

***HON'BLE SRI JUSTICE T.MALLIKARJUNA RAO**

+CRIMINAL PETITION NO.3775 OF 2024

%26.06.2024

#Between:

Pinnelli Ramakrishna Reddy,
S/o P. Venkateswara Reddy,
Aged about 54 years,
Occ: Member of Legislative Assembly,
Resident of Macherla, Palnadu District - 522426.

..... Petitioner / Accused No.1

\$And:

State of Andhra Pradesh, rep., by its Public
Prosecutor, High Court at Hyderabad.

....Respondent/Complainant

!Counsel for the Petitioner : Sri T. Niranjan Reddy, learned Senior Counsel

: Sri Rama Lakshmana Reddy Sanepalli, learned Counsel

^Counsel for the Respondent : Sri N. Ashwani Kumar, learned Special Counsel

<Gist:

>Head Note:

? Cases referred:

1. (2011) 1 SCC 694
2. 2015 SAR (Criminal) 156
3. (2020) 5 S.C.C. 1
4. (2014) 8 SCC 273
5. (2023) 8 SCC 632
6. (2021) 10 SCC 773
7. 2012(3) MPLJ
8. 2006 SCC OnLine Bom 82
9. 2024 S.C.C. OnLine SC 274

This Court made the following:

IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

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....Respondent/Complainant

DATE OF JUDGMENT PRONOUNCED: 26.06.2024

SUBMITTED FOR APPROVAL:**HON'BLE SRI JUSTICE T. MALLIKARJUNA RAO**

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? Yes/No
2. Whether the copies of order may be marked to Law Reporters/Journals? Yes/No
3. Whether Your Lordships wish to see the fair copy of the order? Yes/No

JUSTICE T.MALLIKARJUNA RAO

APHC010243192024



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3369]

WEDNESDAY, THE TWENTY SIXTH DAY OF JUNE
TWO THOUSAND AND TWENTY FOUR

PRESENT

THE HONOURABLE SRI JUSTICE T. MALLIKARJUNA RAO

CRIMINAL PETITION NO: 3775/2024

Between:

Pinnelli Ramakrishna Reddy,

...PETITIONER/ACCUSED

AND

The State Of Andhra Pradesh

...RESPONDENT/COMPLAINANT

Counsel for the Petitioner/accused:

1.RAMALAKSHMANA REDDY SANEPALLI

Counsel for the Respondent/complainant:

1.N ASHWANI KUMAR

2.PUBLIC PROSECUTOR (AP)

The Court made the following ORDER:

1. The petitioner/A. 1 has filed the Criminal Petition, as per Section 438 of the Code of Criminal Procedure, 1973, seeking anticipatory bail concerning Crime No.48 of 2024, registered at the Rentachinthala Police Station of Palnadu District.

2. A case has been registered against the Petitioner and others for the offences punishable under Section 143, 147, 448, 427, 353, 452, 120-B of Indian Penal Code, 1860 ("IPC) read with Section 149 of IPC and Section 3 of

Prevention of Damage to Public Property Act, 1984 ("PDPP Act") and Section 131 and 135 of The Representation of the People Act, 1951 ("R.P. Act").

3. In brief, the prosecution case is that on 13.05.2024, around 12:30 PM, at Paluvaigate Village, Rentachintala Mandal, Palnadu District, unidentified individuals entered Polling Booth Station No. 202 and vandalized an EVM (Electronic Voting Machine) and VVPAT (Voter Verifiable Paper Audit Trail) machine before fleeing the scene. Following this incident, on 22.05.2024, a Memo was submitted by the Sub-Inspector of Police, Rentachintala Police Station, to the Junior Civil Judge's Court, Gurazala. The Memo alleged that on 13.05.2024, A.1, A.2 and A.3 unlawfully entered Polling Station No. 202. They damaged the VVPAT machine, considered election equipment and government property. Before damaging the equipment, the accused engaged in a physical altercation with their adversaries at the polling station.

