

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No. 4713 of 2018

ORDER:

This Criminal Petition, under Section 438 Cr.P.C., is filed by the petitioners/accused to enlarge them on bail in the event of their arrest as they are apprehending arrest in connection with Cr. No.57 of 2017 pending on the file of Annapureddypalli Police Station, Bhadradi Kothagudem District (earlier Khammam District), registered for the offences under Sections 447, 379 r/w 34 IPC.

The petitioners filed the present petition without filing any application before the Sessions Court for grant of pre-arrest bail. Entertaining of such petitioners without approaching the Session Court is contrary to the law declared by the Apex Court in *Gurcharan Singh v. State (Delhi Admn)*¹, wherein the Apex Court held as follows:

“Section 439(1) Cr.P.C. of the new Code, on the other hand, confers special powers on the High Court or the Court of Session in respect of bail. Unlike u/s. 437(1) there is no ban imposed u/s. 439(1), Cr. P.C. against granting of bail by the High Court or the Court of Session to persons accused of an offence 'punishable with death or imprisonment for life. It is, however, legitimate to suppose that the High Court or the Court of Session will be approached by an accused only after he has failed before the Magistrate and after the investigation has progressed throwing light on the evidence and circumstances implicating the accused. Even so, the High Court or the Court of Session will have to exercise its judicial discretion in considering the question of granting of bail u/s 439(1), Cr. P. C. of the new Code. The over-riding considerations in granting bail to which we adverted to earlier and which are common both in the case of [Section 437\(1\)](#) and [Section 439\(1\)](#), Cr. P.C. of the new Code are the nature and gravity of the circumstances in which the offence is committed, the position and the status of the accused with reference to the victim and the witnesses; the likelihood, of the accused fleeing from justice; of repeating the offence; of jeopardising his own life being faced with a grim prospect of possible conviction in the case; of

¹ (1978) 1 SCC 118

tampering with witnesses; the history of the case as well as of its investigation and other relevant grounds which, in view of so many variable factors, cannot be exhaustively set out.

In view of the law declared by the Apex Court, the petitioners are permitted to go to Sessions Court seeking for grant of pre-arrest bail.

With the above direction, this Criminal Petition is disposed of.

M. SATYANARAYANA MURTHY, J

Date: 26-04-2018
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