

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

Criminal Petition No.2925 of 2018

ORDER:

This Criminal Petition, under Section 438 of the Code of Criminal Procedure, 1973, is filed by the petitioner/A.10, for grant of pre-arrest bail apprehending his arrest in connection with Crime No.665 of 2017 of Machavaram Police Station, Vijayawada City, Krishna District, registered for the offence punishable under Section 302, 120B read with 34 of I.P.C.

2. Heard the learned counsel for the petitioner/A.10, learned Public Prosecutor for the State of Andhra Pradesh representing the respondent-State and perused the material on record.

3. The case of the prosecution, in brief, is that 06.12.2017, at 10:30 AM, the husband of the de-facto complainant went out to purchase TV to give it to his father, on a red colour Maestro Edge Motor Cycle of known persons. After one hour, she received a phone call from a person that her husband was murdered at Machavaram down by six persons who came on three motorcycles. Two years ago, her brother-in-law Vemuri Satyam was killed by Samudrala Pavan Kumar and Janeti Surendra and others at Tenali. In the murder case of Krishna of Tenali, her husband Kalidasu Subramanyam @ Subbu is the accused. Due to previous grudges, her husband Kalidasu Subramanyam @ Subbu was murdered and requested the police to take necessary action. On the strength of the compliant lodged by the de-facto complainant, the police registered the Crime, issued First Information Report against two

persons for the offence punishable under Section 302 read with 34 of I.P.C. and started investigation.

4. Investigation revealed that the petitioner/A.10, along with A.1, conspired together and earlier attempted to kill the deceased Kalidasu Subramanyam @ Subbu, husband of the de-facto complainant, in the Court premises itself, but they were unsuccessful and that A.1 is involved in various crimes at Tenali, A.2 and A.3 also involved in more than four and ten crimes respectively and that A.1 and A.2 are habitual offenders. However, the confessional statement of A.1 discloses that the petitioner/A.10 and A.1 prepared a sketch to do away with the life of the husband of the de-facto complainant Kalidasu Subramanyam @ Subbu and earlier made two unsuccessful attempts at Tenali to that effect. Therefore, on the confessional statement of A.1, the petitioner/A.10 was enroped in the instant crime.

5. The learned counsel for the petitioner/A.10 would submit that the husband of the de-facto complainant is a rowdy-sheeter and involved in several murder cases and the members of the family of the deceased bore grudge against them. The name of the petitioner/A.10 is not found in the First Information Report, so also, in the statements of witnesses recorded by the police under Section 161 of Cr.P.C. In the absence of any material *prima facie* to show that the petitioner/A.10 is involved in the instant crime, he is entitled for pre-arrest bail, since the arrest of the petitioner/A.10 would infringe his fundamental rights guaranteed by the Constitution of India and prayed to grant pre-arrest bail to the petitioner/A.10.

6. Learned Public Prosecutor for the State of Andhra Pradesh representing the respondent-State opposed the relief sought by the petitioner/A.10 contending that the basis for enrolling the petitioner/A.10 in the instant crime is the confessional statement of A.1 and that the investigation is not completed and prayed to dismiss the petition.

7. Undisputedly, the petitioner/A.10 was not arrayed as an accused in the First Information Report, but only two persons are arrayed as accused. However, since the First Information Report is only information about the occurrence of cognizable offence, need not contain all details, the police took up investigation and examined the witnesses. The statement recorded by the police discloses about the involvement of the petitioner/A.10 in hatching a plan to do away with the life of the husband of the de-facto complainant in the Court premises itself. But they were unsuccessful in the first attempt and again they hatched the plan to put an end to the life of the husband of the de-facto complainant, but however, they were again unsuccessful. Therefore, the role played by the petitioner/A.10, though not direct participation in the commission of offence, but prepared a sketch, conspired with A.1 to do away with the life of the husband of the de-facto complainant. Thus, the petitioner/A.10 is the main conspirator *prima facie*. Therefore, he cannot be enlarged on bail at this stage. Moreover, the investigation is not yet completed and in such a case, the Court cannot grant pre-arrest bail to the petitioner/A.10.