4. The learned counsel representing the Petitioner/A.1, argues that the Station House Officer, Rentachintala Police Station, filed a Memo nine days after the alleged incident, in which the Petitioner and two others were named as accused under several sections of the law. The learned counsel contends that opposition leaders orchestrated this delay to tarnish the Petitioner's reputation and implicate him in an electoral offence. It is alleged that the Investigation Officer was influenced to implicate the Petitioner unfairly. Furthermore, the learned counsel asserts that the Petitioner has filed a complaint against the Police Official involved, claiming that the allegations against him were concocted through deliberations and discussions. The filing of the Memo before the Court was characterized as belated and part of a design to keep the Petitioner away from the counting process and hinder his ability to appoint election agents. The learned counsel further contends that since the offences in question carry punishments below seven years, the procedures outlined in Section 41-A of the Cr.P.C., which deal with arrest procedures, should have been strictly followed.

Learned counsel emphasizes that the actions of the opposition party and the police indicate a clear intent to arrest the Petitioner, which would result in irreparable harm and injury to him.

5. The Respondent-State has submitted a counter, refuting all the allegations presented in the Petition. The contentions outlined in the Counter need not be reiterated, as they essentially mirror the report's content dated 13.05.2024. Additionally, the Counter asserts that the Petitioner holds the position of a Member of the Legislative Assembly and is currently contesting as an MLA candidate for the Macherla Assembly Constituency. It alleges that the Petitioner has been involved in violent activities and is the primary accused in the present case. Additionally, the Petitioner is claimed to command a group of ruthless associates. If he remains free to move publicly under these circumstances, it could jeopardize the lives of innocent people and create widespread panic in the villages. Moreover, the Counter asserts that the Petitioner is involved in 12 cases, indicating a pattern of alleged criminal behaviour.

6. Heard Sri T. Niranjan Reddy, learned Senior Counsel representing Sri Rama Lakshmana Reddy Sanepalli, learned counsel, for the Petitioner/A.1, and Sri N. Ashwani Kumar, learned Special counsel, representing the Respondent-State (vide G.O.Rt.No.577, dt.12.06.2024). Both sides reiterated their submissions on par with the contentions presented in the petition and Counter. Consequently, the contentions raised by learned counsel need not be reproduced.

7. In the common order of I.A.No.1 of 2024 in CrI.P.Nos.3788, 3789, 3790 of 2024 and I.A.No.1 of 2024 in CrI.P.No.3775 of 2024, this Court granted interim protection to the Petitioner, ensuring no coercive steps and no arrest until 06.06.2024 under specified conditions. Dissatisfied with the Court's order in CrI.P.Nos.3775 and 3788 of 2024, a Special Leave Petition (criminal) Diary No(s).25204 of 2024 and 25512 of 2024 were filed before the Hon'ble Apex

Court. After hearing arguments from the learned counsel representing both parties, the Hon'ble Apex Court passed an order prohibiting the Petitioner from entering the counting station at Macherla Assembly Constituency on 04.04.2024. Additionally, the Hon'ble Apex Court requested this Court to expeditiously dispose of the pending petitions based solely on their merits, without being uninfluenced by the Apex Court's order.

8. The parameters for granting anticipatory bail have been succinctly laid down in ***Siddharam Satlingappa Mhetre V. State of Maharashtra***¹, wherein the Hon'ble Apex Court has observed as follows:

“112. The following factors and parameters can be taken into consideration while dealing with anticipatory bail:

- “(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 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 more excellent care and caution because over-implication in the cases is a matter of common knowledge and concern;*
- (viii) While considering the prayer for the 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*

¹ (2011) 1 SCC 694

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; 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."

9. In ***Rakesh Baban Borhade V. State of Maharashtra and another***², the Hon'ble Apex Court observed that;

"Anticipatory bail not to be granted as a matter of rule but should be granted only when a case is made out and the Court is convinced that the accused would not misuse his liberty".

