

HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

CRIMINAL PETITION No. 6668 of 2021

ORDER:

This Criminal Petition under Section 438 Cr.P.C. is filed by petitioner – Accused seeking bail in the event of his arrest in connection with Crime No. 367 of 2021 on the file of Jubilee Hills Police Station, registered for the offence punishable under Section 326 read with Section 511 IPC.

2. The case of prosecution is that on 14.07.2021, at about 22.00 hours, a complaint was lodged by complainant, who is brother-in-law of petitioner, stating that while he was travelling in a car in Jubilee Hills area, petitioner chased him and made a deliberate attempt to cause grievous injury to him, hence, he filed a complaint before the police to take appropriate action.

3. Learned counsel for petitioner Sri N. Naveen Kumar submits that there are matrimonial disputes between petitioner and his wife, who is none other than sister of complainant. It is stated that wife of petitioner filed a complaint before the police which was registered as Crime No. 297 of 2021 on the file of WPS, CCS, DD, Hyderabad for the offences punishable under Sections 498-A, 400, 509 IPC and Sections 3 and 4 of Dowry Prohibition Act, on 27.03.2021. He submits that in view of the matrimonial disputes pending between the parties, on 14.07.2021, the present crime was registered falsely against petitioner.

4. On the other hand, learned Senior Counsel Sri T. Niranjan Reddy appearing on behalf of Sri A. Vijaya Bhaskar Reddy, learned counsel for Respondent No.2 submits that as per

the allegations in the complaint, offence under Section 307 is attracted, however, Investigating Officer, for the reasons best known to him, registered the crime under Section 326 IPC. It is stated that, in this regard, complainant filed Writ Petition No. 17323 of 2021, wherein this Court directed the Investigating Officer to collect CC TV footage and the said Writ Petition is pending. Further, learned Senior Counsel submits that this Petition for pre-arrest bail is not maintainable as petitioner moved Criminal Petition No. 5915 of 2021 and this Court, by order dated 29.07.2021, directed police not to take any coercive steps and as such, there is no threat of arrest. He contends that petitioner must show that he has reason to believe that he may be arrested for a non-bailable offence. In this regard, he places reliance on the judgment of the Hon'ble Apex Court in ***Gurbaksh Singh Sibbia v. State of Punjab***¹ and points out to paragraph 35, which reads as under:

“ Section 438(1) of the Code lays down a condition which has to be satisfied before anticipatory bail can be granted. The applicant must show that he has ‘reason to believe’ that he may be arrested for a non-bailable offence. The use of the expression “reason to believe” shows that the belief that the applicant may be so arrested must be founded on reasonable grounds. Mere ‘fear’ is not ‘belief’ for which reason it is not enough for the applicant to show that he has some sort of a vague apprehension that some one is going to make an accusation against him, in pursuance of which he may be arrested. The grounds on which the belief of the applicant is based that he may be arrested for a non-bailable offence, must be capable of being examined by the court objectively, because it is then alone that the court can determine whether the applicant has reason to believe that he may be so arrested. Section 438(1), therefore, cannot be invoked on the basis of vague and general allegations, as if to arm oneself in perpetuity against a possible arrest. Otherwise, the number of applications for anticipatory bail will be as large as, at any rate, the

¹ (1980) 2 SCC 565

adult populace. Anticipatory bail is a device to secure the individual's liberty; it is neither a passport to the commission of crimes nor a shield against any and all kinds of accusations, likely or unlikely."

Learned Senior Counsel submits that the act committed by petitioner falls under the 1st limb of Section 307 IPC. To substantiate his submission, he place reliance on another judgment in ***Om Prakash v. State of Punjab***², paragraphs 13, 16 and 19 of which read as under:

" 13. Illustration (d) to Section 307, itself shows the incorrectness of this view. The illustration is:

" A intending to murder Z, by poison, purchases poison and mixes the same with food which remains in A's keeping; A has not yet committed the offence in this section. A places the food on Z's table or delivers it to Z's servants to place it on Z's table. A has committed the offence defined in this section."

A's last act, contemplated in this illustration, is not an act which must result in the murder of Z. The food is to be taken by Z. It is to be served to him. It may not have been possible for A to serve the food himself to Z, but the fact remains that A's act in merely delivering the food to the servant is fairly remote to the food being served and being taken by Z.

16. It may, however, be mentioned that in cases of attempt to commit murder by fire-arm, the act amounting to an attempt to commit murder is bound to be the only and the last act to be done by the culprit. Till he fires, he does not do any act towards the commission of the offence and once he fires, and something happens to prevent the shot taking effect, the offence under Section 307 is made out. Expressions, in such cases, indicate that one commits an attempt to murder only when one has committed the last act necessary to commit murder. Such expressions, however, are not to be taken as precise exposition of the law, though the statements in the context of the cases are correct.

19. We may now refer to *Rex. V. White*. In that case, the accused, who was indicted for the murder of his mother, was convicted of attempt to murder her. It was held that the accused had put two grains of cyanide of potassium in the wine glass with

² AIR 1961 SC 1782

the intent to murder her. It was, however, argued that there was no attempt at murder because “the act of which he was guilty, namely, putting the poison in the wine glass, was a completed act and could not be and was not intended by the appellant to have the effect of killing her at once; it could not kill unless it were followed by other acts which he might never have done”. This contention as repelled and it was said:

“ There seems no doubt that the learned Judge in effect did tell the jury that if this was a case of slow poisoning the appellant would be guilty of the attempt to murder. We are of opinion that this direction was right, and that the completion or attempted completion of one of a series of acts intended by a man to result in killing is an attempt to murder even although this completed act would not, unless followed by the other acts, result in killing. It might be the beginning of the attempt, but would nonetheless be an attempt.”

5. Learned Assistant Public Prosecutor submits that three witnesses were examined so far and investigation is still pending, hence, petitioner is not entitled for grant of pre-arrest bail.

6. Having heard learned counsel on either side, perused the material on record.

7. In this case, complaint was registered for the offence under Section 326 read with Section 511 IPC. As far as the contention of learned Senior Counsel that allegations in the complaint attract the ingredients of Section 307 IPC. is concerned, the said issue is subject matter of Writ Petition No. 17323 of 2021. Though the learned Senior Counsel relied on the judgments noted supra, to substantiate his contention, at this stage, this Court is not inclined to go into that aspect. However, looking at the allegations in the complaint and taking into consideration the earlier crime registered against petitioner (Crime No. 297 of 2021),

it seems, there appears matrimonial disputes between the parties. In view of the same, this Court deems it a fit case to grant pre-arrest bail.

8. Accordingly, this Criminal Petition is allowed. Petitioner – Accused shall surrender before the Station House Officer, Jubilee Hills Police Station in connection with Crime No. 367 of 2021 within one week from today and on such surrender and executing a personal bond for Rs.20,000/- (Rupees twenty thousand only) each with two sureties for a like sum each to the satisfaction of the said Station House Officer, they shall be released on bail. It is made clear that no further extension of time will be granted. Petitioner shall cooperate with the investigation and he shall not influence / threaten witnesses.

LALITHA KANNEGANTI, J

03rd December 2021

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