

HON'BLE Dr. JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION Nos.6952 & 7002 of 2018

COMMON ORDER:

The petitioners are A.3 and A.2 among 3 accused no other than 2 sons and father, who are the borrowers from the defacto complainant bank a secured debt covered by the provisions of the SARFAESI Act, 2002, and it appears the properties were attached through order of the Collector and taken possession invoking the provisions of the SARFAESI Act. A.1 was arrested and was granted regular bail not in dispute. The petitioners before this Court went unsuccessful in seeking anticipatory bail vide common dismissal order dated 05.06.2018 in CrI.P.No.1844 & 1825 of 2018 with observations of there are no grounds to grant concession of anticipatory bail in favour of the petitioners.

In fact the petitioners moved by filing WP.No.16838 of 2016 before the Division Bench of this Court on behalf of the entity Educational society to which they are President and member in saying what the property taken possession pursuant to the orders of the Collector is beyond what is covered by the mortgage of 92 cents out of 105 cents in S.Nos.946, 947 & 948 of Anantharajupeta Village, Railwaykodur Mandal, YSR Kadapa District and there was disposal order of the writ petition of not to interfere beyond the mortgage covered area of 92 cents with land and building. So far as the present complaint concerned, it shows that on

09.06.2016 at about 09.30 AM the security guard P.Narasimhulu of the college premises stated about these accused persons more than 6 and others total 10 members forcibly entered into the college premises and when the security guard tried to stop their attempts to break open the college room locks, they threatened if not to allow them by saying they will not hesitate to kill and M.Subramaniam break open the locks of the college rooms using cutting machine and 9 other persons assisted him and the property was physically handed over as per the Collector proceedings by the revenue officials under Section 14 of the SARFAESI Act and the later extortion thereby committed to take action.

The crime registered was on 11.06.2016 for the offences punishable under Sections 147, 148, 188, 448, 427, 386, 506 r/w 149 IPC.

Learned counsel for the petitioner in seeking the anticipatory bail once again saying there are changed circumstances and A.1 was arrested and granted regular bail that is not brought notice to the Court earlier.

It is also earlier not brought to the notice of the Court regarding distinction between Section 386 & 387 IPC and from the report running 2 pages, page No.1 last line shows the threat was from the interference of watch man not to allow to break open locks and not while breaking open the locks and that is the distinction between Sections 386 & 387 IPC and at best even taken the prosecution case attracts only

the offence under Section 387 and not Section 386 IPC. The offence under Section 386 IPC is punishable up to 10 years and whereas the offence under Section 387 IPC is punishable up to 7 years maximum.

There is force in the said submission from perusal of the very contents of the FIR even therefrom the petitioners are not entitled to the concession of the anticipatory bail, however it will not prevent nor prejudice their right of surrender to move for regular bail to consider on own merits.

It is made clear as it attracts the offence under Section 387 IPC and not Section 386 IPC even so mentioned in the FIR pending investigation and also none of the offences are punishable above seven years, the Police in the event of arrest strictly follow Section 41-A Cr.P.C. and the guidelines of the Apex Court as laid down in **Arnesh Kumar v. State of Bihar¹**.

Accordingly and in the result, this Criminal Petition is disposed of.

Miscellaneous petitions, if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: 25.07.2018
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¹ (2014 (2) ALT (CrI.) 457 SC)