

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.3118 OF 2018

ORDER:

This criminal petition under Section 438 Cr.P.C is filed by one Morusupalli Raghavendra Rao, who is not arrayed as an accused in Crime No.11 of 2018 dated 09.03.2018 on the file of Madhavaram Police Station, Kurnool District, apprehending his arrest in connection with the above crime.

The facts of the case in brief are that, on 08.03.2018 at 17:00 hours, lorry drivers Krishna Reddy and Allaji, drivers of lorries bearing Nos. AP21T 1676 & TS 05 UA 5899 were found mixing fly ash in coal, when they were transporting coal from Krishnapatnam Port to Maruthi Ispat & Energy Private Limited at Madhavaram. Hence, Crime No.11 of 2018 was registered against the two lorry drivers for the offences punishable under Sections 407 & 420 IPC. But, the present petitioner is apprehending his arrest in connection with the above crime, on the ground that his name was referred in the remand report.

Merely because the name of the petitioner is referred as Manager of the Company, as long as no crime is registered against him, no pre-arrest bail can be granted, as there is no reasonable apprehension for grant of pre-arrest bail.

The power of the Court under Section 438 Cr.P.C is purely discretionary and this Court may exercise its power judiciously based on settled principles. But, the circumstances to exercise such jurisdiction may vary from case to case. The law regarding grant of anticipatory bail is elaborately discussed by the

Constitution Bench of the Apex Court in **Gurbaksh Singh Sibbia and Ors v. State of Punjab**¹ case, as the power of granting 'anticipatory bail' is somewhat extraordinary in character and it is only in exceptional cases where it appears that a person might be falsely implicated, or a frivolous case might be launched against him, or "there are reasonable grounds for holding that a person accused of an offence is not likely to abscond, or otherwise misuse his liberty while on bail" that such power is to be exercised. No hard and fast rule can be laid down in discretionary matters like grant or refusal of bail whether anticipatory or regular bail. The Apex Court further held that, it cannot be laid down as an inexorable rule that anticipatory bail cannot be granted unless the proposed accusation appears to be actuated by mala fides; that anticipatory bail must be granted if there is no fear that the applicant will abscond. There are several other considerations, too numerous to enumerate, the combined effect of which must weigh with the court while granting or rejecting anticipatory bail. The nature and seriousness of the proposed charges, the context of the events likely to lead to the making of the charges, a reasonable possibility of the applicant's presence not being secured at the trial, a reasonable apprehension that witnesses will be tampered with and "the larger interests of the public or the state" are some of the considerations which the court has to keep in mind while deciding an application for anticipatory bail. Therefore, anticipatory bail can be granted even in serious cases like economic offences and States should have no concern for grant or refusal of anticipatory bail, as there can be no presumption that

¹ AIR 1980 SC 1632

the wealthy and the mighty will submit themselves to trial and that the humble and the poor will run away from the course of justice, any more than there can be a presumption that the former are not likely to commit a crime and the latter are more likely to commit it. Therefore, while dealing with the application for grant of pre-arrest bail or anticipatory bail, the Court must take into consideration the guidelines issued in **Gurbaksh Singh Sibbia**¹ case.

In view of the law declared by the Constitutional Bench of the Supreme Court, the petitioner against whom no crime is registered, there is no basis for the alleged reasonable apprehension and he is not entitled to claim pre-arrest bail and the criminal petition is liable to be dismissed.

In the result, criminal petition is dismissed. However, the petitioner is at liberty to renew his request whenever a crime is registered against him before appropriate Court.

Consequently, miscellaneous applications pending if any, shall also stand dismissed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Date:23.03.2018

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