

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.4899 OF 2018

ORDER:

The petitioners, who are accused in Crime No.189 of 2017 of Bhongir Town Police Station, Nalgonda District, registered for the offence punishable under Sections 386 and 120-B of the Indian Penal Code, 1860 (for short 'I.P.C.'), filed this criminal petition under Section 438 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') to issue a direction to the Station House Officer to release them on bail in the event of their arrest in connection with the above crime.

The main contention of the learned counsel for the petitioners is that though the petitioners are not arraigned as accused in the above crime, they are called to the Police Station in connection with the above crime and there is any amount of reasonable apprehension of their arrest and sought a direction to the Station House Officer, Bhongir Town Police Station, Nalgonda District, to release the petitioners on bail in the event of their arrest in connection with the above crime.

Though the petitioners' counsel contended that the petitioners were called by the police about 4 times, there is no such allegation in the entire petition, making an allegation during argument is not sufficient to conclude that there is a reasonable apprehension of their arrest in connection with the above crime.

Power under Section 438 CrPC 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 and Others v. 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. At paragraph 45 of the Judgment, it was held as follows:

"We have said that there is one proposition formulated by the High Court with which we are inclined to agree. That is proposition No. (2). We agree that a 'blanket order' of anticipatory bail should not generally be passed. This flows from the very language of the section which, as discussed above, requires the applicant to show that he has "reason to believe" that he may be arrested. A belief can be said to be founded on reasonable grounds only if there is something tangible to go by on the basis of which it can be said that the applicant's apprehension that he may be arrested is genuine. That is why, normally, a direction should not issue under Section 438(1) to the effect that the applicant shall be released on bail "whenever arrested for whichever offence whatsoever." That is what is meant by a 'blanket order' of anticipatory bail, an order which serves as a blanket to cover or protect any and every kind of allegedly unlawful activity, in fact any eventuality, likely or unlikely regarding which, no concrete information can possibly be had. The rationale of a direction under Section 438(1) is the belief of the applicant founded on reasonable grounds that he may be arrested for a non-bailable offence. It is unrealistic to expect the applicant to draw up his application with the meticulousness of a pleading in a civil case and such is not requirement of the section. But specific events and facts must be disclosed by the applicant in order to enable the court to judge of the

¹ 1980 AIR 1632

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reasonableness of his belief, the existence of which is the sine qua non of the exercise of power conferred by the section.”

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.

If the principle laid down is applied to the facts of the present case, petitioners are not entitled to claim pre-arrest bail for the reason that there is no tangible material in support of reasonable apprehension of their arrest in connection with non-bailable offence, that too the petitioners are the members of gang of notorious gangster Nayeem, having of lot of criminal record.

The public prosecutor (TS) contended that the petitioners are arraigned as A.2 and A.4 based on the confession of A.3 in the above crime and that A.2 involved in two other cases of Nayeem, who is a notorious gangster. The petitioners are the relatives of the said Nayeem.

The petitioners did not disclose these details and made a bald allegation that they were arraigned as accused and made an attempt to obtain pre-arrest bail by playing fraud suppressing the criminal background on the court. Hence, the petitioners are not entitled to claim pre-arrest bail.

In the result, the criminal petition is dismissed.

M. SATYANARAYANA MURTHY, J

Date: 01.05.2018
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