

THE HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

CRIMINAL PETITION NO.10153 OF 2021

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/accused in the event of his arrest in connection with Crime No.124 of 2021 of Kulcharam Police Station, Medak District, registered for the offences punishable under Sections 380, 409 and 477-A of the Indian Penal Code.

2. The case of prosecution is that on 02.11.2021 the Station House Officer, Medchal, raided the open place opposite creek plant school, KLR Venture, Medchal, and noticed that a car and a Honda Activa are parked in the dark area and on suspicious, two persons found 10 cases 'White and Blue Whisky', each having 12 quart bottles, and on verification of bottles, no HEALS are found on any bottle seals and all bottles are found intact. The label on the bottle contains 'for sale in Telangana' with Batch No.002 dated 17.03.2020. On enquiry, they revealed that they brought the bottles for sale and the said bottles have brought to home by their father i.e., the petitioner herein, who is Stores Officer and the then Incharge Manager of IMFL Depot, Medak. Basing on the said report, the present crime is registered.

3. Heard Mr.K.Surender, learned counsel for the petitioner, and learned Assistant Public Prosecutor for the respondent-State.

4. Learned counsel for the petitioner submits that Section 409 IPC has no application against the petitioner, as no property has been entrusted to the petitioner. He submits that even if Sections 380 and 477-A IPC are attracted, the punishment for the said offences is below seven years. He further submits that the entire material is seized by the police and even if the petitioner is granted pre-arrest bail, there cannot be any apprehension to the police that he may tamper with the evidence or influence the witnesses. Hence, his case may be considered for grant of pre-arrest bail.

5. On the other hand, learned Assistant Public Prosecutor submits that so far nine witnesses were examined. The petitioner, being the Store Manager in IMFL Depot, Medak, taking advantage of his official position, has committed the alleged offence and as the investigation is pending, the petitioner is not entitled for pre-arrest bail.

6. The Apex Court in **Siddharam Satilingappa Mhetre v. State of Maharastra and others**¹, 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;

¹ (2011) 1 SCC 694

- (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 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.

7. Taking into consideration the parameters laid down by the Apex Court in Siddharam Satilingappa Mhetre (supra) and the entire material is already seized and is in possession of the prosecution and that it is not

a case, where custodial interrogation is warranted, this Court deems it appropriate to grant pre-arrest bail to the petitioner/accused.

8. Accordingly, this Criminal Petition is allowed. Petitioner shall surrender before the Station House Officer, Kulcharam Police Station, Medak District, in connection with Crime No.124 of 2021 within one week from today and on such surrender and executing a personal bond for a sum 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.

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

LALITHA KANNEGANTI, J

Date :04.01.2022

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