

**(2013) 09 AP CK 0032**

**Andhra Pradesh High Court**

**Case No:** Criminal Petition No. 10781 of 2013

S. Nagesh Kumar

APPELLANT

Vs

The State of A.P.

RESPONDENT

**Date of Decision:** Sept. 20, 2013

**Citation:** (2014) 1 ALD(Cri) 159 : (2013) 2 ALD(Cri) 740

**Hon'ble Judges:** B. Chandra Kumar, J

**Bench:** Single Bench

**Advocate:** K.S. Murthy, for the Appellant;

**Final Decision:** Allowed

### **Judgement**

@JUDGMENTTAG-ORDER

B. Chandra Kumar, J.

This Criminal Petition, u/s 438 Cr.P.C., has been filed by the petitioner/accused seeking anticipatory bail in the event of his arrest in connection with Crime No. 808 of 2013 on the file of the Panjagutta Police Station, Hyderabad, registered for the offences punishable under Sections 505(1)(b)(c), 469 IPC and Section 3 of the Police Incitement to Disaffection Act, 1922. Heard the learned counsel for the petitioner and the learned Public Prosecutor for the respondent-State and perused the material available on record.

2. The petitioner is working as Resident Editor in "The Hindu" english daily newspaper. The allegation against the petitioner is that he is responsible for publishing a news item in the front page of the said newspaper on 13.09.2013 under the heading "DGP visiting Old City godman raises eyebrows". The sum and substance of the said news item is that the Director General of Police, Andhra Pradesh - V. Dinesh Reddy, IPS, met a godman named Habib Mustafa Idrus Baba at Fateh Darwaza in the old city. It was also stated in the said news item that the DGP went to meet the godman carrying some files with him.

3. While so, one K.V. Ram Narasimha Reddy, ACP, A.P. Gazetted Police Officer Association, lodged a complaint against the petitioner alleging that the said publication was made with an intention to harm the reputation of the office of the DGP in particular and the entire police force in general and thereby to cause alarm and fear among the public and with an ulterior motive to demoralise the police force and spread disaffection among the ranks and file of the police to weaken the authority which may result in ineffective police. It is also alleged that it is the public who will suffer if the police gets weakened and in order to protect the interests of the public at large and for the purpose of maintenance of law and order, peace and harmony among different religious groups in the present scenario of ongoing "Ganesh Chathrthi" and "Nimajjanam" such visits of police officers can no way be questioned or doubted.

4. Sri L. Ravi Chander, learned senior counsel for the petitioner submitted that "The Hindu" English daily newspaper has reputation and known for its ethical and constructing reporting and that the aforementioned news item published on 13.09.2013 against the DGP seems to have not gone well with the office of the DGP, which resulted in registration of the case. It is also submitted that in view of registration of a case for non-bailable offences, the petitioner is apprehending arrest in connection with the said crime. It is further submitted that in view of the fundamental rights guaranteed to the petitioner under Article 19 of the Constitution of India, i.e., Freedom of Press, his liberty has to be protected and that no innocent person should be made to suffer and should be made victim of illegal arrest. It is also his submission that even if FIR allegations are considered as true, the ingredients of Sections 505(1)(b)(c), 469 IPC have not been made out. It is also submitted that by no stretch of imagination it can be said that the news item published is likely to cause fear and alarm to the police or to any section of the public, whereby they may feel aggrieved. In support of his contentions, learned senior counsel had relied on the judgment of the Apex Court in the case between [Som Mittal Vs. Govt. of Karnataka](#), and the judgment of the Full Bench of the Allahabad High Court in the case between [Amarawati and Another \(Smt.\) Vs. State of U.P.,](#)

.5. Per contra, Sri Vinod Kumar Deshpande, learned Public Prosecutor submitted that a reading of the petition filed by the petitioner gives an impression that the petitioner never complained that he is apprehending arrest and when there is no apprehension of arrest, a petition seeking anticipatory bail is not maintainable. It is also his submission that the if the ingredients of Sections 505(1)(b)(c), 469 IPC have not been made, the petitioner should file a petition to quash the FIR and without availing the said remedy, he cannot take such a plea in a petition seeking anticipatory bail. In support of his contentions, learned Public Prosecutor had relied on the judgment of the Apex Court in the case between [Shri Gurbaksh Singh Sibia and Others Vs. State of Punjab,](#) and the judgment of a Division Bench of this Court in the case between [Y. Chandrasekhara Rao and Others Vs. Y.V. Kamala Kumari and](#)

## Others,

6. The only point that arises for consideration in this criminal petition is whether the petitioner is entitled for anticipatory bail.

