

THE HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

CRIMINAL PETITION No.427 of 2022

ORDER

This petition is filed under Section 438 of the Code of Criminal Procedure, 1973 (for short "Cr.P.C.") seeking pre-arrest bail to the petitioner/A.1 in the event of his arrest in connection with Crime No.145 of 2021 of Mulakalapally Police Station, Bhadradri-Kothagudem District, registered for the offences punishable under Section 304-II IPC and under Section 3(2)(v) of Scs & STs (POA) Act.

2. The case of prosecution is that the de-facto complainant lodged a complaint stating that when her son, by name Jakka Rama Krishna, B.Com., Gradudate, was suffering from fever since 25.08.2021, he went to the hospital of A1 for treatment and since the fever could not control, he underwent blood test at A2's lab at Mulakalapally and found that there is only 4% of blood in the body, then A1 brought blood from his friend Bhukya madhu and when they were infusing the blood, her son has suffered with cough and blood vomiting, then they shifted her son to Swetcha Hospital, where he died at 9.30 am.

3. Learned Counsel for the petitioner Mr.K. Pavan Kumar, submits that even if the allegations in the complaint are taken on its face value, the provisions of SCs & STs Act are not attracted against the petitioner. Learned counsel submits that the petitioner is a registered Medical Practitioner and with an intention to save the patient, he has given treatment and as the patient died, the present complaint is registered. He further submits that it is not even their case that because of the treatment given by the petitioner, the patient died. Learned counsel also submits that the

petitioner is ready to cooperate with the investigation and there cannot be any apprehension that if the petitioner is enlarged on bail, he may tamper with the evidence or interdict with the investigating process and hence, his case may be considered for grant of pre-arrest bail.

4. On the other hand, learned Assistant Public Prosecutor submits that the petitioner, who is not competent to treat the patient, has given treatment and he is responsible for the death of the deceased. He submits that as the scheduled offence under Section 3(2)(v) of SCs & STs (POA) Act is technically applicable, the said crime is registered. Learned Assistant Public Prosecutor further submits that as per Section 15(3) of SCs & STS (POA) Act, he has informed about pendency of this bail application to the victim-2nd respondent, but none appears on her behalf. He submits that as the investigation is pending, petitioner is not entitled for pre-arrest bail.

5. The Apex Court in **Siddharam Satilingappa Mhetre v. State of Maharashtra and others**¹, has considered the factors and parameters that have to be taken into consideration, while dealing with the anticipatory bail, are as under:

- (i) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;
- (ii) The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a court in respect of any cognizable offence;
- (iii) The possibility of the applicant to flee from justice;
- (iv) The possibility of the accused's likelihood to repeat similar or other offences;
- (v) Where the accusations have been made only with the object of

¹ 2011) 1 SCC 694

injuring or humiliating the applicant by arresting him or her;

- (vi) Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people;
- (vii) The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which the accused is implicated with the help of Sections 34 and 149 of the Penal Code, 1860 the court should consider with even greater care and caution because over implication in the cases is a matter of common knowledge and concern;
- (viii) While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors, namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;
- (ix) The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;
- (x) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.

6. Taking into consideration the allegations in the complaint and while granting pre-arrest bail, this Court has to take into consideration the parameters and the guidelines laid down by the Apex Court in **Siddharam Satilingappa Mhetre** (supra) and hence, this Court deems it appropriate to grant pre-arrest bail to the petitioner/A.1.

7. Accordingly, this Criminal Petition is allowed. Petitioner/A.1 shall surrender before the Station House Officer, Mulakalapally Police Station, Bhadradri-Kothagudem District, in connection with Crime No.145 of 2021 within one week from today and on such surrender and executing personal bonds for Rs.20,000/- (Rupees twenty thousand only) with two sureties for a like sum each to the satisfaction of the said Station House Officer, he shall be released on bail. It is made clear that no further extension of time will be granted.

8. Consequently, miscellaneous applications pending, if any, shall stand closed.

7th February, 2022

sj

LALITHA KANNEGANTI, J

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Date:07.02.2022

sj