

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL PETITION No.6962 of 2017

ORDER:

This criminal petition is filed by the petitioner-accused No.9, under Section 438 of Cr.P.C., seeking anticipatory bail in Crime No.26 of 2017 on the file of the Station House Officer, Machavaram Police Station, Guntur District, registered for the offences punishable under Sections 147, 148 and 302 read with 149 of IPC.

2. The facts leading to the filing of the present petition, briefly, are as follows: One Posam Srinivasarao (hereinafter referred to as 'the deceased') was elected as Sarpanch of Vemavaram Gram Panchayat, Guntur District in the year 2014. The deceased used to stay temporarily in Guntur for the purpose of his children's education and used to come to the village whenever necessity arises. Prior to gram panchayat elections, the deceased established a water plant in the village. For one reason or the other, he sold the water plant to accused No.1 soon after the panchayat elections. Again the deceased purchased the water plant from the accused No.1 on a condition that he should not establish another water plant in the village. When accused No.1 made preparations for establishment of another water plant in the village, disputes cropped up between the deceased and accused No.1. Accused Nos.1 to 3 hatched up a plan to liquidate the deceased, in pursuance of which, on 01.5.2017 the accused Nos.1 to 6 on receiving information from accused No.8, went to the house of the deceased and hacked him indiscriminately due to which the deceased died on the spot. Prior to the alleged incident, accused

Nos.1 to 3 informed the petitioner that they will kill the deceased for which he accepted and advised them to consult accused No.7. It is the further case of the prosecution that on the date of the alleged incident, the petitioner was very much present at the time of securing weapons by accused Nos.1 to 3 in order to kill the deceased. On 02.5.2017 Kurella Venkata Ramaiah-brother-in-law of the deceased, lodged a complaint with the Station House Officer, Machavaram Police Station, who in turn registered the above case.

3. The learned counsel for the petitioner strenuously submitted that the petitioner was falsely implicated in this case due to village politics. He further submitted that except the confession of accused Nos.1 to 4, there is no other material to connect the petitioner with the alleged offences. *Per contra*, the learned Additional Public Prosecutor representing the State submitted that the confessional statement of the co-accused reveals the role played by the petitioner. He further submitted that the statements of L.Ws.11 to 13 *prima facie* reveals the role of the petitioner in the commission of the offence; therefore, the petitioner is not entitled to the relief of pre arrest bail.

4. To substantiate the arguments, the learned counsel for the petitioner has drawn the attention of this Court to the judgment in **Siddharam Satlingappa Mhetre v State of Maharashtra**¹ wherein the Hon'ble apex Court held at para Nos.112, 117 and 136 as follows:

112. The following factors and parameters can be taken into consideration while dealing with the anticipatory bail:

¹ (2011) 1 SCC 694

(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 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 the accused is implicated with the help of Sections 34 and 149 of the Penal Code, 1860 the court should consider with even greater care and caution because overimplication 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.

117. In case, the State considers the following suggestions in proper perspective then perhaps it may not be necessary to curtail the personal liberty of the accused in a routine manner. These suggestions are only illustrative and not exhaustive:

(1) Direct the accused to join the investigation and only when the accused does not cooperate with the investigating agency, then only the accused be arrested.

(2) Seize either the passport or such other related documents, such as, the title deeds of properties or the fixed deposit receipts/share certificates of the accused.

(3) Direct the accused to execute bonds.

(4) The accused may be directed to furnish sureties of a number of persons which according to the prosecution are necessary in view of the facts of the particular case.

(5) The accused be directed to furnish undertaking that he would not visit the place where the witnesses reside so that the possibility of tampering of evidence or otherwise influencing the course of justice can be avoided.

(6) Bank accounts be frozen for small duration during the investigation.

136. A three-Judge Bench of this Court in *Official Liquidator v. Dayanand*, (2008) 10 SCC 1, again reiterated the clear position of law that by virtue of Article 141 of the Constitution, the judgment of the Constitution Bench in *State of Karnataka v. Umadevi* (3), (2006) 4 SCC 1,

is binding on all courts including this Court till the same is overruled by a larger Bench. The ratio of the Constitution Bench has to be followed by Benches of lesser strength. In SCC para 90, the Court observed as under: (*Official Liquidator case*, SCC p. 57)

“90. We are distressed to note that despite several pronouncements on the subject, there is substantial increase in the number of cases involving violation of the basics of judicial discipline. The learned Single Judges and Benches of the High Courts refuse to follow and accept the verdict and law laid down by coordinate and even larger Benches by citing minor difference in the facts as the ground for doing so. Therefore, it has become necessary to reiterate that disrespect to the constitutional ethos and breach of discipline have grave impact on the credibility of judicial institution and encourages chance litigation. It must be remembered that predictability and certainty is an important hallmark of judicial jurisprudence developed in this country in the last six decades and increase in the frequency of conflicting judgments of the superior judiciary will do incalculable harm to the system inasmuch as the courts at the grass roots will not be able to decide as to which of the judgments lay down the correct law and which one should be followed.”