10. The learned counsel for the Petitioner relied on the decision of the Hon'ble Apex Court in ***Sushila Aggarwal V. State (N.C.T. of Delhi)***³, wherein it held that:

91.1. *it should enure in favour of the accused without any restriction on time. Normal conditions under Section 437(3) read with Section 438(2) should be imposed; if there are specific facts or features in regard to any offence, it is open for the court to impose any appropriate condition (including fixed nature of relief, or its being tied to an event), etc.*

91.2. *it is held that the life or duration of an anticipatory bail order does not end normally at the time and stage when the accused is summoned by the court, or when charges are framed, but can continue till the end of the trial. Again, if there are any special or peculiar features necessitating the court to limit the tenure of anticipatory bail, it is open for it to do so.*

11. As stated in ***Siddharam Satlingappa Mhetre*** (supra), the nature and gravity of the accusation and the exact role of the accused are the prime factors that must be considered while granting or refusing to grant anticipatory bail to the accused. The Prosecution has submitted a pen drive containing pertinent

² 2015 SAR (Criminal) 156

³ (2020) 5 S.C.C. 1

evidence related to the alleged offence and statements from witnesses gathered during the investigative process. In response, the learned counsel representing the Petitioner has raised objections regarding the authenticity and admissibility of the video clippings, citing the Prosecution's failure to clarify its source. Notably, it appears that the Election Commission of India has not disputed the authenticity of the visuals depicted in the video footage. At present, the matter remains in the investigative phase. Upon review of the CCTV footage, which spans 24 hours, this Court initially finds it unlikely that such videos could have been fabricated. Even otherwise, the statements recorded during the investigation also show that the alleged conduct of the Petitioner, an MLA, during the polling process is unacceptable. Prima facie the act of entering into a polling booth with others and trying to tamper with the electronic voting machine is a blatant assault on the democratic process. Such attributed behaviour, especially from a public representative, undermines public trust in electoral system. The Petitioner has served as a MLA, since 2009. He contested as an MLA, Macherla Assembly Constituency from YSR Congress party during the General Elections 2024. There is a prima facie indication that the Petitioner and others entered a polling station and that Petitioner specifically damaged a VVPAT (Voter Verifiable Paper Audit Trail) machine, crucial election equipment. When the polling agent attempted to resist such actions, the Petitioner appeared to make threatening gestures. This Court views that those entrusted with public office are expected to uphold exemplary standards of conduct. Regrettably, the actions attributed to the Petitioner are perceived to have fallen short of these expectations. When these accusations are made against the Petitioner, and if the Court grants anticipatory bail, there is a significant possibility of recurrence of such events. It could also send a wrong signal to the public, suggesting that the Court is overly liberal in granting anticipatory bail, even in the face of a blatant attack against the electoral system. It is crucial to ensure that the judicial process does not appear

to condone or tolerate such grave alleged misconduct, as it would erode public confidence in the justice system and the democratic process.

12. The Petitioner contends that as a contestant for MLA in the Macherla Constituency, he has raised objections regarding the biased conduct of police officers. He asserts that the allegations against him have been fabricated with malicious intent.

13. As per the records, the crime was initially registered on 15.05.2024, at 2:30 PM, while the incident occurred at 12:30 PM on 13.05.2024. A memo was filed identifying the Petitioner as the accused in this crime. The alleged offence occurred within a polling booth, where it is claimed that the Petitioner entered and committed the act. It is noted that polling officers, agents representing various parties, and police personnel stationed at the booth were expected to recognize the Petitioner upon entry. It is implied that without such recognition, his entry would have been challenged. Despite this awareness of the Petitioner's identity among polling staff, the report lodged on 15.03.2024, did not initially name the Petitioner as an accused MLA, despite the incident occurring on 13.05.2024. A prudent person might assess the rationale behind withholding the Petitioner's name as an accused in the initial report.

14. In this case, this Court does not find it appropriate to give significant weight to the delay in naming the Petitioner as an accused in the report nor to the timing of the report itself. These factors do not provide any advantage to the Petitioner's case. Moreover, the Petition does not extend to assessing the Election Commissioner of India's authority to issue directives for the Petitioner's arrest in the specific circumstances presented. If the Petitioner intends to contest the validity of such a directive, he should have pursued legal remedies according to the established procedures. Under no circumstances can the Election Commissioner's directive be considered a favourable basis for granting anticipatory bail to the Petitioner.

15. The learned counsel representing the Petitioner argues that all the offences for which the FIR was initially registered and subsequently added under a memo filed on 22.05.2024, carry punishments below seven years, necessitating strict adherence to the procedures outlined in Section 41A of Cr.P.C. According to the learned counsel, the Station House Officer has disregarded the guidelines set forth by the Hon'ble Supreme Court in the case of **Arnesh Kumar V. The State of Bihar**⁴ by actively pursuing the Petitioner's arrest.

