

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRL.P.No.4582 OF 2018

ORDER:

This criminal petition is filed under Section 438 Cr.P.C to grant pre-arrest bail to the petitioner/A4 in Crime No.163 of 2017 of Arilova Police Station, Visakhapatnam District, registered for the offences punishable under Sections 406, 409, 465, 466, 467, 468, 471 and 420 read with 120 B IPC and Sections 7, 12(1)(c) and (d) read with 13(2) and 15 of the Prevention of Corruption Act.

The Investigating Officer filed memo before the Chief Metropolitan Magistrate to transfer the original FIR to the Special Judge for SPE & ACB Cases-cum-III Additional District Judge, Visakhapatnam on the ground that A1 is Tahsildar and A2 is Survey Inspector and others committed the above offences.

The case of the prosecution is that it is brought to the notice of the *de facto* complainant that in 1B register and other revenue records of Kommadi, Madhurawada and V.M.Palem Village were tampered and the Government land to an extent of Ac.323.76 cents has been misappropriated and in the investigation the prosecution alleged that A3 got acquaintance with A1 and in co-operation with other accused, 1B register of Paradesipalem, Madhurawada, Kommadi and P.M.Palem Village and taken back the registers after making entries by the petitioner/A4, who is son of A2 and at the dictation of A1, A2, 36 names of unauthorised persons have been tampered in the revenue records in connivance with A1, A2 and private individuals and A3 confessed as per the direction of A2, the petitioner/A4 used to remove the existing photos and erased the details in 1B register brought by A1 and pasted the photographs of

interested persons by illegally entering their names. As such, the petitioner/A4 is also liable for the above offences being son of A2.

This petition is filed on the ground that the allegations made in the complaint are not true and that the material disclose the petitioner did commit no offence and he has no connection with the affairs of the office. Hence, the petitioner cannot be implicated in the above offences.

Learned Additional Public Prosecutor opposed the petition on the ground that the records seized from the custody of the parties disclose tampering as many as 36 names by incorporating other names and affixing photographs in Col.No.2 of the records and prayed for dismissal of the petition.

As seen from the material on record that the petitioner/A4 allegedly tampered the record and investigation in this case is not yet completed. Tampering of revenue records being son of A2 in the above crime would constitute the above offences. The petitioner/A4 allegedly tampered 1B register of Paradeshipalem Village. Originally, the name of Kaki Ramarao is appearing as pattedar and it was erased with some sharp instrument in the name of Doddi Simhachalam w/o Paramesulu and similarly in 22A register of 2014, Survey No.173/1 measuring Ac.5.00 and classified as 'Gayalu' and notified as Government land and the name of Kambampati Srirama Chandra Murthy is recorded as assignee and in V.A.No.3(1421), it was mentioned in remarks column as "violated notice issued". The petitioner/A4 allegedly tampered 1 B register of Paradesipalem Village. Originally, the name of Tedlapu Somaraju is appearing as pattedar and it was erased with some sharp

instrument in the name of Doddi Gopalakrishna So Venkata Ramana and similarly in 22A register of 2014, Survey No.143/8 measuring Ac.4.90 cents and classified as 'Gayalu' and notified as Government land and the name of Rednam Venkata Subbarao is recorded as assignee and there is a writ petition pending before this Court. The petitioner/A4 allegedly tampered 1B register of Paradesipalem Village. Originally, the name of Tedlapu Narasingarao is appearing as pattedar and it was erased with some sharp instrument in the name of Sagiraju Chinnamraju S/o Somaraju and similarly in 22A register of 2014, Survey No.133/2 measuring Ac.4.89 cents and classified as 'Gayalu' and notified as Government land and handed over to VUDA with other lands vide delivery receipt Rc.No.1/2005/Spl.R.I., dated 22.01.2005. The petitioner allegedly tampered 1B register of Paradeshipalem Village. Originally, the name of Doddi Sriramulu is appearing as pattedar and it was erased with some sharp instrument and some unknown person photograph was affixed and over write as Ac.1.89 cents and similarly in 22A register of 2014, Survey No.134/7 measuring Ac.1.98 cents and classified as 'Gayalu' and in the name of Artla Perriraju S/o Appadu is recorded as assignee and in V.A.No.3(1421), the land is recorded in favour of VUDA.

Learned Additional Public Prosecutor also produced the records allegedly tampered to establish that the petitioner/A4 allegedly tampered those records being the son of A2 connivance with other accused.

The statements recorded by the police during investigation also show the role played by the petitioner/A4 more particularly the statements of Potnuru Venkata Narsa Kumar and Munnam Srinivas

Rao @ Zinc Naidu @ Zinc Srinu @ Jamkayala Naidu, though they are not substantive piece of evidence, but they are the material discloses that the petitioner/A4 allegedly tampered the records being the son of A2 in connivance with the other accused.

Investigation in this case is not yet completed and it is pending before the Magistrate Court. Though a memo was filed to transfer the matter to Special Judge for ACB Cases, at this stage, it is impossible to conclude that there is no material against the petitioner/A4 *prima facie* committed any offence.

Moreover, the Apex Court highlighted the purpose of granting pre-arrest bail in **Gurbaksh Singh Sibbia and Others v. State Of Punjab**¹.

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.

No hard and fast rules can be laid down in discretionary matters like the grant or refusal of bail, whether anticipatory or

¹ 1980 AIR 1632

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.

Later judgment 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 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.

² (2011) 1 SCC 694

Even if those guidelines are applied to the present facts of the case and taking into consideration of gravity of the offences, I am not inclined to grant pre-arrest bail to the petitioner, who is allegedly, committed the offence and consequently, the criminal petition is liable to be dismissed.

In the result, the criminal petition is dismissed. However, the Station House Officer, Hariloga Police Station, Visakhapatnam City is directed to follow the guidelines of the Apex Court in **Arnesh Kumar v State of Bihar**³, otherwise it would amount to contempt. Therefore, no specific direction need be given as they are bound to follow the guidelines of the Apex Court in **Arnesh Kumar's case (supra)**

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

30.04.2018
kvrn

M.SATYANARAYANA MURTHY,J

³ 2014(2) ALT(Crl) 457(SC)