HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

Criminal Petition No.9445 OF 2018

ORDER:

The petitioner is A3, who is Junior Technical Officer in R & B Department at Ramannapet, Bhuvanagiri District, in Crime No.74 of 2016 on the file of Kothagudem III Town Police Station, Khammam District (Now Bhadrachalam Kothagudem District). The crime is registered on 18.03.2016 for the offences punishable under Sections 420, 468, 471, 409 r/w 120B IPC and Section 3(1)(q) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short, "the Act").

2. The report of the *de facto* complainant, who is S.T. (Lambadi) by caste, in registration of the crime shows that on the previous day i.e., 17.03.2016 when she went on some work along with her son to the municipal office, there is a list of the eligible candidates of Indiramma Housing Scheme kept at the notice Board and when she noticed in that list, for 25th ward phase II Indiramma houses for her constructing a house an amount of Rs.73,000/- was shown credited to the bank account in her name. Therefrom when she went to the Bank and verified account No.20087, it is found her name with her address particulars, however, it affixed with the photo of one Ganga, who is the neighbour, on the account form and it shows from the bank the amount was entirely withdrawn. She has no knowledge about the allotment of house and opening of bank account and crediting of the amount and withdrawal of the same and she did not construct any house under the Indiramma Housing scheme. What she stated is the councillor of their ward by name Macharla Srinivas earlier with a pretend of some purpose taken the ration card and voter ID Xerox from her. It appears said Srinivas in collusion with said Ganga and other officials concerned misused the same and withdrew amount from the bank by cheated her and the Government and hence, to take action.

3. The contentions in the anticipatory bail application are that the petitioner is innocent and his name not even mentioned and by then he was working as an Assistant Engineer and with no lapse of time he was transferred from Kothagudem to Ramannapet where now he is working and showing of his name in the remand report of A1 and A2 as if the accused is baseless and the police are trying to apprehend to keep him under illegal arrest and custody and hence, he is entitled to the concession of anticipatory bail saying none of the provisions under the IPC and the Act are applicable.

4. The learned Additional Public Prosecutor opposed the anticipatory bail application in saying the arrested A1 & A2 made the disclosure statements about the petitioner also privy in distribution of the amounts and the petitioner was paid Rs.17,500/- out of the amount unlawfully drawn in the name of the *de facto* complainant by others. Section 3(1)(q) of the amended Act 2016 reads that whoever not being a member of a Scheduled Caste or a Scheduled Tribe gives any false or frivolous information to any public servant and thereby causes such public servant to use his lawful power to the injury or annoyance of a member of a Scheduled Caste or a Scheduled Tribe.

5. It is the contention of the learned counsel for petitioner that even taken for arguments sake the so-called disclosure statement of A1 & A2, leave about not admissible during police interrogation hit by Section 25 of the Indian Evidence Act to take as admissible to say the accusation the Bank Manager is not a public servant and once there is any information given to a public servant to use his lawful power to the injury or annoyance of Scheduled Caste or a Scheduled Tribe from what the substance of accusation is, so far as the petitioner is concerned, if at all introduced in opening account by bank as if *de facto* complainant or any other person and thereby, that offence has no application against him and there is no bar.

6. The learned Additional Public Prosecutor submits that the bail application now filed from the crime even pending since 2016 covered by the amended Act 27 of 2018 whereunder Section 18A introduced which says the very anticipatory bail application under Section 438 Cr.P.C. is not sustainable under sub-section (2) of Section 18A of the Act. In fact, this Court in Crl.P.No.9119 of 2018 by order dated 31.08.2018 in **K.Srinivas @ Sivaswamy v. The State of Andhra Pradesh** observed that even otherwise the application can be taken under Section 482 Cr.P.C. to consider from the settled expressions as to whether the ingredients of the Act are applicable to the case on hand or not and once the ingredients are applicable on its face value, then only it can be said Section 18 of the Act is a bar for anticipatory bail application and once the ingredients no way apply, that bar has no application. There is a force in the contention however from Section 21 IPC, particularly from clause (ix), there is likelihood of interpreting the Bank Manager also a public servant.

7. Having regard to the above, it is not a case for grant of anticipatory bail, but for to say as the petitioner is a public servant and if arrested and kept in custody beyond 48 hours there is likelihood of losing the job and even the so-called confession of A1 & A2, leave about its admissibility in dispute shows only Rs.17,000/- paid to petitioner-A3 from the so-called sanction, this Criminal Petition is disposed of directing the petitioner to surrender before the learned Special Judge concerned by filing regular bail application with notice to the learned Public Prosecutor concerned for grant of bail with necessary conditions preferably on the same day by virtue of this order.

Accordingly, this Criminal Petition is disposed of.

Dr. B. SIVA SANKARA RAO, J

12.09.2018
MVA