16. The learned counsel for the Petitioner relied on the decision of the Hon'ble Apex Court in **Mohd. Asfak Alam V. State of Jharkhand**⁵, wherein a reference was made to **Arnesh Kumar V. State of Bihar** (*supra*) and observed as follows:

“11. Our endeavour in this judgment is to ensure that police officers do not arrest the accused unnecessarily and Magistrates do not authorise detention casually and mechanically. In order to ensure what we have observed above, we give the following directions:

11.1. All the State Governments to instruct its police officers not to automatically arrest when a case under Section 498-AIPC is registered but to satisfy themselves about the necessity for arrest under the parameters laid down above flowing from Section 41CrPC;

11.2. All police officers be provided with a checklist containing specified sub-clauses under Section 41(1)(b)(ii);

11.3. The police officer shall forward the checklist duly filled and furnish the reasons and materials which necessitated the arrest, while forwarding/producing the accused before the Magistrate for further detention;

11.4. The Magistrate while authorising detention of the accused shall peruse the report furnished by the police officer in terms aforesaid and only after recording its satisfaction, the Magistrate will authorise detention;

11.5. The decision not to arrest an accused, be forwarded to the Magistrate within two weeks from the date of the institution of the case with a copy to the Magistrate which may be extended by the Superintendent of Police of the district for the reasons to be recorded in writing;

⁴ (2014) 8 SCC 273

⁵ (2023) 8 SCC 632

11.6. *Notice of appearance in terms of Section 41-ACrPC be served on the accused within two weeks from the date of institution of the case, which may be extended by the Superintendent of Police of the district for the reasons to be recorded in writing;*

11.7. *Failure to comply with the directions aforesaid shall apart from rendering the police officers concerned liable for departmental action, they shall also be liable to be punished for contempt of court to be instituted before the High Court having territorial jurisdiction.*

11.8. *Authorising detention without recording reasons as aforesaid by the Judicial Magistrate concerned shall be liable for departmental action by the appropriate High Court.*

12. *We hasten to add that the directions aforesaid shall not only apply to the cases under Section 498-AIPC or Section 4 of the Dowry Prohibition Act, the case in hand, but also such cases where offence is punishable with imprisonment for a term which may be less than seven years or which may extend to seven years, whether with or without fine.”*

17. The learned counsel for the Petitioner further relied on the decision in **Arnesh kumar V. State of Bihar** (supra), wherein the Hon'ble Court observed that:

5. *Arrest brings humiliation, curtails freedom and casts scars forever. Lawmakers know it so also the police. There is a battle between the lawmakers and the police and it seems that the police has not learnt its lesson : the lesson implicit and embodied in CrPC. It has not come out of its colonial image despite six decades of Independence, it is largely considered as a tool of harassment, oppression and surely not considered a friend of public. The need for caution in exercising the drastic power of arrest has been emphasised time and again by the courts but has not yielded desired result. Power to arrest greatly contributes to its arrogance so also the failure of the Magistracy to check it. Not only this, the power of arrest is one of the lucrative sources of police corruption. The attitude to arrest first and then proceed with the rest is despicable. It has become a handy tool to the police officers who lack sensitivity or act with oblique motive.*

6.....no arrest should be made only because the offence is non-bailable and cognizable and therefore, lawful for the police officers to do so. The existence of the power to arrest is one thing, the justification for the exercise of it is quite another. Apart from the power to arrest, the police officers must be able to justify the reasons thereof. No arrest can be made in a routine manner on a mere allegation of commission of an offence made

against a person. It would be prudent and wise for a police officer that no arrest is made without a reasonable satisfaction reached after some investigation as to the genuineness of the allegation.....

7.1.it is evident that a person accused of an offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years with or without fine, cannot be arrested by the police officer only on his satisfaction that such person had committed the offence punishable as aforesaid. A police officer before arrest, in such cases has to be further satisfied that such arrest is necessary to prevent such person from committing any further offence; or for proper investigation of the case; or to prevent the accused from causing the evidence of the offence to disappear; or tampering with such evidence in any manner; or to prevent such person from making any inducement, threat or promise to a witness so as to dissuade him from disclosing such facts to the court or the police officer; or unless such accused person is arrested, his presence in the court whenever required cannot be ensured. These are the conclusions, which one may reach based on facts.

