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**(2014) 02 AP CK 0178**  
**In the Andhra Pradesh High Court**  
**Case No : CrI. P. No. 607 of 2014**

M. Venkatappa Naidu and Others

APPELLANT

Vs

State of Andhra Pradesh

RESPONDENT

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**Date of Decision :** 03-02-2014

**Acts Referred:**

Constitution of India, 1950 — Article 21  
Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 437, 438  
Dowry Prohibition Act, 1961 — Section 3, 4  
Penal Code, 1860 (IPC) — Section 354-A, 384, 471, 498-A, 506

**Citation :** (2015) 1 ALD(Cri) 327

**Hon'ble Judges :** K.G. Shankar, J

**Bench :** Single Bench

**Advocate :** C. Masthan Naidu, Counsel, Advocates for the Appellant

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## Judgement

Dr. K.G. Shankar, J.—Petition seeks for anticipatory bail on behalf of the petitioners 1 to 4, who are accused 5, 6, 9 and 10 in Crime No. 182 of 2013 on the file of Renigunta Police Station, Chittoor District. The petitioners allegedly committed offences under Sections 498-A, 506, 354-A, 384 and 471 IPC and under Sections 3 and 4 of the Dowry Prohibition Act, 1961. All the offences are triable by a Judicial Magistrate of First Class. Whether the petitioners are entitled to be enlarged on bail or not consequently falls for consideration. Sri C. Masthan Naidu, learned Counsel for the petitioners contended that the beneficial provision under Section 438 Cr.P.C., granting right to the Court to grant anticipatory bail deserves to be saved. The Supreme Court observed in Shri Gurbaksh Singh Sibbia and Others Vs. State of Punjab, , that Section 438 Cr.P.C., was enacted to meet the challenge of Article 21 of the Constitution of India and that since the denial of bail amounts to deprivation of personal liberty, the Court should lean against the imposition of unnecessary restrictions on the scope of Section 438 Cr.P.C., more so when such restrictions were not imposed by the Legislature.

2. The learned Counsel for the petitioners referred to Siddharam Satlingappa Mhetre Vs. State of Maharashtra and Others, . The Supreme Court made certain

suggestions which are extracted:

"117. In case, the State considers the following suggestions in proper perspective then perhaps it may not be necessary to curtail the personal liberty of the accused in a routine manner. These suggestions are only illustrative and not exhaustive:

(1) Direct the accused to join the investigation and only when the accused does not co-operate with the investigating agency, then only the accused be arrested.

(2) Seize either the passport or such other related documents, such as, the title deeds of properties or the fixed deposit receipts/share certificates of the accused.

(3) Direct the accused to execute bonds.

(4) The accused may be directed to furnish sureties of a number of persons which according to the prosecution are necessary in view of the facts of the particular case.

(5) The accused be directed to furnish undertaking that he would not visit the place where the witnesses reside so that the possibility of tampering of evidence or otherwise influencing the course of justice can be avoided.

(6) Bank accounts be frozen for small duration during the investigation."

3. In *Joginder Kumar Vs. State of U.P. and others*, , the Supreme Court considered the power of police to arrest an accused. The Supreme Court cautioned that the arrest should not be merely on suspicion about the complicity of the person in the commission of the crime and that the Police Officer must be satisfied about the necessity and justification of such arrest on the basis of some investigation.

4. The Central Government amended the Code of Criminal Procedure and introduced amendments to Section 41 and introduced Sections 41-A, 41-B and 41-C as well as 41-D with effect from 1.11.2010 restricting the right of police to arrest an accused.

5. It is contended by the learned Counsel for the petitioners that in the light of these decisions, Section 438 Cr.P.C., shall be exercised with benevolence. I am afraid that benevolence has no place in law, more so in Criminal Law. The question would only be whether the Court can exercise jurisdiction under Section 438 Cr.P.C., in a petition of this nature.

