

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION No.7921 of 2018

ORDER :

The petitioner is the *de facto* complainant. Aggrieved by the order granting bail in CrI.M.P.No.1790 of 2018 by the learned II Additional Metropolitan Sessions Judge, Hyderabad, dated 25.06.2018, in favour of respondent Nos.2 to 4, who are A.1 to A.3, of Crime No.85 of 2018 of Police Station CCS DD, Hyderabad, for the offences punishable under Sections 420, 406, 468, 471, 34 read with 120(B) IPC, which is out come of the private complaint of the *de facto* complainant in C.C.(S.R.) No.3329 of 2018, dated 26.04.2018, filed in May, 2018 referred under Section 156(3) Cr.P.C., that was received and registered the crime on 11.05.2018.

2. The sum and substance of the accusation in the private complaint running in seven pages with 42 sub-paras of the facts and with cause of action, jurisdiction and prayer that the accused persons were doing business with the name M/s.Smith Cylinders, the *de facto* complainant is known to them of having his experience and his contribution as a partner will be viable and it is in say that they consulted and joined him as a partner subject to the condition of their showing all the properties referred therein as partnership assets and proportionate share to that of the accused persons each, the *de facto* complainant also in a phase manner to contribute and having contributed and they stated these are the properties referred as per the

partnership deed, dated 01.03.2017, covered by subsequent Memo of Understanding (MOU) dated 02.03.2017, however, surprised to the factum of the property is already earlier subject to a mortgage with Vijaya Bank and without even clearance of the secured loan in showing the property as part of the partnership assets, for its mortgage to secure working capital with YES Bank and also suppressed the said factum with the YES Bank in the mortgage about the prior mortgage and thereby the *de facto* complainant was cheated by the accused having lured him and liable for the offences supra.

3. It is after registration of the crime and during its pendency, the accused persons moved for anticipatory bail in Crl.M.P.No.1790 of 2018 and after notice to the learned Additional Public Prosecutor and hearing both sides, the learned Sessions Judge, by order, dated 25.06.2018, granted anticipatory bail and the observations therein are that the petitioners are permanent residents of Hyderabad, A.2 is a government servant, A.3 is a student and they have nothing to do with the business affairs and the *de facto* complainant roped them to harass, not only A.1 but also the family members A.2, A.3, etc., and they are apprehending arrest at the instance of the *de facto* complainant and ready to abide by such conditions to be imposed by the Court in granting anticipatory bail. The learned Public Prosecutor, no doubt, opposed saying investigation is pending and not entitled to the concession of anticipatory bail.

4. The learned Judge observed of from the above contentions perused the record. It is stated further of counsel for accused persons stated of *de facto* complainant already filed O.P.No.4 of 2018 = 985 of 2018 before the X Additional Chief Judge, City Civil Courts, Hyderabad, and there were exchange of notices between the parties about the transactions and the *de facto* complainant suppressed the facts of the suit to suit his convenience in trying to convert a civil dispute into criminal case by abusing the process of law and none of the ingredients of the penal offences attract. It is also referred about the learned Additional Public Prosecutor submitted custodial interrogation is required, but same is not mentioned in the counter. It is thereby stated inclined to grant anticipatory bail to the petitioners on conditions viz., to surrender before the S.H.O., C.C.S., D.D., P.S., Hyderabad within 15 days and shall be released on executing bond of Rs.20,000/- each with two sureties of a like sum and shall appear before the S.H.O. on alternative day between 10.00 A.M. and 5.00 P.M for one month or till filing of charge sheet, whichever is earlier and shall not interfere with verification of the statements of accounts and loan details and other documents, if any, related to the case by the Investigating Officer and shall not tamper with the evidence and shall cooperate in completing the investigation.

5. No doubt, there is some force in the contention of the learned counsel for the petitioner/*de facto* complainant in seeking to cancel the said bail order as it is not complied with the conditions of Section

437(3) Cr.P.C., leave about the same as a mandatory if at all to grant and the order itself is not sustainable apart from a subsequent supervening event of they non-cooperation with investigation despite the direction to cooperate in completing the investigation as part of the conditions of bail imposed by the learned Judge. It is also the submission of the learned Public Prosecutor of the petitioners, but for attending to the police station, as required for the one month, did not cooperate in investigation and the investigation thereby still pending. The counsel for respondent Nos.2 to 4/A.1 to A.3 opposed the cancellation of bail application saying they complied with the conditions and the order is reasoned one and it no way requires interference and cancellation of bail is nothing but interfering with the concession already granted and not so liberal and as a matter of course and there are no such circumstances either in the order to impugn or in the subsequent events to complain.