7. It is not in dispute that the petitioner has been working as Resident Editor in "The Hindu" English daily newspaper. The Director General of Police, Andhra Pradesh, visiting the godman at the old city is also not in dispute. Admittedly, the offences alleged to have been committed by the petitioner are neither punishable with death nor with life imprisonment. Admittedly, there is no apprehension that the petitioner would abscond and do not face trial in future. Admittedly, the petitioner had categorically stated that he is willing to abide by any conditions imposed by this Court. Since it is not the case of the investigating agency that the petitioner may flee away from justice if he is granted anticipatory bail, I am of the view that anticipatory bail can be granted to the petitioner. In this case, no purpose would be served by allowing the investigating agency to arrest the petitioner. In case where the arrest of the accused is not required, no person shall be put to unnecessary restraint. Arrest of a citizen will certainly damage his reputation in the society and it will create mental agony to the wife and children and other family members of an accused. Therefore, it is always better to prevent such a situation, where in a case it appears that arrest of an accused is not required.

8. It is the contention of the learned Public Prosecutor that the petitioner did not state that he is apprehending arrest. The said contention appears to be incorrect because the petitioner, in his petition, had categorically stated that he is apprehending arrest in this case. Admittedly, a case has been registered against the petitioner for the non-bailable offences. When a case for the offences which are non-bailable in nature has been registered, there is reasonable apprehension that the accused may be arrested at any time. Therefore, it cannot be said that there is no reasonable apprehension that the petitioner may be arrested at any time on the accusations of having committed non-bailable offences and thus, it cannot be said that this petition is pre-matured.

9. Section 438 of Code of Criminal Procedure, 1973, reads as follows:-

Section 438 - Direction for grant of bail to person apprehending arrest:-

(1) Where any person has reason to believe that he may be arrested on accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this section that in the event of such arrest he shall be released on bail; and that Court may, after taking into consideration, inter alia, the following factors, namely:--

(i) the nature and gravity of the accusation;

(ii) the antecedents of the applicant including the fact as to whether he 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; and.

(iv) where the accusation has been made with the object of injuring or humiliating the applicant by having him so arrested, either reject the application forthwith or issue an interim order for the grant of anticipatory bail:

Provided that, where the High Court or, as the case may be, the Court of Session, has not passed any interim order under this sub-section or has rejected the application for grant of anticipatory bail, it shall be open to an officer in-charge of a police station to arrest, without warrant the applicant on the basis of the accusation apprehended in such application.

(1A) Where the Court grants an interim order under sub-section (1), it shall forthwith cause a notice being not less than seven days notice, together with a copy of such order to be served on the Public Prosecutor and the Superintendent of Police, with a view to give the Public Prosecutor a reasonable opportunity of being heard when the application shall be finally heard by the Court,

(1B) The presence of the applicant seeking anticipatory bail shall be obligatory at the time of final hearing of the application and passing of final order by the Court, if on an application made to it by the Public Prosecutor, the Court considers such presence necessary in the interest of justice.]

(2) When the High Court or the Court of Session makes a direction under subsection (1), it may include such conditions in such directions in the light of the facts of the particular case, as it may thinks fit, including-

(i) a condition that the person shall make himself available for interrogation by a police officer as and when required;

(ii) a condition that the person shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer;

(iii) a condition that the person shall not leave India without the previous permission of the Court;

(iv) such other condition as may be imposed under sub-section (3) of section 437, as if the bail were granted under that section.

(3) If such person is thereafter arrested without warrant by an officer in charge of a police station on such accusation, and is prepared either at the time of arrest or at any time while in the custody of such officer to give bail, he shall be released on bail, and if a Magistrate taking cognizance of such offence decides that a warrant should issue in the first instance against that person, he shall issue a bailable warrant in conformity with the direction of the Court under sub-section (1).

10. It has to be seen that grant of Anticipatory Bail is a discretionary remedy of the Court. It has to be exercised with great care and caution by balancing the valuable right and liberty of an individual and the interest of the society in general.

11. Learned Public Prosecutor had also relied on Y. Chandrasekhara Rao's case (4 supra). In that case, the Division Bench of this Court, while dealing with an anticipatory bail application, observed as follows:-

The words "reason to believe" occurring in S. 438 obligate the existence of objective material to the subjective satisfaction of the person apprehending arrest.

