

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.2719 OF 2018

ORDER:

This petition is filed under Section 438 of Criminal Procedure Code (for short "Cr.P.C.") by accused No.2, apprehending his arrest, in Crime No.150 of 2017 on the file of Palakol Town Police Station, West Godavari District, registered for the offences punishable under Sections 379, 403, 406, 420, 468 read with 34 of Indian Penal Code (for short "I.P.C."), to direct the Station House Officer, Palakol Town Police Station to release him on bail in the event of his arrest in connection with the above crime.

The case of the prosecution, in brief, is that the accused No.1 allegedly stolen the cheque bearing No.758766 dated 21.07.2017 and forged the signature of de facto complainant and withdrawn Rs.18,00,000/- through the petitioner/accused No.2.

The contention of the petitioner before this Court is that the defacto complainant M/s Bluestar Constructions represented by its Managing Partner Ch.Venkateswara Rao became due an amount of Rs.18,00,000/- to the petitioner in connection with supply of Metal for laying roads through M/s Lakshmi Builders, sub-contractor of the works and to support this contention, he placed on record the memorandum of understanding dated 18.10.2016 between the Bluestar constructions and Sri Lakshmi Builders, where there is a reference about amount due to P.Satyanarayana, the petitioner herein, towards value of the metal supplied for laying roads etc. Therefore, the cheque was issued towards discharge of legally enforceable debt, but lodging

complaint as if the petitioner stolen the cheque and forged the signature etc. is not tenable and sought for pre-arrest bail to the petitioner.

Learned counsel for the petitioner placed on record the Memorandum of Understanding to contend that the cheque was issued towards amount due to the petitioner i.e. cost of material supplied and the same was referred in the 1st page of Memorandum of understanding dated 18.10.2016. Thus, when the cheque was issued towards discharge of liability, it is difficult to conclude that this petitioner committed theft of cheque and forged the signature etc. and prayed to direct the Station House Officer to release the petitioner on bail in the event of his arrest in connection with the above crime.

Learned Public Prosecutor for the State of Andhra Pradesh contended that it is not a fit case to grant pre-arrest bail as there was no changed circumstances after dismissal of earlier application No.10283 and 10497 of 2017 by this Court.

As seen from the material on record, the petition No.10283 and 10497 of 2017 filed by the petitioner was dismissed by this Court by order dated 06.11.2017 having found that there are serious allegations about commission of theft of cheque and withdrawal of amount of Rs.18,00,000/- and declined to grant pre-arrest bail to the petitioner.

The only changed circumstance brought to the notice of this Court that Memorandum of Understanding was secured by the petitioner subsequent to dismissal of earlier application, where there is reference about amount due to the petitioner of Rs.18,00,000/- towards cost of material supplied.

As seen from the document produced by the learned counsel for the petitioner i.e. Memorandum of Understanding, which was signed by Ch.Venkateswara Rao and not by any other person, except one of the attestors. Therefore, the document is incomplete and the same cannot be relied upon.

After dismissal of earlier application by order dated 06.11.2017, no changed circumstances in the investigation were brought to the notice of this Court except producing incomplete memorandum of understanding, that too crime is of the year 2017 and the petitioner is successfully avoiding his arrest by the police. Therefore, the petitioner is not entitled to claim pre-arrest bail, since grant of pre-arrest bail is an exception and unless the Court found certain exceptional circumstances that he did commit no offence *prima facie*, this Court cannot grant pre-arrest bail to the petitioner. Hence, I find no ground to grant pre-arrest bail. Consequently, the petition is liable to be dismissed.

In the result, the petition is dismissed.

The miscellaneous petitions pending, if any, shall also stand closed.

JUSTICE M. SATYANARAYANA MURTHY

19.03.2018

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