

HONOURABLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.17059 OF 2016

ORDER:

This Criminal Petition is filed by the petitioners-A.4 and A.5 under Section 438 of Cr.P.C. to grant pre-arrest bail to the petitioners A.4 and A.5 in Crime No.363 of 2016 of Nagarampalem Police Station, registered for the alleged offences punishable under Sections 120 B, 468, 471 of I.P.C. apprehending arrest in the above crime.

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

The defacto complainant proposed to construct a chemical factory in Guntur and in that connection, he came into contact with one Siva Sankara Rao and Racharla Srinivasa Rao and they informed that there is Ac.700.77 sq. yards of land in D.No.252/B, Ankireddy palem village of one Korrapati Hanumantha Rao of Guntur and when he asked them to furnish the documents of the land in question, on 3-7-2012, they collected Rs.35,00,000/- from him, and executed a registered sale deed in his favour conveying the said land. After two months, when he went to the said property to fix boundaries, he found stones erected on the land and mobile numbers were displayed on these stones and in that connection, he called those persons with the numbers, then, one Gopal Rao partner of Rithu Mitra Cold Storage, Guntur informed him that the said plots belong to his nephew Siva Sankar and they purchased the same in

the year 1993 and he is in possession of the documents. Hence, the petitioners-A.4 and A.5 committed the above said alleged offences.

The learned Public Prosecutor for the State of Andhra Pradesh strongly opposed the petition on the ground that they cheated the defacto complainant making him to part with huge amount with a dishonest intention, inducement and thereby, they are not entitled to claim a pre-arrest bail under Section 438 of Cr.P.C.

Undisputedly, a sale deed was executed in favour of the defacto complainant by the petitioners for a huge amount of Rs.35,00,000/- but the property belongs to a different person who purchased the same in the year 1993 and therefore, making such a false representation with dishonest intention to part with the huge amount, it amounts to committing the offences by the petitioners under sections referred above, *prima facie*.

Therefore, the material available on record would disclose that commission of various offences is without respect for laws.

Grant of pre-arrest bail is not a matter of course, it is a matter of exception. Unless the petitioners have shown exceptional circumstances, the court cannot grant pre-arrest bail and such discretion is only in exceptional circumstances as per the law declared by the Apex Court in *STATE OF MAHARASHTRA VS. MOHD. SAJID HUSAIN* (¹). wherein the Apex Court laid down the following guidelines for grant of anticipatory bail:

1.The nature and gravity or seriousness of accusation as apprehended by the applicant;

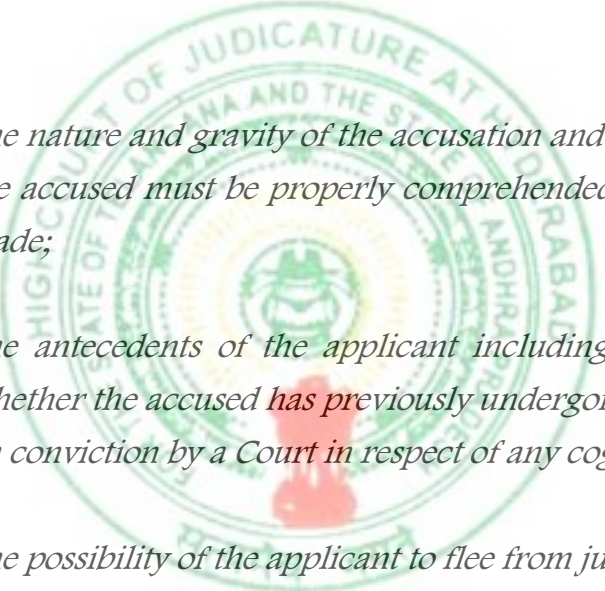
¹ AIR 2008 SC 155

2.The antecedents of the applicant including the fact as to whether he has, on conviction by a Court, previously undergone imprisonment for a term in respect of any cognizable offence;

3.The likely object of the accusation to humiliate or malign the reputation of the applicant by having him so arrested; and

4.The possibility of the appellant, if granted anticipatory bail, fleeing from justice.

Similarly, in *SIDDHARAM SATLINGAPPA MHETRE VS. STATE OF MAHARASHTRA AND OTHERS* (²), the Apex Court held as follows:

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- 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 facts 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 accuser'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 case 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 case in which accused is implicated with the help of Section*

² 2011 CrI.L.J. 3905

34 and 149 of IPC, 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 witnesses 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.*

Keeping in mind the guidelines issued by the apex court for grant of pre-arrest bail, the petitioners are not entitled for grant of pre-arrest bail as there is prima facie material against the petitioners to establish that they committed the offences punishable under sections referred supra.

In this case, the investigation is not completed and it is at preliminary stage and as such, there is every possibility of interfering with investigation, committing similar offences if while on bail.

Hence, I find no ground to grant pre-arrest bail to the petitioners-A.4 and A.5 and therefore, this Criminal Petition is liable to be dismissed.

Accordingly, this Criminal Petition is dismissed.

At the stage of completion of dictation of this order, the learned counsel for the petitioners requested to extend the interim order granted by this court on 5-1-2017 but granting such extension of interim order restraining arrest of a person charged with the offences referred above will amount to interference with investigation as held by the apex court in a decision reported in *GURBAKSH SINGH SIBBIA V. STATE OF PUNJAB*.³

In view of the above principles, this court cannot extend the interim stay of orders further.

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



JUSTICE M.SATYANARAYANA MURTHY

Dated 19-1-2017.

Dvs.

³ AIR 1980 SC 1632

HONOURABLE SRI JUSTICE M.SATYANARAYANA MURTHY



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Dated 19-1-2017.

Dvs