

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY**CRIMINAL PETITION No.3967 of 2018****ORDER:**

This Criminal Petition, under Section 438 Cr.P.C, is filed by the petitioners to enlarge them on bail in the event of their arrest since they are apprehending arrest in connection with Crime No.38 of 2018 pending on the file of Piler Urban Police Station, Chittor District, registered for the offences under Sections 353, 323, 427, 506 r/w 34 IPC.

The *de facto* complainant, a Sentry by name Amalanathan Suresh, lodged a report with the police on 24.03.2018 alleging that on 24.03.2018 at about 10.00 am while he was in police station, one D. Chidananda Reddy came to police station and informed that when a survey is being conducted in S.No.202/2 of Kaspur village, the petitioners herein were obstructed him and complained that he is facing life threat and presented a report with the police. Thereupon, Y. Suman, SI-2 assured that he will take care of every thing and asked him to go. Thereafter, at 12.00 noon, D. Raghavareddy came to police station and informed that there was a quarrel near the survey land of D. Chidananda Reddy by the petitioners as they were obstructing them to conduct survey and presented a report in writing. Thereupon, the SI of Police asked *de facto* complainant to go to the land in a jeep bearing No. AP 18 P 1883 being driven by its driver-Nagaraj and accordingly they went to the land of D. Chidananda Reddy and in their presence, Moula Sab picked up quarrel and obstructed the public while abusing them. Thereupon, the *de facto* complainant asked both the parties to come to the police station as directed by the SI of Police and thereafter, returned to police station along with Moula Saheb and his father Razak Saheb and then the SI

enquired them as to why they are quarrelling and if there is any dispute with regard to the land, settle the same before revenue authorities. Thereupon, the petitioners grew wild and among them, Moula Sab-A.1, who is a rowdy sheeter, behaved in indecent manner and abused the police in filthy language while saying "Polisulaithe Nakem Bhayam Nannu Evvadu Emi Chesukoledu". When he informed to the petitioners not to cause any inconvenience in the station as directed by the S of police, the petitioners grew wild and pounced upon the *de facto* complainant, who is in police uniform, while saying that "Nee anthu chustam Vundadi" and abused him in filthy language and caught hold of his shirt and torn the same while pushing him and beat him with hands and thus, the petitioners obstructed the *de facto* complainant when he was discharging his duties being a public servant. The said Pazak saheb-A.2 also supported his son and abused the *de facto* complainant in filthy language and later A.1 entered into the writer's room and caused damage to the window glasses and in that process, he received a minor injury to his below left eye due to contact with glasses peaces. The police constable No.3631 was directed not to allow these petitioner to go outside and accordingly, he informed the same to the petitioners, but they fled away from the police station after causing nuisance.

On the basis of the complaint given by the *de facto* complainant, a case in Cr.No.38 of 2018 was registered for the offences under Sections 353, 323, 427, 506 r/w 34 IPC.

The learned counsel for the petitioners vehemently contended that there were civil disputes between the parties and a suit is pending between the wife of D. Chidananda Reddy and the petitioners before Senior Civil Judge's court in O.S.No.121 of 2012, in which, the wife of the D. Chidhanandha reddy was arrayed as Defendant No.1 and an interim injunction was obtained by these petitioners under Order 39 Rules 1 and 2

CPC restraining the respondents therein from interfering with the possession and enjoyment of the property. In view of the civil disputes, these petitioners were falsely implicated in the said crime with the support of police as the said D. Chidananda Reddy is an influential person in the area and therefore, there is absolutely no material against these petitioners to conclude that the petitioners committed such offences punishable under Sections 353, 323, 427, 506 r/w 34 IPC.

He further contended that the SI of Police at the point of gun threatened A.1 and caused an injury to his left eye and immediately the said fact was reported to Junior Civil Judge by presenting a report on 24.03.2018, who in turn recorded the statement of the *de facto* complainant. Therefore, the Police are the persons, who caused injury to A.1 to his left eye and therefore, a false case has been foisted against these petitioners and prayed to release the petitioners on pre-arrest bail.

He also contended that C.C.No.125 of 2016, CC No.200 of 2016 and C.C.236 of 2016 were ended in acquittal on 06.10.2016 and 16.03.2018 respectively and no cases are pending as on today and in the absence of criminal background, the petitioners are entitled to get pre-arrest bail.

The learned Public Prosecutor appearing for the State of Andhra Pradesh would contend that A.2 is an X- ZPTC member and A.1 is a rowdy sheeter involved in several cases and maintaining a youth gang and causing law and order problem and in case these petitioners are released on pre-arrest bail, there is likelihood of causing law and problem again because of the criminal background of A.1 and influence of A.2 being X-ZPTC member and that apart the material collected during investigation discloses the commission of offence by these petitioners and taking into consideration the facts and circumstances of the case, the petitioners

cannot be enlarged on pre-arrest bail and prayed for dismissal of the petition.

