

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No. 3348 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. 2 in Crime No. 42 of 2018 of Patamata Police Station, Vijayawada City, registered for the offence punishable under Section 8 (c) read with Section 20 (b) (ii) (C) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'the Act').

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

3. The case of the prosecution is that on 18-01-2018 at 16.00 hours, the Inspector of Police, Patamata Police Station, along with his staff was conducting vehicular checking on NH 16, near Subam Kalyana Mandapam, Ramavarappadu Village, Vijayawada Rural; that on seeing them, the petitioner and accused Nos. 1 and 3, who were travelling in car bearing No. MH 02 AU 9137, tried to escape from the scene; that the Inspector of Police caught hold of accused No. 1 with the help of his staff while the petitioner and accused No. 3 successfully escaped and on interrogation, accused No. 1 confessed that he, accused No. 3 and the petitioner were transporting Ganja and that on verification, the police found 270 kilograms of Ganja and seized the same from the possession of accused No. 1.

4. Learned counsel for the petitioner submits that nothing was seized from the possession of the petitioner and that the

crime was registered long back and entire investigation is completed and no purpose would be served if he is kept behind the bars.

5. Learned Public Prosecutor opposed the petition on the ground that the petitioner conveniently escaped from the scene of offence; that the statement of accused No. 1 recorded under Section 67 of the Act is suffice to rope the petitioner with the offence and that failure to recover any contraband from the possession of the petitioner is not a ground to grant pre-arrest bail.

6. As seen from the material on record, the police seized 270 kilograms of Ganja from the possession of accused No. 1 and in pursuance of his statement recorded under Section 67 of the Act, the petitioner and accused No. 3 are roped with the offence. When the quantity of Ganja involved in this case 270 kilograms, which is commercial quantity, the petitioner is not entitled for pre-arrest bail. Unless the Court records its satisfaction that there are reasonable grounds to believe that the petitioner is not guilty of the offence and that he is not likely to commit any offence while on bail, it cannot grant bail in view of the bar under Section 37 of the Act.

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

¹ 2010 (12) TMI 1085 SC

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;*
- (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 when he was able to abscond from the scene to avoid his arrest. 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

