

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.3099 OF 2018

ORDER:

Petitioner, who is the sole accused in Cr.No.57 of 2018 on the file of the Station House Officer, Dharmajigudem Police Station, West Godavari District, registered for the offences punishable under Sections 420 and 506 IPC and 3 (1) (s) of the SCs & STs (POA) Act, 1989 (for short 'the Act') filed this petition under Section 438 Cr.P.C. seeking pre-arrest bail.

2. Heard learned counsel for the petitioner, learned Additional Public Prosecutor representing the State of Andhra Pradesh and perused the record.

3. The petitioner is the sole accused in the above crime. The case of the prosecution is specific that the de facto complainant supplied maize to the petitioner worth Rs.1,40,000/- about three years ago on the promise made by the petitioner to pay the sale consideration within few months. Though three years have been lapsed, the petitioner did not pay the amount and when the de facto complainant insisted the petitioner to pay the amount, the petitioner abused the de facto complainant as 'Entira Lanja Kodaka Tokka Teesi Pareatha. Dabbulu Ivvanu. Yemain chesuko. Kulam Takkuva Na kodaka' and so saying, the petitioner pushed him.

4. It is the contention of the petitioner that the allegations in the complaint would not disclose commission of any offence under the provisions of the Act. The other offences are under Sections 420 and 506 IPC and sought for pre-arrest bail.

5. A bare looking of the contents of the report, it is clear that the petitioner-accused abused the de facto complainant as stated above. This itself *prima facie* indicates that the petitioner insulted the de facto complainant in the public view to attract the offence punishable under Section 3 (1) (s) of the Act. Since there is a bar under Section 18 of the Act, the petitioner is not entitled to claim pre-arrest bail. However, in the recent judgment of the apex Court in Criminal Appeal No.416 of 2018, dated 20.03.2018 in **DR.SUBHASH KASHINATH MAHAJAN V STATE OF MAHARASTHA AND ANOTHER** the apex Court issued certain guidelines and the SDPO directed to follow the guidelines laid down by the apex Court in case of the accused, who is a Government or non-Government servant. The guidelines are as follows:

“i) Proceedings in the present case are clear abuse of process of Court and are quashed.

ii)There is no absolute bar against grant of anticipatory bail in cases under the Atrocities Act if no *prima facie* case is made out or where on judicial scrutiny the complaint is found to be *prima facie* mala fide. We approve the view taken and approach of the Gujarat High Court in *Pankaj D Suthar V State of Gujarat* ((1992) 1 GLR 405) and *Dr.N.T.Desai V State of Gujarat* ((1997) 2 GLR 942) and clarify the judgments of this Court in *State of M.P. V Ramkrishna Balothia* ((1995) 3 SCC 221) and *Manju Devi V Onkarjit Singh Ahluwalia* (2017) 13 SCC 439);

iii) In view of acknowledged abuse of law of arrest in cases under the Atrocities Act, arrest of a public servant can only be after approval of the appointing authority and of a non-public servant after approval by the S.S.P. which may be granted in appropriate cases if considered necessary for reasons recorded. Such reasons must be scrutinized by the Magistrate for permitting further detention.

iv) To avoid false implication of an innocent, a preliminary enquiry may be conducted by the DSP concerned to find out whether the allegations make out a case under the Atrocities Act and that the allegations are not frivolous or motivated.

v) Any violation of direction (iii) and (iv) will be actionable by way of disciplinary action as well as contempt”.

6. In view of my foregoing discussion and in view of bar under Section 18 of the Act, the petitioner-accused is not entitled to claim pre-arrest bail. However, the SDPO concerned is directed to follow the guidelines laid down in the judgment of the apex Court in **Dr.Subhash Kashinath's** case (cited supra).

7. Accordingly, the Criminal Petition is disposed of.

M.SATYANARAYANA MURTHY, J

DATED: 22-03-2018.

Hsd