7.3. In pith and core, the police officer before arrest must put a question to himself, why arrest? Is it really required? What purpose it will serve? What object it will achieve? It is only after these questions are addressed and one or the other conditions as enumerated above is satisfied, the power of arrest needs to be exercised. In fine, before arrest first the police officers should have reason to believe on the basis of information and material that the accused has committed the offence. Apart from this, the police officer has to be satisfied further that the arrest is necessary for one or the more purposes envisaged by sub-clauses (a) to (e) of clause (1) of Section 41 CrPC.

9. Another provision i.e. Section 41-A CrPC aimed to avoid unnecessary arrest or threat of arrest looming large on the accused requires to be vitalised. Section 41-A as inserted by Section 6 of the Code of Criminal Procedure (Amendment) Act, 2008 (5 of 2009), which is relevant in the context reads as follows:

“41-A. Notice of appearance before police officer.—(1) The police officer shall, in all cases where the arrest of a person is not required under the provisions of sub-section (1) of Section 41, issue a notice directing the person against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence, to appear before him or at such other place as may be specified in the notice.

(2) Where such a notice is issued to any person, it shall be the duty of that person to comply with the terms of the notice.

(3) Where such person complies and continues to comply with the notice, he shall not be arrested in respect of the offence referred to in the notice unless, for reasons to be recorded, the police officer is of the opinion that he ought to be arrested.

(4) Where such person, at any time, fails to comply with the terms of the notice or is unwilling to identify himself, the police officer may, subject to such orders as may have been passed by a competent court in this behalf, arrest him for the offence mentioned in the notice.”

The aforesaid provision makes it clear that in all cases where the arrest of a person is not required under Section 41(1) CrPC, the police officer is required to issue notice directing the accused to appear before him at a specified place and time. Law obliges such an accused to appear before the police officer and it further mandates that if such an accused complies with the terms of notice he shall not be arrested, unless for reasons to be recorded, the police officer is of the opinion that the arrest is necessary. At this stage also, the condition precedent for arrest as envisaged under Section 41 CrPC has to be complied and shall be subject to the same scrutiny by the Magistrate as aforesaid.

18. In **Satender Kumar Antil V. CBI**⁶, while giving certain guidelines to consider the bail applications, the Hon’ble Apex Court observed that:

5.The caveat which has been put by the learned ASG is that where the accused have not cooperated in the investigation nor appeared before the investigating officers, nor answered summons when the court feels that judicial custody of the accused is necessary for the completion of the trial, where further investigation including a possible recovery is needed, the aforesaid approach cannot give them benefit, something we agree with.

19. The learned Public Prosecutor, representing Respondent-State asserts that the procedural guidelines outlined in Section 41A of Cr.P.C., cannot be mandated as compulsory. He argues that it is within the discretion of police authorities to determine whether to adhere to Section 41A of Cr.P.C., or proceed under Section 41(1)(b) of Cr.P.C. Furthermore, he contends that issuing directives to enforce specific procedural steps would infringe upon the autonomy

⁶ (2021) 10 SCC 773

of police officers in conducting their investigations. According to him, such directives would amount to undue interference in the investigative process. He emphasizes that the Court should exercise restraint and refrain from dictating operational procedures to law enforcement agencies.

20. While considering the similar submissions in ***W.P. No.3848 of 2020***, this Court passed an order ***dated 28.04.2020***, observing that *even in the case of Arnesh Kumar (3 supra), the Hon'ble Supreme Court of India has spelt out how the Power under Section 41 (1) (b) and 41-A of Cr.P.C. are to be exercised. The Hon'ble Supreme Court of India, after considering Section 41 (1) Cr.P.C., noted that in all cases where the arrest of a person is not required, the Police Officer should issue a notice directing the accused to appear before him at a specified place and time. This Court concurs with the submission of the learned Government Pleader that the discretion to arrest or not to arrest a person and, after that, to follow Section 41-A of Cr.P.C. is solely vested in the Investigating Officer. This Court cannot compel the police to act based on 41-A Cr.P.C. as a matter of right. In this Court's opinion, the discretion should be left to the officer concerned to arrest or not to arrest.*

