

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.3535 OF 2018

ORDER:

The petitioner/A.7 in Crime No.50 of 2017 of Vetapalem Police Station, Prakasam District, filed the present petition under Section 438 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.'), to grant pre-arrest bail in the event of his arrest in connection with the above crime, apprehending his arrest.

The case of the prosecution in brief is that on 25.06.2017 the *de facto* complainant lodged a complaint alleging that one Rajesh is his friend. The said Rajesh asked his car to visit Chirala. The *de facto* complainant, while giving the car asked the said Rajesh to get the gold ornaments, which were prepared. A.1 induced the said Rajesh to purchase gold biscuits at a cheaper rate. On 22.06.2017 the said Rajesh contacted A.1 over phone and asked about his whereabouts, both of them met at Railway Station, where A.1 came to know about the possession of gold ornaments, due to previous plan A.1 took the said Rajesh to Nagarapamma temple to get gold biscuits, on the way the other accused way laid, threatened the said Rajesh with a fear of death, taken away the gold ornaments from him pushed him aside and went away along with his cell phone.

Initially, the police registered the complaint under Section 384 read with 34 of IPC against five unknown persons, thereafter police filed memo for altering Section of law from Section 384 to 395 and 411 of IPC.

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The main contention of the petitioner is that he is press personnel, not connected with the alleged offence and that no material is collected against the petitioner till date by the investigating agency, but he is apprehending his arrest and prayed to enlarge the petitioner on bail.

The Public Prosecutor (A.P.) contended that the petitioner is a member of dacoit gangs and 5 other cases are pending against the petitioner. In case the petitioner is enlarged on pre-arrest bail, he may commit similar offence while on bail and prayed to dismiss the petition.

It is the case of extortion while L.W.2 and others proceeding, on the way the petitioner and other accused taken away the gold ornaments from their possession and this offence is a serious offence against the public at large and merely because the petitioner allegedly present without any specific role, he is entitled to claim pre-arrest bail. It is also pertinent to note here that similar cases are pending in various police stations for identical or similar offences and he is a member of dacoit gang as contended by the Public Prosecutor.

Grant of pre-arrest bail is not a matter of course and it is a matter of exception. Unless the court concludes that there is a material that the petitioner committed no offence, anticipatory bail cannot be granted.

In **Siddharam Satlingappa Mhetre vs State Of Maharashtra And**

Ors¹ the Apex Court laid down the following guidelines to exercise power while granting bail under Section 438 CrPC.

“(a) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;

(b) The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a court in respect of any cognizable offence;

(c) The possibility of the applicant to flee from justice;

(d) The possibility of the accused's likelihood to repeat similar or other offences;

(e) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her;

(f) Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people;

(g) The courts 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 cases in which the accused is implicated with the help of Sections 34 and 149 of the Penal Code, 1860 the court should consider with even greater care and caution, because over implication in the cases is a matter of common knowledge and concern;

(h) 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;

(i) The Court should consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;

¹ (2011) 1 SCC 694

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(j) 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 in entitled to an order of bail.”

If the guidelines laid by the Apex Court in **Siddharam Satlingappa Mhetre** case are applied to the present facts of the case, taking into consideration of the gravity, nature of offence and manner in which the petitioner and other accused committed offence, I am of the view that it is not a fit case to grant pre-arrest bail to the petitioner and the petition is liable to be dismissed.

In the result, the criminal petition is dismissed.

M.SATYANARAYANA MURTHY, J.

Date: 16-04-2018.

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