

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No. 3276 OF 2018

ORDER:

This petition is filed, under Section 438 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.'). for grant of anticipatory bail to the petitioner-accused No. 3 in Crime No. 53 of 2018 of Reddigudem Police Station, Krishna District, registered for the offence punishable under Section 307 read with Section 34 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 on 13-02-2018 at about 10 a.m. while the *de facto* complainant along with his staff was verifying the damaged UT Canal at 21.618 k.m., the petitioner along with other accused came there with an intention to kill him and that the petitioner caught hold of his shirt while the other accused caught hold of his legs and hands and threw him into the damaged UT Canal and the persons who accompanied the *de facto* complainant rescued him and saved his life.

4. Learned counsel for the petitioner submits that the petitioner did commit no offence and that due to political rivalry, the petitioner was unnecessarily implicated in the above crime.

5. Throwing the *de facto* complainant, who was visiting the scene of offence along with his staff, in the manner narrated in the complaint itself is suffice to attract the offence punishable under Section 307 IPC. Apart from that, the *de facto* complainant is a Government employee and not under the

influence of any political party. Therefore, the allegation that the petitioner is falsely implicated due to political rivalry is without any substance and it is common knowledge that when a person is thrown in a canal, it would be dangerous for the life of the person who fell in the canal. Therefore, making attempt to kill the *de facto* complainant in the manner described in the complaint is suffice to conclude that the petitioner *prima facie* indulged in commission of the offence punishable under Section 307 IPC and granting pre-arrest bail to the person who committed such serious offence is not a matter of routine and it is a matter of an exception and unless the petitioner shows that there are exceptional circumstances to grant pre-arrest bail to him, the Court cannot exercise discretion under Section 438 Cr.P.C.

6. 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;*

¹ 2010 (12) TMI 1085 SC

- (v) *Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her;*
- (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 that it is not a fit case to grant pre-arrest bail to the petitioner.

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

M.SATYANARAYANA MURTHY, J.

27-03-2018.
JSK