5. Let me consider the facts of the case on hand in the light of the above legal principles.

6. It is not in dispute that the petitioner unsuccessfully contested against the deceased in the gram panchayat elections held on 03.7.2013. The petitioner also filed E.O.P.No.1 of 2014 on the file of the Election Tribunal-cum-Junior Civil Judge Court, Piduguralla, challenging the election of the deceased and the same is pending. These undisputed factual aspects disclose animosity between the petitioner and the deceased. In order to appreciate the rival contentions, this Court carefully perused the statements of L.Ws.11 to 13. As per the statement of L.W.11, on the date of the incident, accused Nos.1 to 3 along with the petitioner have been verifying the sharpness of the weapons. His statement further reveals that the petitioner and other accused threatened him with dire consequences if he discloses the information to anybody in the village. The statement of L.W.12 discloses that since two months prior to the incident, the petitioner along with accused Nos.1 to 3

was planning to kill the deceased. As per the statement of L.W.13 on 23.4.2017 he has seen the petitioner along with accused Nos.1 to 3 in Guntur. L.Ws.11 to 13 belong to Vemavaram village.

7. The record further reveals the presence of the petitioner in the village on the date of the alleged incident. The Court has to consider the time gap, if any, between the date and time of incident and the date and time of recording the statements of witnesses in order to ascertain whether the accused have been falsely implicated after due deliberations and discussions. In this case, the incident occurred in the night of 01.5.2017 whereas the statements of these witnesses were recorded on 02.5.2017 i.e., within the few hours of the incident. While deciding the bail applications, more particularly anticipatory bail applications, the Court has to consider whether there is any *prima facie* material to connect the accused with the alleged offence or not. This Court is not supposed to express any opinion touching the merits of the main case, while deciding the bail applications.

8. The predominant contention of learned counsel for the petitioner is that the confession of co-accused is not a substantial piece of evidence and once confession of accused Nos.1 to 4 is discarded, there is no other material, even remotely, to connect the petitioner with the alleged incident. There is no quarrel with regard to the proposition of law that confession of co-accused is a weak piece of evidence. While considering the bail applications, the Court has to consider *prima facie* material. The admissibility and evidentiary value of the factual aspects are to be considered after full-fledged trial. To appreciate the contention of learned

counsel for the petitioner, this Court is placing reliance on **State of U.P. v Amarmani Tripathi**², wherein the Hon'ble apex Court held at paragraph Nos.18 and 22 as follows:

18. It is well settled that the matters to be considered in an application for bail are (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) nature and gravity of the charge; (iii) severity of the punishment in the event of conviction; (iv) danger of the accused absconding or fleeing, if released on bail; (v) character, behaviour, means, position and standing of the accused; (vi) likelihood of the offence being repeated; (vii) reasonable apprehension of the witnesses being tampered with; and (viii) danger, of course, of justice being thwarted by grant of bail [see **Prahlad Singh Bhati v. NCT, Delhi**, (2001) 4 SCC 280, and **Gurcharan Singh v. State (Delhi Admn.)**, (1978) 1 SCC 118]. While a vague allegation that the accused may tamper with the evidence or witnesses may not be a ground to refuse bail, if the accused is of such character that his mere presence at large would intimidate the witnesses or if there is material to show that he will use his liberty to subvert justice or tamper with the evidence, then bail will be refused. We may also refer to the following principles relating to grant or refusal of bail stated in **Kalyan Chandra Sarkar v. Rajesh Ranjan**, (2004) 7 SCC 528: (SCC pp. 535-36, para 11)

"11. The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the court granting bail to consider among other circumstances, the following factors also before granting bail; they are:

- (a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.
- (b) Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.
- (c) Prima facie satisfaction of the court in support of the charge. (See **Ram Govind Upadhyay v. Sudarshan Singh**, (2002) 3 SCC 598 and **Puran v. Rambilas**, (2001) 6 SCC 338.)"

22. While a detailed examination of the evidence is to be avoided while considering the question of bail, to ensure that there is no prejudging and no prejudice, a brief examination to be satisfied about the existence or otherwise of a prima facie case is necessary. An examination of the material in this case, set out above, keeping in view the aforesaid principles, disclose prima facie, the existence of a conspiracy to which Amarmani and Madhumani were parties. The contentions of the respondents that the confessional statement of Rohit Chaturvedi is inadmissible in evidence and that that should be excluded from consideration, for the purpose of bail is untenable. This Court had negated a somewhat similar contention in **Kalyan Chandra Sarkar** thus: (SCC p. 538, para 19)

² (2005) 8 SCC 21

“19. The next argument of learned counsel for the respondent is that *prima facie* the prosecution has failed to produce any material to implicate the respondent in the crime of conspiracy. In this regard he submitted that most of the witnesses have already turned hostile. The only other evidence available to the prosecution to connect the respondent with the crime is an alleged confession of the co-accused which according to the learned counsel was inadmissible in evidence. Therefore, he contends that the High Court was justified in granting bail since the prosecution has failed to establish even a *prima facie* case against the respondent. From the High Court order we do not find this as a ground for granting bail. Be that as it may, we think that this argument is too premature for us to accept. The admissibility or otherwise of the confessional statement and the effect of the evidence already adduced by the prosecution and the merit of the evidence that may be adduced hereinafter including that of the witnesses sought to be recalled are all matters to be considered at the stage of the trial.”

As per the principle enunciated in the case cited *supra*, the evidentiary value of the confession of co-accused will be considered at the time of trial only. However, the Court cannot exclude the confession of co-accused, while deciding bail petitions. As observed earlier, in this case, apart from the confession of co-accused, *prima facie* there is some other material on record. The record placed before the Court *prima facie* reveals the role played by the petitioner in the commission of the alleged offence.

9. Having regard to the facts and circumstances of the case and also the principle enunciated in the case cited *supra*, this Court is of considered view that it is not a fit case to grant pre arrest bail to the petitioner.

10. Accordingly, the criminal petition is dismissed.

T.SUNIL CHOWDARY, J

12.10.2017

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