

HON'BLE SRI JUSTICE Dr. B. SIVA SANKARA RAO

Criminal Petition No.6190 of 2018

ORDER:

The petitioner is A3 among three accused in Crime No.352 of 2018 on the file of Pet Basheerbad Police Station, Cyberabad, Rangareddy District. The crime is registered on 05.06.2018 for the offence punishable under Section 420 IPC, Section 63 of the Copy Right Act, 1957 and Sections 103 & 104 of the Trade Marks Act, 1999.

2. Heard the learned counsel for petitioner and the learned Public Prosecutor representing the State of Telangana and perused the F.I.R. and the bail application averments.

3. A perusal of the F.I.R. shows that all the three accused persons are running the business in the name of Srinivasa Traders by buying local brand flour named Kohinoor premium and metro gold premium quality chakki atta raw material and by mixing both the products creating new one and using branded company name Ashirvad Atta and selling to the local dealers by violating Ashirvad Atta trademark/copy rights by selling flour under similar and deceptive names to mislead the

innocent customers by believing as if that is the original product of Ashirvad Atta company by harming the reputation of Aashirvad Atta and also cheating the innocent customers by selling these duplicate flour and atta as if of the company.

4. The S.I. of Police secured the mediators from that report and conducted a raid and stated A3 fled away on seeing the police and found A1 & A2 in the SVR Nilayam Godown and seized (i) Aashirvad Atta - 650 bags (each bag contained 5 kgs) approximately 19 tones (ii) local brand loose wheat floor - approximately 3 tones (iii) Automated Flour Packing machine - 1 (iv) Stitching machine - 1 (v) Weighing machine - 1 (vi) Compressor - 1 (vii) Aashirvad atta labels - 2 rolls (viii) Invoice books - 2 from the scene of offence supra.

5. It is the contention of learned counsel for the petitioner-A3 in the anticipatory bail application of none of the penal provisions are applicable and he was not there and the complainant hatched a plan and implicated them and the police allegedly prepared the so-called confession of A1 & A2 in the Panchanama also to implicate A3. The further contention is that Sree Srinivasa Traders is a partnership firm of the family

members and the petitioner is doing wholesale-cum-retail kirana with that name in the shop at Sai Nagar, Kushaiguda, Hyderabad with GST REG-06 registration certificate. It is also contended that the case diary cannot be used for any purpose including in a bail application by referring to Sections 161 and 172 (2) Cr.P.C. and Section 145 of the Indian Evidence Act. It is also the contention that the petitioner is entitled to the anticipatory bail in recognition to his fundamental right and sought for granting of bail.

6. The learned Public Prosecutor opposed the bail application saying the investigation is in progress and from the case diary the petitioner is the prime accused for the *modus operandi* and thereby, he is not entitled to the concession of bail.

7. Even from very reading of Section 172(2) Cr.P.C. what is prohibited of the case diary by itself cannot be used as evidence and it is not a prohibition of knowing the progress of investigation and the *prima facie* accusation in the bail application concerned, that too what is to be considered in the bail application is not what would be the admissible evidence ultimately, but from the collected material by prosecution whether the

accusation is sustainable and whether personal liberty can be over weighed over the crime and impact on society; thereby, the said contention is untenable. Leave apart in a non-bailable offence the accused cannot seek a bail as of right under the claim of curtailment to personal liberty for what Article 21 of the Constitution of India speaks is a qualified fundamental right and not an absolute fundamental right. So far as the contention of the Section 115(4) of the Trade Marks Act, 1999 speaks of investigation by the S.I. of police for search and seizure is not permissible and the person, who received the F.I.R. and conducted the scene observation and investigating the case, the self-same is the S.I. of police; the very crime is unsustainable. In fact, that is at best be confined to the investigation of the offence under the Trade Marks Act and not extended to the IPC offences or other statutory offences, that too when Section 156(2) Cr.P.C. clearly says the investigation of a police officer cannot be called in question including by saying he is not competent to investigate. Even the Police Officer, who received the information and conducted raid to investigate the crime concerned there is no statutory bar, but for if at all ultimately to demonstrate any prejudice therefrom caused so to make out during trial to consider

on own merits this aspect. Therefore, said contentions are untenable.

8. Having regard to the above, from the very report and Panchanama, it shows the petitioner on seeing the police officer fled away and the other two accused are apprehended and available in their processing of the duplicate atta by using of the Aashirvad atta brand name, which is an offence of cheating the customers in particular till ultimate consumer apart from loss to the complainant entity and thereby, the petitioner is not entitled to the concession of anticipatory bail even from the say of other accused were granted regular bail, from the distinction between the anticipatory bail and regular bail, leave about any such remedy, if at all the petitioner wants to avail it is made clear of this order will not come in the way.

Accordingly, this Criminal Petition is dismissed. Consequently, miscellaneous petitions, if any shall stand closed.

Dr. B.SIVA SANKARA RAO, J

16.07.2018
MVA