21. In consideration of the preceding arguments and established case law, the fact that the offences prima facie alleged against the Petitioner carry punishments of seven years or less under the law does not automatically entitle the Petitioner to a notice under Section 41A of Cr.P.C. The decision whether to follow the procedure outlined in Section 41A or to proceed with immediate arrest under Section 41(1)(b) of Cr.P.C., rests solely within the discretion of the investigating officer. It is well-settled that the authority to arrest or refrain from arresting an accused person lies with the investigating officer, however, he must exercise this discretion judiciously. Therefore, the decision to issue a notice under Section 41A of Cr.P.C., is a matter for the investigating officer to determine based on the circumstances of the case.

22. A perusal of the parameters for granting anticipatory bail laid down by the Hon'ble Apex Court shows that the Court must consider the seriousness of the offence, the likelihood of the Petitioner's absconding from justice, the antecedents of the accused and chances of the Petitioner tampering with evidence or threatening the witnesses.

23. The learned counsel representing the Respondent-State asserts that the Petitioner is a habitual offender involved in 11 cases, including two similar offences. The Prosecution has provided details of these cases, which are outlined below:

Sl. No.	Crime Number	Offences	Police Station
1.	Cr. No.64 of 2009	341, 324, 506 r/w 34 of IPC	Rentachintala
2.	Cr. No.78 of 2014	147, 148, 324, 506 r/w 149 of IPC	Veldurthy
3.	Cr. No.34 of 2017	147, 148, 324, 302 r/w 149, 120B of IPC	Veldurthy
4.	Cr.No.97 of 2014	188, 341, 283 of IPC	Karempudi
5.	Cr. No.75 of 2014	147, 148, 307, 324, 354, 427 r/w 149 of IPC, Section 3(1)(x) of SC/ST (POA) Act & Section 3 of E.S. Act	Machavaram
6.	Cr. No.252 of 2015	143, 341, 188 r/w 149 of IPC	Macherla Town
7.	Cr. No.125 of 2018	147, 148, 427, 307 r/w 149, 188 of IPC, section 32 of P.A. Act, 1861, section 132(1) of R.P.Act	Macherla Town
8.	Cr. No.92 of 2019	143, 188 of IPC, Section 32 of P.A. Act, 1861, section 131(1)(A) of R.P.Act	Macherla Town
9.	Cr.No.331 of 2018	143, 341, 188 r/w 149 of IPC	Gurazala Town
10.	Cr. No.52 of 2024	506, 509 of IPC & Section 131 (2) of R.P.Act	Rentachintala
11.	Cr. No.53 of 2024	143, 147, 148, 307, 324 r/w 149 of IPC and section 131(2) of R.P.Act	Rentachintala

24. As per the G.O.Rt.No.577 Home (Courts.A) Department, dt.12.06.2024, the Andhra Pradesh State Government has appointed Sri N. Ashwani Kumar, learned counsel as Special Counsel to appear before the High Court in certain

cases of Macherla Assembly Constituency incidents involving the serious and grave violation of Model Code of Conduct. The learned Senior Counsel representing the Petitioner made submissions regarding the appointment of Special Counsel in this case. It is not the Petitioner's case that the Government is not empowered to appoint Special Counsel on behalf Defacto Complainant/State.

25. Learned counsel for the petitioner has relied on a decision reported in **Paras Kumar Jain and another vs. State of M.P. and others**⁷, wherein the Madhya Pradesh High Court, observed in Para 16, which reads as under:

“16. Thus the position in law is settled that while appointing a Special Public Prosecutor the State is required to apply its mind on the relevant aspects of the matter and see that only a fair and impartial advocate is appointed as Special Public Prosecutor. If an advocate has appeared on behalf of the complainant in earlier proceedings, then this aspect needs consideration by the State while appointing him as Special Public Prosecutor. The appointment of the Special Public Prosecutor cannot be made in a mechanical manner on mere asking by the complainant. It is the responsibility of the State to ensure the fair trial and see that the advocate appointed as Special Public Prosecutor, acts in non prejudicial manner.”