It is an undisputed fact that there were civil disputes between Patan Razaaq Khan (A.2) and Dandu Vasantha, P. Bhaskar Reddy and Kamalapuram Janardhana Reddy, who are shown as defendant In O.S.No. 121 of 2012 pending on the file of Senior Civil Judge, Piler, where the plaintiff sought a relief of declaration that the sale deed dt. 26.05.2007 and 21.06.2007 registered in the name of the defendants as inoperative, unenforceable, null and void in the eye of law and also sought for consequential perpetual injunction restraining the defendants therein from interfering with the peaceful possession and enjoyment of the property. He also filed I.A.No.502 of 2011 under Order 39 Rules 1 and 2 CPC and obtained ad-interim injunction dt. 07.09.2012 and thereby the respondents therein namely Dandu Vasantha, P. Bhaskar Reddy and K. Janardhana Reddy were restrained from interfering with the peaceful possession and enjoyment of the property during pendency of the suit. But this incident took place in the year 2018 i.e., 24.03.2018 at 1.00 Am when D. Chidananda Reddy getting the land in Sy.No.202 surveyed. The remedy available to these petitioners is to file a petition before the Court for violation of the interim order they obtained under Order 39 Rules 1 and 2 CPC. But, instead of approaching the Court by filing an appropriate application, they allegedly obstructed the *de facto* complainant and D. Chidananda Reddy. However, the dispute with regard to survey is unconcerned, but they were called to the police station and then the accused caught hold the shirt of the *de facto* complainant and pulled and beat him while he was on duty as police constable and the other accused also abused him and threatened with dire consequences and caused damage to the public property. But, the contention of the learned counsel for the petitioners is that the question of causing such an

injury due to contact with glass pieces does not arise, but, at this stage, it is difficult to decide whether the injury was caused due to glass pieces while deciding an application for grant of pre-arrest bail.

However, recording of the statement of A.1 by the Judicial Magistrate on 24.03.2018 is silent as to the time of recording such statement and presentation of the complaint by the petitioners before Magistrate. If it is prior to 1.00 pm, then there is some substance in the contention of the learned counsel for the petitioners. In the absence of time of presentation of the complaint and recording the statement of the accused by the Magistrate, it is difficult to conclude that the injury was caused by the SI of Police to A.1 and a false case is foisted. It is an undisputed fact that three cases were pending against A.1 and thereafter, A.1 was found not guilty and acquitted. But, the learned Public Prosecutor produced a copy of the Rowdy Sheet relating to A.1 to establish that A.1 is a rowdy sheet and the photo in sheet No.9 clearly shows that A.1 is a rowdy sheet and the petitioner having such criminal background may stoop to any extent and obstruct the police or any other person because of maintaining youth gang and cause law and order problem in town and on the other hand, the police collected sufficient evidence to conclude the petitioners committed such offences punishable under Sections 353, 323, 427, 506 r/w 34 IPC *prima facie*. Therefore, when the Court find *prima facie* material against these petitioners to conclude that the petitioners committed the offences levelled against them, it cannot exercise such discretionary power under Section 438 Cr.P.C. to grant pre-arrest bail to the petitioners.

In view of the criminal background of A.1, if he released on pre-arrest bail, there is a possibility of interfering with the investigation or to cause law and order problem again.

The power of the Court under Section 438 Cr.P.C is purely discretionary and this Court has to exercise its power judiciously based on settled principles. But, the circumstances to exercise such jurisdiction may vary from case to case. The law regarding grant of anticipatory bail is elaborately discussed by the Constitution Bench of the Apex Court in *Gurbaksh Singh Sibbia and Others Vs. State of Punjab*¹, 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. No hard and fast rule can be laid down in discretionary matters like grant or refusal of bail whether anticipatory or regular bail.

For granting pre-arrest bail under Section 438 of Cr.P.C., the Apex Court laid down 10 guidelines in "*Siddharam Satlingappa Mhetre v State Of Maharashtra*"² which 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 fact 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 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 cases 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

¹ AIR 1980 SC 1632

² AIR 2011 SC 312

comprehend the exact role of the accused in the case. The cases in which accused is implicated with the help of Sections 34 and 149 of the Indian 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 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 tampering of the witness 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."

In view of guidelines, taking into consideration the background of A.1 and the position of A.2 being the member of ZPTC, if they are enlarged on bail, there is every possibility to interfere with further investigation or to create law and problem and the investigation is in the mid way and therefore, at this stage, it is difficult to accede to the request of the learned counsel for the petitioners to grant pre-arrest bail to these petitioners. Consequently, this criminal petition is liable to be dismissed.

Accordingly, this Criminal Petition is dismissed.

Miscellaneous Petition, if any pending, in this case, shall stand dismissed.

M. SATYANARAYANA MURTHY, J

Date: 11-04-2018

Note: Issue C.C.by 17.04.2018

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HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY



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