6. Where the accused persons allegedly committed offences under provisions which are triable by a Judicial Magistrate of First Class, I would consider that it would be more appropriate for the petitioners to approach the trial Court, surrender before the trial Court and move the trial Court for grant of regular bail rather than approaching the Sessions Court, the High Court or the Supreme Court seeking for grant of anticipatory bail. In a case triable by a Judicial Magistrate of First Class, the entire case record would be available with the trial

Court itself. On a bail application by the accused, the trial Court can consider to grant bail or otherwise and pass appropriate orders on the same day on which the bail application is laid.

7. The learned Counsel for the petitioners would appear to suggest that the Courts at the magisterial level adopt the approach that any person who is accused before the Court shall first be referred to penitentiary before his case is considered for enlargement on bail. I am afraid that such an attitude could not have been adopted by Courts and cannot be adopted. If such is the practice, the practice is deprecated. It is made clear that any Magistrate before whom a case for bail application is laid under Section 437 Cr.P.C., shall consider the same on merits and dispose of the same without the attitude that the accused must first be committed to prison and to entertain the bail application only after the accused is admitted in the prison.

8. The learned Counsel for the petitioners would also appear to be apprehensive that a Magistrate may dismiss the bail application even after the accused surrenders before the Court if the High Court turns down the application for grant of anticipatory bail on the ground that the accused may surrender before the trial Court. If a Counsel cannot convince a Magistrate for grant of bail, I am afraid that it cannot be a ground for the accused to approach the Sessions Court or the High Court seeking for grant of anticipatory bail.

9. Grant of anticipatory bail is not sine qua non as grant of bail. The parameters for grant of anticipatory bail certainly are more stringent than granting bail. The Supreme Court had already considered the same in *Siddharam Satlingappa Mhetre's* case (supra). The Supreme Court considered that the relief under Section 438 Cr.P.C., is not extraordinary in the sense that it should be invoked in exceptional circumstances only and that great ignominy, humiliation and disgrace are attached to an arrest. The Supreme Court also considered that if the Court opines that the accused has joined investigation and is co-operative with the Investigating Agency and is not likely to abscond, custodial interrogation should be avoided and anticipatory bail deserves to be granted to the accused.

10. In the present case, the question is whether the petitioners are entitled to anticipatory bail or not. Admittedly, the petitioners have not been arrested. A direction to the petitioners to consider surrender before the trial Court and moving the trial Court for grant of regular bail cannot be tantamount to arrest of the petitioners leading to ignominy and humiliation. Such would be the situation even if the petitioners are directed to surrender before the police but the same is not correct so far as surrender before the trial Court is concerned.

11. The learned Counsel for the petitioners also placed a decision of Rajasthan High Court in *Anant Kumar Gupta Vs. State of Rajasthan*, , where a learned Single Judge held that in a petition for grant of anticipatory bail, imposition of a condition to surrender before the trial Court and to move the trial Court for grant of regular bail while disposing of an application for anticipatory bail is not

permissible. If a petitioner approaches the Court and seeks for grant of anticipatory bail, a direction to him to surrender before the trial Court is certainly an exceptional hardship. I do not consider that it would be appropriate to direct a petitioner seeking anticipatory bail to surrender before the trial Court. At the same time, granting liberty to the petitioner to surrender before the trial Court and directing the trial Court to dispose of an application for grant of bail on the same day on which it is filed, in the event the petitioner surrenders before the trial Court voluntarily cannot be equated with a case where a direction is issued to the petitioner to surrender before the trial Court. I therefore consider that this decision of the Rajasthan High Court has no relevance for the facts of the present case.

12. In respect of the facts of the present case, it is alleged by the petitioners that the de facto complainant initially lodged a private complaint in the Court of the Judicial Magistrate of First Class at Srikalahasti. That petition would appear to have been referred to police under Section 156(3) Cr.P.C. Police after due investigation, filed a final report closing the case. Questioning the same, the de facto complainant filed a Protest Petition. These facts are not in dispute.

13. While the Protest Petition is still pending, the de facto complainant would appear to have preferred another Private Complaint before the V Additional Judicial Magistrate of First Class, Tirupathi making similar allegations against various accused including the petitioners herein. It is the contention of the learned Counsel for the petitioners that the de facto complainant has grossly abused the process of Criminal Law and that the petitioners consequently are entitled to anticipatory bail. The facts narrated above would perhaps be a good ground for the quashment of the complaint in the present case. I am afraid that these facts do not constitute a good ground for grant of anticipatory bail.

