

HONOURABLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.16620 OF 2016

ORDER:

This Criminal Petition is filed by the petitioner–accused under Section 438 of Cr.P.C. to grant pre–arrest bail in connection with Crime No.102 of 2016 of Ponnur Rural Police Station, Ponnur, Guntur District, registered for the offences punishable under Sections 354 (A) (1), 354 (B), 452 I.P.C.

Petitioner herein is the accused.

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

On 20-9-2016, the defacto complainant Moparthi Malleshwari wife of late Punnarao. while she was sleeping in her house, petitioner herein entered into her house in the early morning around 2.30 A.M., and came to her cot and woke her up and asked her to come to him as he required her and closed her mouth with both hands and hugged her and pulled her saree, insulted her and then she pushed him aside and then Kaparthi Kameshwaramma and others came there, then, the petitioner escaped. On the strength of the complaint given by the defacto complainant, a case in the above crime was registered for the offences punishable under Sections referred supra.

The contention of the petitioner is that he is innocent of the alleged offences and that he is a local political leader and that he was implicated falsely by the defacto complainant to wreck vengeance against him and further he is apprehending arrest in connection

with the above crime, hence, he prayed this court to grant pre-arrest bail in the above crime directing the police concerned to release him on bail in the event of his arrest for the alleged offences.

During hearing, the learned counsel for the petitioner reiterated the contentions raised in the petition but whereas the learned Public Prosecutor for the State of Andhra Pradesh submitted that the petitioner is a habitual offender and rowdy sheeter and he involved in many crimes and after obtaining stay orders from this court, in the present petition, he involved in another crime No.131 of 2016 on 20-12-2016 for the alleged offences punishable under Sections 324, 448 read with 34 of I.P.C. Basing on the above crime, he contended that if pre-arrest bail is granted, there is every likelihood of committing similar offences and that apart, being a political leader, there is every possibility of influencing the witnesses and prayed to dismiss the petition.

The main contention of the petitioner is that police may arrest him in connection with the above crime and that arrest of the petitioner is a part of investigation and if there is any possibility of any interference with the investigation or to collect important material, the police may arrest the petitioner.

But, that itself is not a ground to grant pre-arrest bail to the petitioner.

In the present case, the offences allegedly committed by the petitioner is against a woman during mid night which are serious offences punishable under the above referred Sections.

The petitioner is having criminal background and he involved in three crimes earlier and even after obtaining stay orders in the present petition by order dated 7-12-2016, he committed another offence in Cr.No.131 of 2016 on 20-12-2016. Therefore, the material available on record would disclose the criminal background of the petitioner and commission of various offences is with scant respect of law.

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;*
- 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.*

¹ AIR 2008 SC 155

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

² 2011 Cri.L.J. 3905

- 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 Sessions Judge dismissed the application in CrI.M.P.No.2053 of 2016 in Cr.No.102 of 2016 of Ponnur Rural Police Station, by order dated 19-10-2016 in which, the learned Judge clearly observed that investigation is in the mid way and there is every likelihood of the petitioner-accused threatening witnesses and interference with investigation. Here, it is admitted by the counsel for the petitioner fairly that the petitioner is a local political leader. Thereby, normally, there is every possibility of influencing witnesses with the help of police by a local political leader due to his political background. But here, he is not only a political leader having lot of criminal background involved more than four crimes. Even after obtaining stay of his arrest, he committed offences punishable under Sections 324, 448 read with 34 of I.P.C. In this case, the investigation is not completed and there is every possibility of committing similar offences being a rowdy sheeter involving in other crimes, and as such, this petition is liable to be dismissed.

In the result, this Criminal Petition is dismissed.

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

JUSTICE M.SATYANARAYANA MURTHY

Dated 18-1-2017.

Dvs.



HONOURABLE SRI JUSTICE M.SATYANARAYANA MURTHY



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Dated 18-1-2017

Dvs