

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CRIMINAL PETITION NO.3510 of 2015

ORDER :

The petitioner, who is A-1, preferred the present application under Section 438 Cr.P.C., seeking release in the event of his arrest in Crime No.66 of 2015 of Bahadurpura Police Station, Hyderabad, registered for the offence punishable under Sections 147, 148, 302, 201, 212 read with 149 and 120-B IPC and under Section 25(1)(b) of the Indian Arms Act.

The case of prosecution is as under :

On 16.03.2015 at about 9.00 a.m., the Inspector of Police, Bahadurpura P.S., Hyderabad, received a report from Sri Syed Hyder Hussain stating that on that day at about 7.00 a.m., he received a phone call from a Cell No.8801943937 (Mohsin) wherein he was informed that one Asad Bhai has been murdered near state Kanta, Mir Alam lake road. Immediately, he rushed to the spot and found his brother Syed Nisar Hussain @ Asad was lying in a pool of blood and was dead. His head was badly cut and injuries were noticed on left hand, and right thumb finger was also severed. According to him about 15 days back Wadood, Ibrahim and others stopped the deceased at Tadbun x road and discussed on some matter and he noticed his brother abusing Ibrahim. It is alleged that his brother left the place informed the informant about the incident. Hence, he doubts the participation of one Murtuza, who is a Rowdy sheeter of Rajendra nagar P.S., and Wadood, Ibrahim and Hameed as responsible for that incident, as his brother was having enmity with them. Basing on the report a case in Crime No.66 of 2015 came to be registered by L.W.17. Since this being a grave offence, the investigation was immediately handedover to L.W.18.

Learned counsel for the petitioner submits that even accepting the allegations in the report to be true, no offence is made out against the petitioner. According to him, that the informant who gave the report is not an eyewitness to the incident and his suspicion was against the persons who are not shown as accused in the remand report of other accused. He further submits that even otherwise the entire case is based on the confession of A-2, which is inadmissible in evidence.

Learned Public Prosecutor opposed the application contending that the case is still

at the stage of investigation and it is pre-matured to say that there is no material against the petitioner. He submits that at this stage the Court cannot ignore the confession of A-2 and the relevancy of confession of an accused while dealing with an application for anticipatory bail is no more res-integra in view of the judgment of the Apex Court in ***State through C.B.I. V. Amarmani Tripathy*** wherein it is held that the confession of co-accused can also be a basis for holding *prima facie* accusation against the accused for negating bail in rejecting the contention contra.

The material on record reveal that while the investigation was in progress, on a reliable information, L.Ws.13 to 16 proceeded to the farm house bearing No. 7-45, situated at Chetanpally, Farooqnagar Mandal, Shadnagar, Mahaboobnagar District which belongs to A-8. While entering into the premises, the police task force south zone team also joined in the operation. On entering the farm house they found some persons lying on the ground in a room and taking rest. On seeing the police, the accused persons present there tried to escape but the police managed to stop them and questioned about their presence and purpose. Initially they hesitated to give reply but on questioning with regard to murder of Asad they surrendered themselves and confessed about the commission of offence. During the course of interrogation A-2 is alleged to have stated that he started real estate business where he met A-1 who was a rowdy-heeter of Rajendra Nagar P.S., and developed friendship with him. It is stated by him that he used to settled disputes relating to properties and also involved in number of offences, which are grave in nature, like Murder, attempt to murder and land grabbing cases. He became a very close associate of A-1 and used to assist him in all sorts of his criminal activities. In the year 2010 he involved himself in the Murder case of one Jaffer, who killed Haji Pahalwan (who is an associate of Murtuza Pahalwan) and ultimately the case ended in acquittal in 2013. From that day A-2 thought that he can get away from the legal process with the blessings of A-1. Since January 2014 he was planning to eliminate Asad brother of Hyder and Jaffer who is a great planner and financial supporter of Hyder. He was under the impression that if he eliminates Asad, the gang of Hyder will become financially weak. He discussed about his plan with A-1 and Chandru Kaka (A-7). But A-1 told him that he was trying to contest in general elections 2014 and asked him to wait for some time. After elections, he met A-1 and discussed the plan regarding elimination of deceased. Meanwhile, A-2 got information from his mother-in-law that Asad was making plans to eliminate him and advised him to be safe. Pursuant to which, he decided to do away the life of Asad and discussed plan with A-1 who took

keen interest in preparing the plan. In fact, even A-1 has grouse against the deceased as he threatened him in the year 2013.

