

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No. 3259 OF 2018

ORDER:

This petition is filed, under Section 438 of the Code of Criminal Procedure, 1973, for grant of anticipatory bail to the petitioner-accused No. 6 in Crime No. 276 of 2017 of Pendlimarri Police Station, Y.S.R. Kadapa District, registered for the offences punishable under Sections 147, 148, 307 and 324 read with Section 149 of the Indian Penal Code (for short, 'IPC').

2. Heard learned counsel for the petitioner and learned Public Prosecutor (A.P.).

3. The case of the prosecution is that for the last one month prior to 25-12-2017, accused Nos. 1 to 4 and others had been obstructing the *de facto* complainant and five other families to draw water from the tap fixed at the water tank by keeping stones and thorny branches; that the *de facto* complainant requested accused Nos. 1 to 4 through elders to remove the stones and thorny branches but in vain; that the *de facto* complainant gave report to Revenue Department and District Collector but no purpose was served; that on 25-12-2017 morning, while the *de facto* complainant, Vennapusa Subbamma, Vennapusa Gangamma and some other woman folk were clearing the stones and thorny branches, the petitioner along with accused Nos. 1 to 5 and 7 to 10 went there and questioned as to why they were clearing the way; that thereupon, with intent to kill them, accused No. 1 stabbed the *de facto* complainant with a knife on her left wrist, due to which she sustained bleeding injury on her left wrist and on index finger;

that accused No. 3 beat Ganganamma with a stone, as a result of which she sustained a bleeding injury to her head; that meanwhile, accused No. 4 beat Subbamma with a stone on her chest, due to which she sustained a swelling injury and that coming to know about the quarrel, when the husband of the *de facto* complainant, Sankara Reddy, Rami Reddy and others went to their rescue, accused No. 9 tried to hit Sankara Reddy with a knife, due to which he sustained a bleeding injury to his ring finger, accused No. 8 beat Rami Reddy with a stick, due to which he sustained a swelling injury on his right wrist and the petitioner and accused Nos. 5 and 7 beat them with hands and legs with intent to kill them.

4. Learned counsel for the petitioner submits that the petitioner did commit no offence; that due to earlier pending civil litigation in O.S.No. 485 of 2017 on the file of the Court of Principal Junior Civil Judge, Kadapa, the present case is foisted against the petitioner and that lodging report is nothing but abuse of process of law and prayed to grant pre-arrest bail.

5. Learned Public Prosecutor opposes the petition on the ground that investigation is not yet completed and that the material on record so far collected during investigation directly points out the complicity of the petitioner and prayed for dismissal of the petition.

6. The allegations made against the petitioner are serious in nature. If really the petitioner and other accused had no intention to kill the *de facto* complainant and the other injured persons, they would not have used knives, sticks and stones.

Apart from that, the statements of the witnesses recorded during investigation clearly disclose the intention of the petitioner and the other accused to kill the *de facto* complainant and the other injured persons and the investigation in this case is not yet completed. The other contention is that due to pendency of civil litigation between the parties with regard to enjoyment of pathway, the present case is foisted. Pendency of the litigation may be the reason either to foist a false case or to commit an offence since motive is a double edged weapon and it can be used for either of the purposes. Therefore, on that ground alone, pre-arrest bail cannot be granted.

7. Grant of pre-arrest bail is not a matter of routine and it is a matter of exception. Unless the petitioner is able to satisfy the Court that there are exceptional circumstances, the Court cannot grant pre-arrest bail. 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;*

¹ 2010 (12) TMI 1085 SC

- (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 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 petitioner is 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. Hence, I find no ground to grant pre-arrest bail to the petitioner.

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

M.SATYANARAYANA MURTHY, J.

29-03-2018.
JSK