered sale deed No.1193 of 2011 from Sub-Registrar in his favour by impersonation, and that he is guilty for the offences punishable under Section 420, 468 and 471 IPC.

Learned counsel for the petitioner, Sri K. Ravinder Rao, would contend that after all the petitioner is seeking an anticipatory bail, as the litigation is civil in nature and he is ready to abide by any of the conditions imposed by this Court while enlarging him on bail.

Learned Public Prosecutor for the State of Telangana contended that within six months the subject document was created by impersonation and forging the signatures of the de facto complainant, A. Narender and Narsibhai and there is material on record to substantiate this contention.

As seen from the material on record, the petitioner executed a deed in favour of Arthica on 09.11.2011 and he obtained a

registered sale deed, dated 02.05.2011, by impersonation though the property was purchased by the de facto complainant and others. Therefore, the material on record prima facie shows that the petitioner committed an offence punishable under Sections 420, 468 and 471 IPC.

Learned counsel for the petitioner contended that granting pre-arrest bail is a matter of routine, but it is purely a discretion of the Court and the Court has to exercise its discretion judiciously taking into consideration all the facts and circumstances of the case.

Granting bail is not a matter of routine. It is a matter of exception and unless the petitioner shows that there are exceptional circumstances entitling him to claim pre-arrest bail, the Court cannot exercise such discretion and grant pre-arrest bail to a person, who committed such offence.

The Apex Court in **Gurbaksh Singh Sibbia vs State Of Punjab**¹ held that the power of the Court under Section 438 is purely discretionary and the Court has to exercise the power judiciously, but the circumstances to exercise such jurisdiction may vary from case to case. The power of granting anticipatory bail is somewhat extraordinary and it can only be exercised in exceptional cases. The Apex Court further held that it cannot be laid down as any rule that anticipatory bail cannot be granted unless the principles of accusation appears to be mala fides. Thus, the Court has to keep in mind certain principles while exercising such discretionary power to grant pre-arrest bail under Section 438. The

¹ (1980) 2 SCC 565

Apex Court in **Siddharam Satlingappa Mhetre vs State Of Maharashtra**² laid down 10 guidelines for grant of pre-arrest bail, 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;
- 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.

In view of the law laid down by the Apex Court in a constitutional Bench in **Shri Gurbaksh Singh Sibbia and Ors. v. State of Punjab**³ and in **Siddharam Satlingappa Mhetre (1 supra)** to the facts of the present case, it is difficult to exercise such discretion at this stage to grant pre-arrest bail to the petitioner

² AIR 2011 SC 312

³ AIR 1980 SC 1632

though grant of such bail is not routine. Therefore, I find no ground and consequently the petition is liable to be dismissed.

In the result, the petition is dismissed.

Miscellaneous petitions, if any pending, shall also stand dismissed.

M.SATYANARAYANA MURTHY,J

Date: 16.02.2017
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