HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRL.P.No.3952 OF 2018

ORDER:

This criminal petition is filed under Section 438 Cr.P.C to grant pre-arrest bail to the petitioner/A3 in Crime No.202 of 2017 of Karkhana Police Station, registered for the offences punishable under Sections 416, 419, 420, 463, 464, 465, 467 and 468 read with 34 IPC.

2. Smt Oora Praveen W/o late O.Shyama Sunder Rao lodged a report with the police making serious allegations against A1 to A4 and the Assistant Manager of the State Bank of India in lending huge amount of more than Rs.300 crores by mortgaging the property. In fact, the complainant never offered the property as security for due payment of the loan. It is the case of the complainant that O.Shyama Sunder Rao, her husband died on 09.01.2012. During life time of her husband, purchased a constructed Flat No.102, 1st floor, Ritesh Premier Towers situated at Vasavi Nagar, on 10.12.2005 from Smt B.Renuka Devi vide registered document No.1980 of 2005, registered at SRO, Bowenpally. After demise of her husband, she left her matrimonial home to her mother's house. On 21.03.2013 a lease deed was executed by O.Sampath Rao, A1, who is no other than the brother of her husband in favour of Venkateshwara Hatcheries Pvt. Ltd (Irrigation Division), Office at Flat No.203, Ritesh Premier Towers, Vasavinagar, Secunderabad. The lessee who is a representative of a registered company, though knowing well that the Flat No.102, belongs to her husband and paying rents for two apartments and an advance of Rs.2,40,000/- paid by the lessee to the lessor. On

21.10.2016, the complainant issued legal notice to the General Manager, M/s Venkateshwara Hatcheries demanding payment of rent and the General Manager did not respond to the said notice. Again another notice dated 13.01.2017 got issued contending that the said property devolved on her by virtue of succession after the death of her husband and the agreement of lease is not valid as the lease agreement between them and O.Sampath Rao, who is not owner of the property and demanded to pay arrears of rent of Rs.13,71,708/-. On 04.02.2017 a reply notice was received by the complainant's advocate denying facts of the case and advised her to approach the concerned SBI and settle the issue with them. On 17.04.2017, the complainant received possession notice from SBI stating that they issued demand notice on 01.12.2016 calling upon the borrower M/s Neeta Chemicals, Represented by Director, guarantors and Mortgagors to repay the amount of Rs.329,71,74696/- as on 30.11.2016 together with interest and costs etc. The complainant went to SBI to find out whether her husband actually executed guarantee in favour of Neeta Chemicals or not. In the light of the same, they considered it appropriate to intervene and hereby set aside the reply of the CPIO in rejecting the application of the appellant, she suspected role of AGM, SBI, who sanctioned loan more than Rs.300 crores to the company Neeta Chemicals and also suspected the role of O.Sampath Rao, who executed lease deed. The lease deed was executed after the death of her husband on 09.01.2012. The signatures of her husband on his passport when compared with the signatures on the documents executed before the bank amply reveal the signatures are forged. On the basis of the complaint, the police proceeded to investigate into and found that A1 and the Manager of the SBI are responsible for the same. The investigation in this case is not yet completed.

3. The main contention of the petitioner is that he is no way concerned with the case and that the agreement of guarantee was executed for due payment of debt borrowed by the husband of the complainant from the State Bank of India and thereby it does not constitute offence, requested to grant pre-arrest bail.

4. Learned counsel for the petitioner reiterated the contention urged in the petition.

5. Whereas, learned Additional Public Prosecutor contended that there is material on record against the petitioner to conclude that the accused committed offence *prima facie* and the investigation is in the mid way and prayed for dismissal of the petition.

6. As seen from the material on record, the petitioner allegedly played fraud to a tune of Rs. 329,71,74696/- by executing alleged agreement of guarantee in favour of the bank and the material discloses the involvement of several persons, creation of mortgage in favour of the bank. When the petitioner allegedly committed a serious economic offence and became due to a tune of Rs. 329,71,74696/-, the petitioner is not entitled for pre-arrest bail since the pre arrest bail cannot be granted as a matter of routine and it is a matter of exception.

