

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.2933 OF 2017

ORDER:

This criminal petition, under Section 438 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.'), is filed by the petitioner/A.6 and A.7 seeking a direction to the Forest Range Officer, Badvel Range, Y.S.R. District, to enlarge them on bail in the event of their arrest in O.R. No.83 of 2016-17 registered for the offences under Sections 20(1)(C)(ii), 20(1)(C)(Viii) and 58 of Andhra Pradesh Forest Act, 1967 and Section 9 of Andhra Pradesh Wild Life (Protection) Act, 1972 punishable under Section 51 of Andhra Pradesh Wild Life Protection Act, 1972 and section 429 of the Indian Penal Code, 1860 (for short 'I.P.C.'), apprehending their arrest.

These petitioners approached this court straight away under Section 438 of Cr.P.C. without approaching the Sessions Court. Though this court and the sessions court are having concurrent jurisdiction, this court can exercise discretion while entertaining such applications depending on the circumstances. In **Y. Chendrasekhara Rao and others v. Y.V. Kamala Kumari and others**¹ the Division Bench of this Court, at paragraph 28, held as follows:

“For the foregoing reasons we hold that it is not obligatory under Section 438 to move the Court of Session in the first instance. It is always open to this Court when an application is filed under Section 438, without first moving the Court of Session, to consider all the circumstances, and if the situation warrants, this Court can direct the party to move the Court of Session. Passing of such an order in consequence of exercise of discretion is different from insisting upon the party to move the Court of Session in the first instance as an inflexible rule of practice. The

¹ 1993 Cri.L.J.3508

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existing practice of the Registry in returning applications filed under Section 438 on the ground that the Court of Session is not moved in the first instance, is clearly impermissible in law”

In view of the law declared by the Division Bench of this Court in **Y. Chendrasekhara Rao and others v. Y.V. Kamala Kumari and others** referred above, the petitioners are permitted to move appropriate application before the sessions court.

With the above direction, this petition is disposed of.

M.SATYANARAYANA MURTHY, J

17.04.2017
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