6. Heard both sides. Perused the provisions and the propositions placed reliance across the Bench by both sides, at length, with reference to it.

7. Undisputedly, this is a complaint and crime registered for the offences no way punishable above seven years. Section 41-A subsection (1) Cr.P.C. speaks a person accused of an offence shall not be arrested other than the case comes under Section 41(1) Cr.P.C. (previous section). Section 41 (1)(b) Cr.P.C. clearly speaks that if the

offence is punishable for seven years and below, accused shall not be arrested, either without warrant or without permission of Magistrate. That might be the reason of incorporation of sub-section (4) of Section 41-A Cr.P.C. of if at all a notice contemplated to the accused where arrest not required with reference to the above, if failed to comply permission of Magistrate required to arrest. It is leave about if the conditions under Sections 41(1) Cr.P.C. are there with those reasons, the police officer can arrest even the offence punishable below seven years without warrant or without permission of Magistrate and that is what practically incorporated in Section 41-A sub-clause (3) Cr.P.C. that despite accused on notice responded and complying with the conditions the police officer investigating a case, if assigned reasons of his arrest is required, as referred supra, may arrest, even on complying with the conditions. Thereby, Section 41-A Cr.P.C. to be read with Section 41(1) Cr.P.C. Once such is the case and in the absence of showing arrest of the accused is required, when police are bound to issue notice under Section 41-A sub-section (1) Cr.P.C. and even before notice issued, once the accused persons approached the Court for anticipatory bail of the offence punishable for seven years or below otherwise generally without complying with the conditions cannot be arrested, from such *bonafide* apprehension and therefrom the anticipatory bail application is maintainable and entertained subject to the limitations the anticipatory bail can be granted. In such event so many reasons are not required, in the

absence of showing by the police after hearing of the case comes under Section 41 sub-section (1) parameters of arrest required, otherwise merely because the offence is punishable for seven years, generally arrest is not required. That what Section 41(1) Cr.P.C. speaks. That distinction has to be kept in mind in granting anticipatory bail for offence punishable up to seven years and those cases where offences punishable above seven years, that is also the reason in one of the expressions placed reliance by the learned counsel for the petitioner/*de facto* complainant in **Jai Prakash Singh v. State of Bihar and another**¹, where it is a murder case anticipatory bail granted in observing at para 19 referring to the earlier expressions of the parameters for grant of anticipatory bail in a serious offence are required to be satisfied and further while granting such relief, the Court must record the reasons thereof. Once it is a serious offence, Court is bound to assign reasons undisputedly. The Court has to keep the distinction in mind in choosing the cancel or not to cancel the order in question. Having regard to the above, once there is a direction to cooperate, though the order in so many words not mentioned about not to interfere with witnesses either directly or indirectly, as one of the three conditions of Section 437(3) Cr.P.C. that equally apply to Section 438 Cr.P.C. in granting or refusing anticipatory bail, as a matter of consideration, but for the supervening event of non-cooperation, if any, from the direction to cooperate, this

¹ (2012) 4 SCC 379

Court is not inclined in the factual scenario to cancel the bail order in question. So far as the supervening circumstances which can definitely a ground for cancellation of bail including from the Three Judge expression of the Apex Court latest placed reliance in **Mr.X. vs. State of Telangana**². Here what the learned Public Prosecutor says there is no cooperation in completion of investigation by the accused. Leave about the order there is an oral submission of learned Public Prosecutor of custodial interrogation required, police custody should have been granted not granted, the prosecution agency or *de facto* complainant did not choose for police custody within 15 days after grant and release on anticipatory bail.

8. So far as the cooperation for completion of investigation concerned, what the learned Public Prosecutor from the case diary says, is that the accused are failing to produce the documents required for investigation in support of their private complaint averments of those documents referred in the private complaint. The *de facto* complainant also bound to produce as there are 23 documents enclosed with the private complaint. Accused in his custody, no doubt, is supposed to produce. Once he obliged the bail order to comply with the condition of cooperating in fair investigation of the case once the documents in his custody or control is required, leave about there is a right of silence does not mean, he shall not cooperate to produce the documents in his custody. Once such is the case, from

² 2019 (2) ALD (Crl.) 265

the undertaking given by the counsel for the accused of they are going to cooperate and produce whatever the documents in relation to the crime, they are going to submit to the Investigating Officer within 15 days from today subject to the same as additional condition to the bail order.

9. Accordingly, the criminal petition is disposed of.

Miscellaneous petitions pending, if any, shall stand closed.

19th September 2018.

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Dr. B. SIVA SANKARA RAO, J