7. In **Gurbaksh Singh Sibbia and Others v. State Of Punjab**[1], the Apex Court highlighted the legislative intention in incorporating Section 438 CrPC enabling the Courts to direct the Station House Officer to release the alleged accused persons on bail in the event of

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[1] 1980 AIR 1632

their arrest. According to the Constitutional Bench Judgment of the Apex Court, no one can accuse the police of possessing a healing touch nor indeed does anyone have misgivings in regard to constraints consequent upon confinement in police custody. But, society has come to accept and acquiesce in all, that follows upon a police arrest with a certain amount of sangfroid, insofar as the ordinary rut of criminal investigation is concerned. It is the normal day-to-day business of the police to investigate into charges brought before them and, broadly and generally, they have nothing to gain, not favours at any rate, by subjecting ordinary criminal to needless harassment. But the crimes, the criminals and even the complaints can occasionally possess extraordinary features. When the even flow of life becomes turbid, the police can be called upon to inquire into charges arising out of political antagonism. The powerful processes of criminal law can then be perverted for achieving extraneous ends. Attendant upon such investigations, when the police are not free agents within their sphere of duty, is a great amount of inconvenience, harassment and humiliation. That can even take the form of the parading of a respectable person in hand-cuffs, apparently on way to a court of justice. The foul deed is done when an adversary is exposed to social ridicule and obloquy, no matter when and whether a conviction is secured or is at all possible. It is in order to meet such situations, though not limited to these contingencies, that the power to grant anticipatory bail was introduced into the Code of 1973.

8. At paragraph 31, the Apex Court further observed that the Bill introduces a provision for the grant of anticipatory bail. This is substantially in accordance with the recommendation made by the

previous Commission. We agree that this would be a useful addition, though we must add that it is in very exceptional cases that such a power should be exercised. Thus the reason for incorporation of this provision is to protect the persons against their arrest unnecessarily.

9. In **Siddharam Satlingappa Mhetre vs State Of Maharashtra And Ors**[2], the Apex Court laid down the following guidelines to grant pre-arrest bail.

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 accuser's likelihood to repeat similar or the 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 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 case in which accused is implicated with the help of Section 34 and 149 of IPC, 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 the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;

ix) The Court to consider reasonable apprehension of

[2] (2011) 1 SCC 694

tampering of the witnesses or apprehension of threat to the complainant;

(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.

10. Learned counsel also drawn the attention of this Court to the Constitutional Bench Judgment of the Apex Court in **Gurbaksh Singh Sibbia** case referred supra and reiterated the duty of the Court while deciding an application under Section 438 CrPC and the guidelines to be followed for grant of such pre-arrest bail.

11. Power under Section 438 Cr.P.C is purely discretionary and the Court has to exercise its power judicially based on settled principles, but the circumstances may vary from case to case and the law regarding grant of bail is literally discussed by the Constitutional Bench in **Gurbaksh Singh Sibbia** 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.

12. No hard and fast rules can be laid down in discretionary matters like the 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; told, equally, 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 consideration for grant or refusal of grant of anticipatory bail, as there can be no presumption that 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** case. Though, according to the judgment of the Apex Court, even in economic offences, the Court can grant anticipatory bail, subject to satisfaction of other grounds.

13. In **Siddharam Satlingappa Mhetre** case, the Apex Court carefully analyzed the principles in various judgments and considering the law on anticipatory bails in other countries, laid down 10 guidelines which are referred supra.

14. As the alleged fraud is involving more than 300 crores, it is a serious economic offence. Considering gravity of offence, it is difficult to exercise power under Section 438 Cr.P.C., and that in serious economic offences no anticipatory bail can be granted as held by the Apex Court in **Nimmagadda Prasad v. Central Bureau of Investigation**[3]**.**

15. In view of the law declared by the Apex Court considering the gravity and nature of offence, I am not inclined to grant pre-arrest bail to the petitioner as the investigation is in the mid way and the total amount involved is Rs. 329,71,74696/- and consequently, the criminal petition is liable to be dismissed.

16. In the result, the criminal petition is dismissed.

Pending miscellaneous petitions in the petition, if any, shall stand closed.

M.SATYANARAYANA MURTHY,J

17.04.2018
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[3] AIR 2013 SC 2821