14. So far as the present case is concerned, allegations are made against the petitioners, which are predominantly matrimonial in nature. It therefore would be appropriate for the petitioners to consider surrendering before the trial Court and move the trial Court for grant of regular bail.

15. However, the 1st petitioner-accused No. 5 is an employee of Tirumala Tirupati Devasthanams. Any arrest and detention of the 1st petitioner may lead to the suspension of the petitioner from service. I therefore consider that the case of the 1st petitioner deserves to be treated specially for grant of anticipatory bail. Similarly, the 2nd petitioner-accused No. 6, who is the wife of the 1st petitioner, is a lady. On account of her sex, I deem it appropriate to consider the case of the 2nd petitioner also specially.

16. The purport of anticipatory bail is a direction to the police to release the person who is granted anticipatory bail in the event of his arrest. It does not automatically imply that the applicant should be arrested and then enlarged on bail. It does not also contemplate any Court accepting bond from such an applicant and releasing him on bail. However, complaints have been occurring on

regular basis that police officers have ignored the anticipatory bail order and arrested the applicant. If the police officer is called up for arresting the applicant despite the applicant having obtained anticipatory bail, the response of the police officer is that the applicant has not been brought it to notice of the police officer that he has obtained anticipatory bail and that the applicant has failed to produce copy of such an order. To obviate hardship to the applicants who have obtained anticipatory bail, device was invented directing the person to whom anticipatory bail is granted to surrender before the concerned Court with a direction to the concerned Court to enlarge the petitioner on bail on terms determined by the bail ordering Court. The Court which actually enlarges the petitioner on bail does not grant bail. Another Court, which usually is a superior Court to the Court granting anticipatory bail, actually orders grant anticipatory bail. It actually directs the applicant to surrender before the trial Court with a direction to the trial Court to automatically enlarge such a petitioner on bail. In the strict sense, it may be contended that it is tantamount to asking a party to surrender before the Court. In reality, it is merely granting anticipatory bail and removing the petitioner from exposing to the mercy of police. I consider that this method of directing a person who is granted anticipatory bail to surrender before the specified trial Court directing the trial Court to enlarge the petitioner on bail on terms fixed by the Court ordering anticipatory bail is reasonable, pragmatic and desirable. I deem it appropriate to adopt such method in the disposal of this petition.

17. In view of the employment of the 1st petitioner and the sex of the 2nd petitioner, it would be appropriate to grant anticipatory bail to these petitioners. The petitioners 1 and 2-accused 5 and 6, therefore, are directed to surrender before the V Additional Judicial Magistrate of First Class, Tirupathi within two weeks from today. On such surrender, the learned V Additional Judicial Magistrate of First Class, Tiruapthi shall enlarge the petitioners 1 and 2 herein-accused 5 and 6 on bail on a bond of Rs. 10,000 (Rupees ten thousand only) each with two sureties each in a like sum to his satisfaction.

18. I do not treat the case of the petitioners 3 and 4-accused 9 and 10 as exception to the Rule. Where the offences are triable by a Judicial Magistrate of First Class, the petitioners 3 and 4-accused 9 and 10 may surrender before the trial Court and move the trial Court for grant of regular bail. I therefore dismiss the application of the petitioners 3 and 4. The petitioners 3 and 4 may surrender before the trial Court if they so choose and seek for grant of regular bail. If the petitioners 3 and 4 surrender before the trial Court and move the trial Court for grant of regular bail, the trial Court shall dispose of such an application on the same day on which it is filed. It is made clear that the petition is dismissed so far as the petitioners 3 and 4-accused 9 and 10 are concerned, not on merits but on the ground that the offences are triable by a Judicial Magistrate of First Class and that they may surrender, if they so choose, before the trial Court and move the trial Court for grant of regular bail. It is also clarified that the trial Court, in such an event, shall consider the application of the petitioners 3 and 4-accused 9 and 10 on merits, without influenced by any observation in any part of this order, and

dispose of the same on the same day on which it is filed. Accordingly, this petition is allowed in part.