

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRL.P.No.3232 OF 2018

ORDER:

This criminal petition is filed under Section 438 Cr.P.C to grant pre-arrest bail to the petitioners/A2, A3 and A1 in Crime No.107 of 2017 of Gara Police Station, Srikakulam District, registered for the offences punishable under Sections 302, 201 read with 34 IPC under Section 3(1)(r)(s) and 2 of SC and ST (POA) Act, 2015.

The case of the prosecution in brief is that Balaga Krishna Murthy, who belongs to the schedule caste, father of the deceased Balaga Kameswara Rao lodged a report alleging that his son had illicit intimacy with one lady Gayatri, who belongs to Reddika caste of another village mentioning the name of the petitioner and others. Earlier, the *de facto* complainant gave a report before the Gara Police Station, Bachuvanipeta Village without mentioning the names of the accused including the petitioner, alleging that both of them were killed in Palmyra Tope at the extreme end point of Bachuvanipeta Village near to bay of sea and he does not know who killed his son, but he came to know that his son was killed due to grudge having illicit intimacy with higher caste girl. The petitioner and others held meeting in Rama Mandir 10 days prior to 08.08.2017 and decided to kill his son.

The main contention of the petitioner before this Court is that in the earlier report dated 08.08.2017, no specific names were disclosed as to who is responsible for causing murder of his son, but made a bald allegation that somebody killed his son. Later, on 13.12.2017 i.e. almost after four months after the death of the

petitioner's son, he lodged another report alleging that the petitioner and others committed murder of his son. It is also the contention of the petitioner that when the first report did not disclose commission of any offence against the petitioner and giving second report would not serve any purpose and that apart, the second report cannot be registered as crime.

In ***Shiv Shankar Singh v. State of Bihar***¹ the Apex Court expressed a view that the law does not prohibit filing or entertaining of a second complaint even on the same facts, provided that the earlier complaint has been decided on the basis of insufficient material or has been passed without understanding the nature of the complaint or where the complete facts could not be placed before the Court and the applicant came to know of certain facts after the disposal of the first complaint. The Court applied the test of full consideration of the complaints on merits and held as under:-

“Thus, it is evident that the law does not prohibit filing or entertaining of the second complaint even on the same facts provided the earlier complaint has been decided on the basis of insufficient material or the order has been passed without understanding the nature of the complaint or the complete facts could not be placed before the court or where the complainant came to know certain facts after disposal of the first complaint which could have tilted the balance in his favour. However, the second complaint would not be maintainable wherein the earlier complaint has been disposed of on full consideration of the case of the complainant on merit.”

The Division Bench of this Court relied on ***Ram Lal Narang v. State (Delhi Admn.)***², ***M.Krishna v. State of Karnataka***³,

¹ (2012) 1 SCC 130

² (1979) 2 SCC 322

³ 1999) 3 SCC 247

V.K.Sharma v. Union of India⁴, Mohan Bhaitha v. State of Bihar⁵, T.T.Antony v. State of Kerala⁶, Narinderjit Singh Shani v. Union of India⁷, Kari Chaudhary Vs. Most. Sita Devi⁸, State of Punjab v. Rajesh Syal⁹, Upkar Singh v. Ved Prakash¹⁰, Rameshchandra Nandlal Parikh v. State of Gujarat¹¹, Vikram v. State of Maharashtra¹², Pramod Kumar Saxena v. Union of India¹³, Nirmal Singh Kahlon Vs. State of Punjab¹⁴, C.Muniappan v. State of T.N.¹⁵, Babubhai v. State of Gujarat¹⁶, Chirra Shivraj Vs. Sate of AP¹⁷, Shiv Shankar Singh v. State of Bihar¹⁸, Surender Kaushik v. State of Uttar Pradesh¹⁹, Amitbhai Anilchandra Shah v. CBI²⁰ “Anju Chowdry Vs. State of U.P²¹, “YanabSheikh@gagu Vs. State of West Bengal²²”, distinguished the facts and on analysing the decisions of Apex Court recorded “evolution of the law” in the form of table, which is as follows:

S.NO	Decision	The dispute arose out of	Whether the Second (2nd) FIR or Multiple FIRs filed are Valid or Invalid
1.	Ram Lal Narang Vs. State(Delhi Administration) and Om Prakash Narang & Ors Vs. State(Delhi	Arose out of theft of two sandstone pillars of great antiquity.	Valid