12. Learned Public Prosecutor had also relied on Shri Gurbaksh Singh Sibia's case (3 supra). In that case, the appellant was a Minister of Irrigation and Power in the Ministry of Government of Punjab. Grave allegations of political corruption have been made against him and others. They filed applications u/s 438 Cr.P.C. praying that they may be directed to be released on bail in the event of their arrest on the aforesaid charges. The High Court of Punjab and Haryana granted anticipatory bail to them and directed that they shall be released on bail in the event of their arrest. Challenging the said orders, the matter was carried to the Apex Court and the Apex Court observed that normally a direction should not be issued u/s 438(1) Cr.P.C. to the effect that the appellants shall be released on bail whenever arrested for whichever offence whatsoever. In the instant case, a case has been registered against the petitioner. Therefore, the observations of the Apex Court with regard to the blanket order, i.e., whenever arrested for whichever offence, as referred above, do not apply to the present case.

13. On the other hand, learned counsel for the petitioner had relied on Som Mittal's case (1 supra), wherein the Apex Court observed as follows:-

It has been consistently held that the power u/s 482 must be exercised sparingly, with circumspection and in rarest of rare cases. Exercise of inherent power u/s 482 of the Code of Criminal Procedure is not the rule but it is an exception. The exception is applied only when it is brought to the notice of the Court that grave miscarriage of justice would be committed if the trial is allowed to proceed where the accused would be harassed unnecessarily if the trial is allowed to linger when *prima facie* it appears to Court that the trial would likely to be ended in acquittal. In other words, the inherent power of the Court u/s 482 of the Code of Criminal Procedure can be invoked by the High Court either to prevent abuse of process of any Court or otherwise to secure the ends of justice.

14. Learned counsel for the petitioner had also relied on Smt. Amarawati's case (2 supra), wherein, it was held as follows:-

The arrest of the accused is not a "must" if cognizable offence is disclosed in the FIR or in a criminal complaint. The police should rather be guided by the decision of the Supreme Court in Joginder Kumar Vs. State of U.P. and others, before deciding

whether to make arrest or not. The use of "may" in S. 41 of the Code cannot be interpreted as "must" or "shall".

15. In the Preamble of our Constitution, we have declared that the "people of India, having solemnly resolved to constitute India into a Sovereign Socialist Secular Democratic Republic and to secure to all its citizens: JUSTICE: social, economic and political; LIBERTY of thought, expression, belief, faith and worship." Thus, the liberty of an individual has to be protected at any cost.

16. Article 19 of the Constitution of India guarantees that all citizens shall have right to freedom of speech and expression. Though freedom of press is not expressly mentioned in Article 19 of the Constitution of India, but the said right flows from the general freedom of speech and expression guaranteed to all the citizens. One of the basic principles of democracy is freedom of expression, freedom of assembly and freedom of association subject to certain reasonable restrictions.

17. Through print media, people see the happenings of the world. Through print media, people know the policies and programmes of the Government. Similarly, the lacunas and irregularities would also be pointed out and scams, corrupt practices, misdeeds are unearthed. Through print media, people know the agitations and dissatisfaction of the people and it enables the Government or the Rulers to know about the feelings of the public. Through print media, people know the statements, views of political parties, educationalists etc. Therefore, the print media is the eye of all the people. Once those in power do not know the feelings of the people, the Governments may collapse. Since the print media plays a vital role in protecting the democracy and partaking democratic system and values of freedom and liberty and also the right to life, freedom of press has to be protected under any cost.

18. In view of the importance of freedom of press, a great responsibility lies on the print media to play honest role. They must report true facts. Truth is the only path, which can solve many problems. Print media is not expected to work with ulterior motives or for blackmailing. Newspapers are not expected to be used as a pamphlet of any political party. The Print media should avoid paid news. Press reporters or the editors of the newspapers are not expected to blackmail any one. Now-a-days, we hear such complaints, which pain every right thinking person.

19. Having regard to the facts and circumstances, nature of offences and the apprehension of the petitioner, I am inclined to grant anticipatory bail to the petitioner. In the result, the criminal petition is allowed. The petitioner is directed to surrender before the Station House Officer, Panjagutta Police Station, Hyderabad, within a period of two (02) weeks from today and on such surrender or in the event of his arrest in the meanwhile, he shall be enlarged on bail on his executing a personal bond for a sum of Rs. 10,000/- (Rupees ten thousand only) with two sureties for a like sum each to the satisfaction of the arresting officer. The petitioner is directed to cooperate with the Investigating Officer in completing the

investigation at the earliest and shall make himself available to the police as and when required. The petitioner is also directed to report before the Station House Officer, Panjagutta Police Station, Hyderabad, on every Sunday between 09:00 AM and 11:00 AM for a period of four (04) weeks.