8. A Division Bench of the Apex Court, in *Kiran Devi Vs. State of Rajasthan*¹, held that anticipatory bail should not be granted in a murder case when the investigation is incomplete. Though the Apex Court, in *Kiran Devi's* case supra did not consider the earlier judgment of the Constitutional Bench of the Supreme Court in *Gurbaksh Singh Sibbia and Ors. v. State of Punjab*², but however, in *Gurbaksh Singh Sibbia's* case supra, the Apex Court summarised the true legal position in relation Section 438 of Cr.P.C., which reads as follows:-

(1) The power under Section 438, Criminal Procedure Code is of an extraordinary character and must be exercised sparingly in exceptional cases only.

(2) Neither Section 438 nor any other provision of the Code authorises the grant of blanket anticipatory bail for offences not yet committed or with regard to accusations not so far levelled.

(3) The said power is not unguided or uncanalised but all the limitations imposed in the preceding Section 437, are implicit therein and must be read into Section 438.

(4) In addition to the limitations mentioned in Section 437, the petitioner must make out a special case for the exercise of the power to grant anticipatory bail.

(5) Where a legitimate case for the remand of the offender to the police custody under Section 167(2) can be made out by the investigating agency or a reasonable claim to secure incriminating material from information likely to be received from the offender under Section 27 of the Evidence Act can be made out, the power under Section 438 should not be exercised.

(6) The discretion under Section 438 cannot be exercised with regard to offences punishable with death or imprisonment for life unless the Court at that very stage is satisfied that such a charge appears to be false or groundless.

(7) The larger interest of the public and State demand that in serious cases like economic offences involving blatant corruption at the higher rungs of the executive and political power, the discretion under Section 438 of the Code should not be exercised; and

¹ 1987 Supp. Supreme Court Cases 549

² AIR 1980 SC 1632

(8) Mere general allegations of mala fides in the petition are inadequate. The Court must be satisfied on materials before it that the allegations of mala fides are substantial and the accusation appears to be false and groundless.

9. While dealing with a petition for grant of pre-arrest bail, the Apex Court, in *Siddharam Satlingappa Mhetre v State Of Maharashtra*³, formulated 10 guidelines and held that the discretionary power under Section 438 of Cr.P.C. has to be exercised sparingly and in exceptional circumstances; and, until the Court comes to the conclusion that there is no *prima facie* material/evidence to establish the guilt of the accused for the offences alleged, the Court cannot grant pre-arrest bail as a matter of routine.

10. The Apex Court, in *Jai Prakash Singh v. State of Bihar*⁴, held that Anticipatory bail can be granted only in exceptional circumstances where the court is *prima facie* of the view that the applicant has falsely been enroled in the crime and would not misuse his liberty. The Courts are expected to deal with very serious matters seriously, but not in casual and cavalier manner and grant anticipatory bail by extending unwarranted sympathy towards accused by exercising discretion. Court might not exercise its discretion in derogation of established principles of law, rather it had to be in strict adherence to them. Discretion had to be guided by law, duly governed by rule and could not be arbitrary, fanciful or vague; and, Court must not yield to spasmodic sentiment to unregulated benevolence. Any order *dehors* grounds provided in Section 438 of Cr.P.C. is illegal.

³ AIR 2011 SC 312

⁴ AIR 2012 SC 1676

11. Keeping in view the legal preposition laid down by the Apex Court for grant of pre-arrest bail if I look at the facts of the case on hand, admittedly, investigation is not completed and according to the prosecution, the petitioner/A.10 conspired with A.1 and hatched a plan to do away with the life of the husband of the de-facto complainant. Hence, to strike the balance between the individual liberty and societal interest, this Court is of the opinion that it is not a fit case to grant pre-arrest bail to the petitioner/A.10.

12. In the result, this Criminal Petition is dismissed.

Miscellaneous petitions, if any, pending in this Criminal Petition, shall stand closed.

M.Satyanarayana Murthy, J

22nd March, 2018
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