

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No. 2870 OF 2018

ORDER:

This petition is filed, under Section 438 of the Code of Criminal Procedure, 1973, for grant of anticipatory bail to the petitioners-accused Nos. 1 to 3 in Crime No. 204 of 2016 of Yadagirigutta Police Station, Nalgonda District, registered for the offences punishable under Sections 386 and 120-B of the Indian Penal Code (for short, 'IPC').

2. Heard learned counsel for the petitioners and learned Public Prosecutor (T.S.).

3. The case of the prosecution is that one Maturi Sathyanarayana-the *de facto* complainant lodged a complaint on 17-09-2016 alleging that he inherited Ac. 16.00 guntas of agricultural land in survey Nos. 445 to 449 situated at Chollar Village, Yadagirigutta Mandal, from his father by way of gift deed in the year 2014 and his father passed away in the year 2015; that his father purchased the said land from one late Mohd. Haneef-husband of petitioner No. 1 and father of petitioner Nos. 2 and 3, of Chollar Village in the year 1950; that on denial by the seller, the matter is being carried to various Courts; that as the matter stood thus, the petitioners through their hired Goondas threatened the *de facto* complainant to dispossess from the land and the latter also received a warning from gangsters to part with the land as demanded by them and also threatened with dire consequences and that on 03-02-2016, apprehending danger to their lives, an agreement on bond paper was signed

by him and his elder brother for taking only Ac. 9.00 guntas from out of Ac. 16.00 guntas leaving the balance Ac. 7.00 guntas to them and thereby the petitioners committed the offence of extortion by putting the *de facto* complainant and his brother in fear of death.

4. A perusal of the record shows that during the lifetime of Haneef, he filed O.S.No. 413 of 1987 on the file of the Court of Principal District Munsif, Bhongir, for declaration of title over 1/4th of the property and the same was decreed; that later, the father of the *de facto* complainant filed O.S.No. 22 of 2001 on the file of the Court of Senior Civil Judge, Bhongir, and the same was decreed; that feeling aggrieved, petitioner Nos. 2 and 3 preferred A.S.No. 60 of 2011 on the file of the Court of V Additional District Judge, Bhongir, and the same was dismissed and that aggrieved thereby, the petitioners filed S.A.No. 321 of 2015 before this Court and the same is pending. When the litigation is pending, the allegation that the petitioners engaged some gangsters and committed extortion by putting the *de facto* complainant and his elder brother in fear of death would clearly amount to the offence punishable under Section 386 IPC and therefore at this stage, it is difficult to grant pre-arrest bail to the petitioners taking into consideration the gravity of the offence.

5. Learned counsel for the petitioners submits that petitioner No. 1 is a woman and suffering from various ailments and drawn the attention of this Court to the proviso to Section 437 (1) Cr.P.C., where it is contemplated that when any person accused

of, or suspected of, the commission of any non-bailable offence is arrested, the Court may direct that such person be released if he is under the age of sixteen years or is a woman or is sick or infirm. The provisions under Section 437 Cr.P.C. cannot be applied to Section 438 Cr.P.C. Therefore, basing on the proviso to Section 437 (1) Cr.P.C., petitioner No. 1, who is a woman, cannot be enlarged on pre-arrest bail.

6. The Apex Court in *Siddharam Satlingappa Mhetre Vs. State of Maharashtra*¹ provides the factors and parameters that are needed to be taken for consideration while dealing with anticipatory bail and they are 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 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 case of large magnitude affecting a very large number of people;*
- (vii) *The Court 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 the accused is implicated with the help of Section 34 and 149 of the Penal Code, the Court should consider with even greater care and caution*

¹ 2010 (12) TMI 1085 SC

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 free, fair and full investigation, and there should be prevention of harassment, humiliation and unjustified detention of the accused;*
- (ix) The Court should consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant; and*
- (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."*

Having considered the above factors and parameters and applying to the present facts of the case, the petitioners are not entitled to seek pre-arrest bail in view of the gravity of the offence and that too the investigation is not yet completed in the present case. Grant of pre-arrest bail is not a matter of routine and it is a matter of exception. Unless the petitioners are able to satisfy the Court that there are exceptional circumstances, the Court cannot grant pre-arrest bail. Hence, I find no ground to grant pre-arrest bail to the petitioners.

7. The criminal petition is accordingly dismissed. Pending miscellaneous petitions if any shall stand dismissed in consequence.

M.SATYANARAYANA MURTHY, J.

20-03-2018.
JSK