

CRIMINAL PETITION No. 2110 of 2017

COMMON ORDER:

This Criminal Petition under Section 438 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.'), is filed to enlarge the petitioners/A-1 and A-2 on pre-arrest bail since they are apprehending arrest in connection with Crime No.3 of 2017 of Police Station, Dagadathi, SPSR, Nellore District, registered for the offences punishable under Sections 447, 323, 324, 354, r/w 34 of IPC.

The case of the petitioners is that one G.Padma, native of Katarayapadu village whose source of living is agriculture possessing 6 acres of land, raised crop in the land. While so, on 06.01.2017 at about 10 to 11 a.m. when she was drawing water to irrigate the land, the petitioners herein questioned her about drawing water, then she answered that she is drawing water from the bore-well belonging to her, then they scolded her and beat her with mud and dragged her holding her saree and pushed her, they also beat her with hands and kicked with legs. The second petitioner bite on her right hand and right leg and she was unable to do anything, sat on the land. Neighbours witnessing the incident, came there and informed their children and after reaching the agricultural land, she was admitted in the Government Hospital, Kavali where she was treated by the doctors. Thus, the petitioners committed offences as mentioned above.

The learned counsel for the petitioners contended that there was a rivalry between the parties and earlier, a complaint was lodged against these petitioners, but no action was taken. A sworn affidavit of the second petitioner is filed along with the petition stating that they lodged a

complaint. A copy of the C.D. of conversation recorded to establish that there was rivalry, is filed. The learned counsel further contended that no offence took place and it is only to wreak-vengeance against these petitioners for the earlier complaint, the present complaint is lodged and prayed for enlargement of the petitioners on bail, in the event of their arrest.

The learned Public Prosecutor for the State of Andhra Pradesh would contend that the de facto complainant's husband and the de facto complainant sustained serious bite injuries and that her saree was pulled by the first petitioner, whereas the second petitioner beat her on both right leg and hand and caused injuries.

As seen from the material on record including the sworn affidavit filed by the petitioners, there were disputes between the parties earlier and that by itself is not a ground and the previous enmity may be one of the circumstances either to foist false case or to commit such offence since the motive is double edged weapon. Therefore, it is not a ground to enlarge the petitioners on bail concluding prima facie that the petitioners did commit no offence.

On the other hand, the material on record would show that the de facto complainant received bite injuries allegedly caused by the second petitioner on her right leg and hand and therefore, the material on record is suffice to conclude that the petitioners are prima facie responsible for causing such injuries. The material produced by the Public Prosecutor including the statements recorded by the police during investigation under Section 161 Cr.P.C. further supports that the petitioners are the persons who caused such injuries on the body of the de facto complainant and pulled her saree by the first petitioner. Such act would

prima facie constitute an offence punishable under Section 354 r/w 34 of IPC.

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. The power of granting 'anticipatory bail' is somewhat 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.

Here in the present case, to establish that there was enmity, no other material is produced to conclude that prima facie the petitioners did commit no offence. Therefore, as per the material available on record, it is difficult for me to conclude prima facie that the petitioners did commit no offence to grant pre-arrest bail.

Considering the facts and circumstances of the case, I find that it is not a fit case to grant pre-arrest bail to the petitioner.

In the result, this Criminal Petition is dismissed.

Miscellaneous petitions, if any, pending in this criminal petition, shall stand closed.

M. SATYANARAYANA MURTHY, J

Date: 30.03.2017
ccm

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY



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ccm