

THE HON'BLE SRI JUSTICE SANJAY KUMAR

I.A.NO.1 OF 2019 IN CRL.P.No.1953 of 2019

AND

CRIMINAL PETITION No.1953 of 2019

COMMON ORDER

By way of this petition filed under Section 438 CrPC, A.1 and A.2 in Crime No.41 of 2019 on the file of Chaderghat Police Station, Hyderabad, seek anticipatory bail. The said crime was registered on the strength of the complaint made by one Syed Mahboob alleging commission of offences under Sections 420, 406 and 506 IPC. While so, I.A.No.1 of 2019 was filed by Syed Mahboob, the complainant, seeking to be impleaded as a respondent.

Heard Sri C.Vijaya Shekar Reddy, learned counsel for the petitioners/A.1 and A.2, and Sri G.Suresh Goud, learned counsel for the proposed respondent-complainant.

As per the complaint of the proposed respondent-complainant, the accused, being his relatives, approached him in June, 2017 and persuaded him to part with a sum of Rs.5,00,000/- promising to pay Rs.12,500/- per month as a return thereon. The proposed respondent-complainant claimed that he pledged gold articles and raised a sum of Rs.4,15,000/- and adjusted the balance of Rs.85,000/- by other means and gave the sum total of Rs.5,00,000/- on 06.07.2017 to the petitioners/A.1 and A.2. His complaint was that the promised return was paid only for three months and thereafter, the petitioners/A.1 and A.2 started dodging him and did not make the payment. He further claimed that his attempt to get the matter settled through the intervention of elders and by way of legal notices failed and he therefore requested the police to take appropriate

legal action against the petitioners/A.1 and A.2 who had cheated him with a dishonest intention.

In the affidavit filed in support of his implead petition, the proposed respondent-complainant reiterated his allegations against the petitioners/A.1 and A.2.

This being the factual milieu, it may be noted that the petitioners/A.1 and A.2 themselves placed on record the notices dated 11.03.2019 and 14.03.2019 issued under Section 41A CrPC (wrongly shown as Section 41(1)(A) CrPC) requiring the first petitioner/A.1 to appear before the IO for questioning in relation to Crime No.41 of 2019.

Be it noted that a notice under Section 41A CrPC would be issued when the Police Officer concerned is of the opinion that the arrest of a person is not required under Section 41(1) CrPC. It is only if the addressee of such notice fails to comply with the terms thereof that the Police Officer may take recourse to Section 41A(4) CrPC and effect an arrest.

In the present case, despite the issuance of notices under Section 41A CrPC, the petitioners/A.1 and A.2 filed this anticipatory bail petition asserting that there was a serious apprehension that the police may arrest them at any time. Sri C.Vijaya Shekar Reddy, learned counsel, is however unable to state as to what is the basis for such an apprehension, when notices have already been issued under Section 41A CrPC.

To maintain an anticipatory bail petition, the applicant must show that he has 'reason to believe' that he may be arrested in a non-bailable offence and use of the expression 'reason to believe' shows that the applicant's belief that he may be arrested must be founded on reasonable grounds and mere 'fear' would not amount to 'belief', inasmuch as the

grounds on which the belief of the applicant that he may be arrested is based must be capable of being examined (*See VAMAN NARAIN GHIYA V/ s. STATE OF RAJASTHAN*¹).

Reference may also be made to the earlier decision of the Supreme Court in *SHRI GURBAKSH SINGH SIBBI A V/ s. STATE OF PUNJAB*², wherein it was laid down that the applicant must show by disclosing specific facts and events that he has 'reason to believe', the existence of which is a *sine qua non* for exercise of power by the Court under Section 438 CrPC and a vague apprehension that he may be arrested would not be sufficient.

Applying this standard to the case on hand, the apprehension voiced by the petitioners/A.1 and A.2 is without any demonstrable basis or foundation. It is only a vague apprehension which, in fact, has no moorings, as the police have already issued notices to at least to the first petitioner/A.1 under Section 41A CrPC.

The Criminal Petition is accordingly dismissed on this short ground. I.A.No.1 of 2019 is ordered and the Registry is directed to make necessary corrections in the cause title before issuing a copy of this final order.

JUSTICE SANJAY KUMAR

29th APRIL, 2019

PGS

¹ (2009) 2 SCC 281

² AIR 1980 SC 1632