26. The learned Special Counsel for the Respondent, relied on a decision reported in **Sri Omprakash Baheti and others vs. The State of Maharashtra**⁸, wherein the High Court of Bombay held that:

“18. xxx The records disclose that there has been application of mind by respondent no. 1 before appointing Advocate Gupta as Special Public Prosecutor and therefore, it cannot be said that respondent no. 1 has appointed Advocate Gupta as Special Public Prosecutor mechanically at the request of the complainant.”

27. The petitioner does not argue that the State Government failed to follow proper procedures when appointing Sri N. Ashwani Kumar, as Special Counsel, nor has the petitioner challenged these proceedings. Furthermore, the petitioner

⁷ 2012(3) MPLJ

⁸ 2006 SCC OnLine Bom 82

does not claim that the appointment of Sri N. Ashwani Kumar as Special Counsel has caused any prejudice to him.

28. In light of these facts, this Court finds that the petitioner's submission regarding the appointment of Sri N. Ashwani Kumar as Special Counsel is not significantly relevant to the disposal of the current application.

29. The learned counsel for the Petitioner argues that custodial interrogation is unnecessary, citing the Prosecution's assertion that it has gathered all pertinent evidence demonstrating the Petitioner's involvement in the offence. Furthermore, the Prosecution has not argued for the necessity of the Petitioner's custodial interrogation.

30. In *Ashok Kumar V. State of Union Territory Chandigarh*⁹, the Hon'ble Apex Court held that:

12. There is no gainsaying that custodial interrogation is one of the effective modes of investigating the alleged crime. It is equally true that just because custodial interrogation is not required that by itself may also not be a ground to release an accused on anticipatory bail if the offences are of a severe nature. However, a mere assertion on the part of the State while opposing the plea for anticipatory bail that custodial interrogation is required would not be sufficient. The State would have to show or indicate more than prima facie why the custodial interrogation of the accused is required for investigation.

31. This Court views that the investigating officer deserves a free hand to take the investigation to its logical conclusion in a case containing severe allegations.

32. With regard to the Prosecution's case, the investigation remains incomplete. Granting anticipatory bail to the Petitioner could potentially hinder the ongoing investigation. There is a concern regarding threats to witnesses, and a prima facie case implicating the Petitioner in a serious offence exists. The

⁹ 2024 S.C.C. OnLine SC 274

allegations are severe, and the investigating agency has not yet been able to interrogate the Accused/Petitioner.

33. The established legal principle is that anticipatory bail is not granted as a matter of routine; it should only be provided when the Court is convinced that exceptional circumstances warrant such an extraordinary remedy.

34. The Prosecution is concerned that the Petitioner, having cultivated a strong grassroots following across every village and town over his four consecutive terms as MLA, poses a risk if released on bail as there is a severe apprehension that he may influence his followers and associates to seek retribution against the witnesses or the victim. Additionally, the Prosecution has presented matters that the Petitioner allegedly assaulted Namburi Seshagiri Rao, an agent of the TDP, in continuation of the incident in question, prompting the filing of a criminal case against him.

35. The Petitioner is shown to be involved in multiple cases, making his antecedents a crucial factor to consider when deciding on an application for anticipatory bail. The investigation concerning the Petitioner is ongoing. Before the Order was issued on 23.05.2024 in this Petition, the Petitioner evaded arrest, raising concerns about his potential to threaten the complainant or tamper with evidence.

36. Considering all the attending facts and circumstances of the case as well as the gravity of the offence, as also the settled principle of law that power of grant of bail under Section 438 Cr.P.C., is to be sparingly exercised in extraordinary circumstances and thus, no such circumstances being having been made out in this case, this Court does not find it a proper case for granting the relief of anticipatory bail to the Petitioners/Accused.

37. As a result, the Petition is ***dismissed***.

38. It is explicitly clarified that the observations made in this Order are preliminary and pertain solely to the decision on the present application without indicating a stance on the case's merits.

Pending miscellaneous applications, if any, shall stand closed.

JUSTICE T. MALLIKARJUNA RAO

Date: 26.06.2024
MS / SAK

THE HONOURABLE SRI JUSTICE T. MALLIKARJUNA RAO

Criminal Petition No.3775 of 2024

Date: 26.06.2024

MS