Accordingly, A-2, A-6 and A-7 chalked out a plan to eliminate the deceased. In order to eliminate him, a plan was prepared with the help of A-1, A-6 and others and A-2 was asked to collect close friends to execute the plan. A-1 is alleged to have paid a sum of Rs.10,000/- for purchasing daggers, knives etc. Later A-2 contacted his friends i.e., Shaik Wahed Ali (A-3), Vamshi Krishna Goud (A-4), Mukesh @ Irfan (A-5) and put the plan before them and they agreed to assist and execute the plan. Then A-2 and A-3 went to Nanded of Maharashtra State and brought four swords and three sickles and hide them in a house bearing No.5-5-108/12 at Manikyamma Nagar, Opp: Sub Registrar Office, Rajender Nagar, Cyberabad, which was taken by A-1 on an agreement by paying token amount. A-2 keep the keys with him and inform the same to his friends about the execution of plan and said that after executing the plan a handsome amount will be paid. On 16.03.2015 around 5.00 a.m., A-2 called A-9 and A-10 over phone and informed them to go to Tadban X roads to watch the movements of their target. Meanwhile, A-2 along with his friends A-3, A-4, A-5, A-12, A-13, A-14, A-15 and A-16 started from Manikyamma Nagar, Rajendranger to Hassan Nagar on five bikes and one Auto. A-2 kept a black bag containing 8 weapons in the Auto of A-14. As per the plan at around 6.30 a.m., A-9 called A-2 and informed that the target came to Tadban x roads labour adda and spent some time with somebody and then started towards Hassan Nagar in his red colour Pulsar bike. Immediately they all started moving in opposite road and took U turn behind the target's bike. At first A-13 tried to stop the vehicle of target by putting his vehicle across his bike, but somehow the target escaped and started moving in a great speed. Then A-2 shouted at A-5 to dash the target's vehicle. A-5 drove his vehicle towards the target and dashed his vehicle due to which the target fell down on the road near State Weigh Bridge (State Kanta), Hassan Nagar. Immediately within no time they took out the bag from Auto, picked up swords and knives from the Bag. First A-3 hit the deceased with sword, then A-2 start to inflict injuries with one more sword, A-4 and A-5 also hit the deceased with swords on his head and face, due to which he became motionless. Then A-2 sat behind him and cut his throat with his sword. A-15, A-16, A-11 were guarding and watching the commission of offence. Due to multiple injuries the deceased was collapsed and then all the accused escaped from there. After execution of the plan successfully, A-2 informed A-1 about

the completion of the work and as per his instructions, they all went to Shamshabad where they met A-6, who took them to the Farm House of M.A.Razak Hussain (A-8) at Chetanpally village, Shaadnagar, Mahabubnagar District. A-2 removed his pant and shirt and gave them to A-4 with a direction to burn them. Meanwhile, the other friends cleaned the blood soaked swords in the water. After one hour A-1 and A-7 came there and asked about the details of the offence. Thereafter, A-8 also came there and participated in the discussion. A-1 also advised them to stay for some days till the situation become normal and also promised to arrange all the legal facilities and while moving from there A-1 gave Rs.10,000/- to A-2 for expenses. On 19.03.2015 at 9.00 p.m., police surrounded them and apprehended and after recording the confession of A-2, the police seized the weapons, vehicles and cell phones used in commission of the offence.

From the remand report, which is based on the confession of A-2, it is clear that though A-1 did not actually participate on the attack of the deceased but his name finds place in the First Information Report and he was also a member of the group who planned the attack on the deceased. Apart from that, the confession of A-2 reveals the role played by A-1 at every stage of the incident. Prior to the incident A-1 along with A-6 discussed with A-2, prepared a plan of eliminating the deceased. Thereafter A-1 gave some money to A-2 for purchasing weapons. After killing the deceased, A-2 immediately contacted A-1 about the completion of the work and as per his instructions went and met A-6 who is also a close confidant of A-1. Then A-6 took them to Shadnagar highway and from there to the farm house of A-8. Thereafter while they were in the farm house A-1 and A-6 came there and met them. In fact A-1 advised them to stay in the farm house for some days along with his friends till the situation becomes normal and also promised to arrange all legal facilities within two days. While moving from that place A-1 called A-2 and gave Rs.10,000/- towards expenses. From the above, it is clear that A-1 and A-6 actually played an active role in executing the plan. In fact it is clear that the plan to eliminate the deceased was prepared by A-2 in consultation with A-1 and A-6. This being a grave offence and as the investigation is still at its inception, I am not inclined to grant anticipatory bail to A-1.

Accordingly, criminal petition is dismissed.

JUSTICE C. PRAVEEN KUMAR

Dt:27.04.2015

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