

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.5022 of 2018

ORDER:

This Criminal Petition, under Section 438 Cr.P.C., is filed to enlarge the petitioners on bail in their event of their arrest as they are apprehending arrest in connection with Cr.No.43 of 2018 pending on the file of Station House Officer, Settur Police Station, Anantapur District.

The case of the prosecution in brief is that her husband having one brother by name Golla Bala Sreenivassulu, the petitioner herein, and there were disputes in respect of the property at the time of partition and the petitioner No.1 filed O.S.No.120 of 2014 pending on the file of III Additional District Judge, Anantapuramu, for separate possession. After filing the suit, her late husband become nervous and used to say with her that in view of the harassment of her brother, it is better to commit suicide and it is further alleged that petitioner No.1 went to the shop of her late husband regularly, which is situated at vegetable market at Kalyanadurg and said that if he commits suicide, entire property devolves upon him.

It is also alleged that petitioner No.2, who is an Advocate by profession, filed a suit against her husband and that both the petitioners threatened her husband to compromise the suit, otherwise, to book certain cases against them and due to such threat, the husband of the complainant committed suicide on 21.04.2018 at about 07.00 pm.

The counsel for the petitioners contended that petitioner No.2/Advocate is no way responsible and there is no material against him as he only filed a suit against the husband of the complainant and hence he cannot be enroled in the crime registered for the offences punishable under Section 306 r/w 34 IPC. In the absence of any material against the

petitioners, the petitioner cannot be arrested. In support of his contentions, the learned counsel for the petitioner placed reliance on a judgment reported in *Barapati Srilekha v Ramachandra Reddy Pattolla and another*¹.

Learned Public Prosecutor for the State of Andhra Pradesh produced the diary maintained by the deceased, where there is reference about specific allegations about these petitioners and the harassment in the hands of the petitioners. Based on this diary, he contended that there is sufficient material against both the petitioners and at this stage, the petitioners cannot be enlarged on bail and prayed for dismissal of the petition.

Undoubtedly, the *de facto* complainant lodged a report referring the names of both A.1 and A.2, the petitioners herein, and the petitioner No.2 filed O.S.No.120 of 2014 for various reliefs pending before the Civil Court. The role attributed to petitioner No.2 is that he along with petitioner No.1, threatened the husband of the complainant to compound the said case, otherwise, to book cases against the husband of the complainant and accordingly, A.1 and A.2 threatened the deceased in the same lines of A.1. Having vexed with the attitude of the petitioners, the husband of the complainant committed suicide by hanging. Therefore, the said fact is supported by diary maintained by the deceased where several instances were noted, more particularly, how he was threatened by the the petitioners and how they harassed the deceased etc., which led him to commit suicide having no other alternative.

Learned counsel for the petitioners while contending that the petitioners are entitled to bail though it is an offence punishable under Section 306 IPC and placed reliance on a judgment referred supra, where

¹ 2017(3) ALT (CrI) 219 (AP)

a quash petition under Section 482 Cr.P.C. was considered and the Court held that unless there is material to consider as ordered as defined under Section 107, the Court cannot proceed against the petitioner therein.

A similar question came up before Madras High Court in CrI.A.(MD) No.142 of 2016 against the conviction and sentence in SC.No.226 of 2013, whereunder the Appellant therein was found guilty for the offence under Section 306 IPC and sentenced to go RI for a period of 10 years and to pay a fine of Rs.5000/- with default sentence. But, based on the evidence available on record, the Court acquitted the appellant/accused. But, the principles laid down in the above two judgments cannot be applied while considering the bail under Section 438 Cr.P.C., since it is at the stage of investigation and the facts before the Court are hasty in nature. When there is material pointing out the complicity of these petitioners, this Court cannot exercise its jurisdiction under Section 438 Cr.P.C., in view of the law declared by the Apex Court in *Gurbaksh Singh Sibbia and Others Vs. State of Punjab*²

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*”³ 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.

² AIR 1980 SC 1632

³ AIR 2011 SC 312

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 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."

If those guidelines are applicable to the present facts of the case, there is a possibility of interfering with the investigation by the petitioners, more particularly, the petitioner No.2 being an Advocate, this Court cannot enlarge the petitioners on pre-arrest bail. Hence, this Court feels that it is not a fit case to enlarge the petitioners on pre-arrest bail.

Accordingly, the Criminal Petition is dismissed.

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

M. SATYANARAYANA MURTHY, J

Date: 02-05-2018
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HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY



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Dt. 02-05-2018

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