⁴ (2000) 9 SCC 449

⁵ (2001) 4 SCC 350

⁶ (2001) 6 SCC 350

⁷ (2002) 2 SCC 210

⁸ (2002) 1 SCC 714

⁹ (2002) 8 SCC 158

¹⁰ (2004) 13 SCC 292

¹¹ (2006) 1 SCC 732

¹² (2007) 12 SCC 332

¹³ (2008) 9 SCC 685

¹⁴ (2009) 1 SCC 441

¹⁵ (2010) 9 SCC 567

¹⁶ (2010) 12 SCC 254

¹⁷ (2010) 14 SCC 444

¹⁸ (2012) 1 SCC 130

¹⁹ (2013) 5 SCC 148

²⁰ (2013) 6 SCC 348

²¹ (2013) 6 SCC 384

²² (2013) 6 SCC 428

	Administration), (1979) 2 SCC 322		
2.	M. Krishna Vs. State of Karnataka, (1999) 3 SCC 247	Arose out of amassing wealth disproportionate to one's source of income.	Valid
3.	V.K. Sharma Vs. Union of India, (2000)9SCC449	Arose out of swindling a large number of depositors on the false pretext that their deposits would be returned with interest on a subsequent date. (White-Collar Crime)	Valid (Multiple FIRs)
4.	Mohan Bhaitha Vs. State of Bihar, (2001)4SCC350	Arose out of a dowry death. <u>Note:</u> - The question involved here is not concerned about whether there can be more FIRs than one but whether there can be more trials than one.	<u>Held:</u> -Offences more than one committed by the same persons could be tried at one trial, if they can be held to be in one series of facts so as to form the same transaction.
5.	T.T. Antony Vs. State of Kerala, (2001) 6 SCC 350	Arose out of police firing resulting into deaths of few people and injuries to a large number of people.	Third (3 rd) FIR Invalid.
6.	Narinderjit Singh Shani and another Vs. Union of India, (2002)2SCC210	Arose out of swindling of a large number of depositors on the false pretext that their deposits would be returned with interest on a subsequent date.	Valid (Multiple FIRs)
7.	Kari Chaudhary Vs. Most. Sita Devi and Ors, (2002) 1 SCC 714	Arose out of a murder case.	Valid
8.	State of Punjab Vs. Rajesh Syal, (2002)8SCC158	Arose out of swindling of a large number of depositors on the false pretext that their deposits would be returned with interest on a subsequent date. (White-Collar Crime)	Valid (Multiple FIRs)
9.	Upkar Singh v. Ved Prakash, (2004) 13 SCC 292	Arose out of an attempt to murder and house-trespass cases	Valid
10.	RameshchandraNandlal Parikh v. State of Gujarat (2006) 1 SCC 732	Arose out of swindling of a large number of depositors on the false pretext that their deposits would be returned with interest on a subsequent date.	Valid (Multiple FIRs)
11.	Vikram Vs. State of Maharashtra, (2007) 12 SCC 332	Arose out of a murder case.	Valid

12.	Pramod Kumar Saxena Vs. Union of India and Ors, (2008)9SCC685	Arose out of swindling of a large number of depositors on the false pretext that their deposits would be returned with interest on a subsequent date.	Valid (Multiple FIRs)
13.	Nirmal Singh Kahlon Vs. State of Punjab and Others, (2009) 1 SCC 441	Arose out of scandal involving selection of Panchayat Secretaries.	Valid
14.	C. Muniappan and others Vs. State of Tamil Nadu, (2010) 9 SCC 567	Arose out of setting fire to a university bus and several public buses.	Investigation of the Second FIR was clubbed with the investigation of the First FIR. In essence, two complaints/FI Rs are clubbed together and investigated jointly.
15.	Bahubhai Vs. State of Gujarat, (2010) 12 SCC 254	Arose out of altercation that took place between members of the two communities.	Invalid
16.	ChirraShivraj Vs. Sate of AP, (2010) 14 SCC 444	Arose out of an attempt to murder case.	Second F.I.R. held Valid because SHO made a mistake by recording information as a fresh F.I.R. and that this mistake should not make the case of prosecution weak especially when no prejudice had been caused.
17.	Shiv Shankar Singh Vs. State of Bihar, (2012) 1 SCC 130	Arose out of dacoity and murder.	Valid
18.	Surender Kaushik and Others Vs. State of UP, (2013) 5 SCC 148	Arose out of fake and fraudulent documents prepared by the accused persons.	Invalid
19.	AmitbhaiAnilchandra Shah Vs. CBI, (2013) 6 SCC 348	Arose out of murder cases	Invalid
20.	Anju Chowdry Vs. State of UP, (2013) 6 SCC 384	Arose out of a hate speech.	Valid
21.	YanabSheikh@gagu Vs. State of West Bengal, (2013) 6 SCC 428	Arose out of a murder case.	Invalid

Finally, concluded that the decision of the Two member bench in “**T.T.Antony’s case**” referred supra was not taken note of in “**Narinderjit Singh Shani’s case, Rajesh Syal’s case**” and “**Pramod Kumar Saxena’s case**” referred supra. In all those 3 decisions, the Apex Court concerned with the cases of persons who collected money from innumerable persons but failed to repay the same. The decision in **T.T.Antony’s case** referred supra, arose out of offences relating to Law and Order, Public Order and the Police Firing. When the offences alleged against the person relates to collection of deposits and failure to repay, the ratio decidendi in “**Narinderjit Singh Shani’s case, Rajesh Syal’s case,**” and “**Pramod Kumar Saxena’s case**” referred supra alone would apply and not the ratio in **T.T.Antony’s case** referred supra. But in view of the Full Bench judgment of the Apex Court and various decisions referred supra, more particularly in **Rajesh Syal’s case** referred supra multiple F.I.Rs. are valid. Similarly in “**Rameshchandra Nandlal Parikh’s case, Pramod Kumar Saxena’s case, V.K.Sharma’s case and Narinderjit Singh Shani’s case**” referred supra it is also held that multiple F.I.Rs. are maintainable. But in few judgments “**Bahubhai’s case, T.T.Antony’s case, Surender Kaushik’s case and Amitbhai Anilchandra Shah’s case**” referred supra it is held that multiple F.I.Rs. are not maintainable. But in view of Full Bench judgment of the Apex Court rendered in “**State of Punjab’s case**” referred supra the Division Bench of this Court concluded that multiple F.I.Rs. are maintainable.

However, at this stage, it is difficult to conclude that the petitioner committed no offence as investigation is at the foetus stage and if the petitioner is directed to be released on bail, there is

every possibility of interfering with the investigation in view of the caste superiority in the village as the petitioner belongs to Reddyka caste, whereas the *de facto* complainant belongs to schedule caste. Therefore, I find, it is not a fit case to grant pre-arrest bail and consequently, the criminal petition is liable to be dismissed.

In the result, the criminal petition is dismissed.

Pending miscellaneous petitions in the petition, if any, shall stand closed.

02.04.2018
kvrm

M.SATYANARAYANA MURTHY,J

