

HONOURABLE DR.JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION No. 9497 OF 2018

ORDER :

This Criminal Petition is filed by the petitioners/A-2 to A-5 under section 438 of Cr.P.C., seeking to grant bail in anticipation of their arrest in Crime No. 378 of 2018 of Alwal Police Station, Ranga Reddy district, registered for the offences punishable under section 498-A of I.P.C. and Section 3 and 4 of Dowry Prohibition Act.

2. The Petitioners are Accused Nos. 2 to 5 in Crime No. 378 of 2018 of Alwal Police Station, registered for the offences punishable under section 498-A of I.P.C. and section 3 and 4 of Dowry Prohibition Act. From the report of the defacto-complainant, who is no other than wife of A-1 and the petitioners are parents-in-law, sister-in-law and sister-inlaw's husband respectively.

3. The Petitioners who went un-successful for anticipatory bail before the learned XIII-Additional District and Sessions Judge-cum-Additional Metropolitan Sessions Judge, Cyberabad at L.B.Nagar, Ranga Reddy district, in CrI.MP.No. 3725 of 2018, dated 30/08/2018, moved this Court for anticipatory bail.

4. Heard Sri K. Anthony Reddy, learned counsel for the petitioner and the learned Public Prosecutor in opposing the same.

Perused the F.I.R., bail application averments and Part-I Case Diary.

5. A perusal of the Case Diary and the bail application averments show that Accused No.1 was arrested and subsequently enlarged on regular bail.

6. The main allegations are against Accused No.1. Needless to say this is not a case involving any offence under section 323 I.P.C. or the like.

7. Having regard to the above, it is the duty of the Court to balance the personal liberty with the propensity of crime, anticipatory bail granted to the petitioners/A-2 to A-5 with the following conditions:

[i] Petitioner-accused shall within fifteen (15) days from today submit before the S.H.O. concerned and execute a self-bond for Rs.50,000/- [Rupees fifty thousand only] with two sureties for like sum each to the satisfaction of the arresting authority, otherwise giving liberty to the petitioner to submit within said 15 days from now before the Judicial Magistrate of First Class having the jurisdiction, for taking to custody and to enlarge as above. The bond to be obtained is not only to appear before the Court pending investigation and after filing of final report in the form of charge sheet or the like for enquiry or pre-committal enquiry before said Court, but also thereafter on committal before the Court of Sessions or by virtue of any transfer of proceedings for want of jurisdiction or otherwise before any other Court and even after trial before such Court to appear before provisional or appellate Court or other superior Court - vide decision – **PRE-LEGAL AID COMMITTEE, JAMSHEDPUR V/s. STATE OF DELHI 1982 [2] A.P.L.J. 43 (SC)** ; so that at stage of committal or other proceedings obtaining of fresh bond from accused and even affidavits of sureties of bonds and solvency earlier produced are ratifying and in existence and enforceable, without even insisting their further presence, serves the purpose. Such recourse quickens the proceedings at such committal or other stages without loss of time and it also to some extent complies with the requirement of Section 437-A Cr.P.C.

[ii] Petitioner-accused shall report before the Station House Officer, concerned on every Sunday till filing of the charge sheet and thereafter once in a month on 1st Sunday till completion of trial/enquiry between 10.00 and 11.00 AM for assurance of his availability and non-interference in any manner with the witnesses.

[iii] Petitioner-accused shall not enter the area where the complainant and witnesses reside, until further orders being passed by the learned Magistrate relaxing the same empowering him by virtue of this order.

[iv] Petitioner-accused shall attend before the Court of law regularly in enquiry and trial without fail, if not his bail shall be cancelled forthwith, without any further order so that, the Magistrate can also issue NBW by cancelling the bail from the power under section 439 [2] Cr.P.C. delegated to the learned Magistrate by this order during pendency of proceedings before the Magistrate.

[v] Petitioner-accused shall not leave the State pending enquiry/trial without prior permission of the Court of concerned Magistrate/trial Judge.

[vi] Petitioner-accused shall furnish his full address with property and Bank Account particulars and submit his passport if any, after enlargement of bail on the next hearing date before the Magistrate Court concerned (for collecting by police as part of their duty to investigate-also the means of accused and to furnish the same in the final report of investigation to enable the trial court in the event of considering the need of awarding compensation under section 357 Cr.P.C. So to award from such material and evidence, apart from securing presence and obtaining of bond with sureties under section 437A Cr.P.C. etc.), failing which it is open to the learned Magistrate concerned by virtue of the power conferred by this order to cancel the bail.

[vii] In the event of the police making out a case for police custody for the purpose of interrogation, the petitioner shall be liable to be taken in police custody for facilitating the further investigation remained if any, with the permission of the Magistrate concerned who can grant such police custody within 15 days from today, not exceeding 12 hours in the presence of a male member, subject to necessary precautions and instructions as per the constitutional bench expression of the Apex Court in guideline No.iv in **Gurbaksh Singh Sibbia Vs. State of Punjab**¹.

[viii] The bail now granted is since a regular one till end of trial (without prejudice to the right to cancel meanwhile in case of need and/or for non-compliance of conditions supra) any absence of

¹ (1980)2 SCC 565

petitioner as accused for hearing/enquiry or trial, issuance of non bailable warrant-NBW (unless cancelled before execution) and even its execution and production of accused as per the NBW; that does not tantamount to cancellation of bail including from the wording of Sec.439(2) Cr.P.C. and as such in such event no fresh bail application can be entertained. As it tantamounts to only cancellation of bail bonds earlier executed, (leave about the power of the court to issue surety notices by forfeiting bonds and for imposing penalty on the bonds forfeited); the proper course is to direct the accused to work out the remedy to pay penalty on the previous forfeited bonds as per Section 441 to 446 Cr.P.C. and to submit fresh solvency with self bond for enlarging him by release from custody on payment of penalty of the earlier bonds forfeited without need of enforcing against earlier sureties again.

6. While granting anticipatory bail with the above necessary conditions, the Police are directed to make efforts for any possibility of counselling for reconciliation between the couple.

7. As a sequel, miscellaneous petitions if any, pending in this Criminal Petition shall stand closed.

Dr. JUSTICE B. SIVA SANKARA RAO.

14-09-2018
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HONOURABLE DR.JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION No. 9497 OF 2018

[RESULT :: ANTICIPATORY BAIL ALLOWED & POLICE TO
MAKE EFFORTS FOR ANY POSSIBILITY OF
COUNSELLING FOR RECONCILIATION BETWEEN
THE COUPLE.]

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