

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CRIMINAL PETITION No. 1819 of 2015

ORDER :

The petitioner, who is accused No.1 in P.R.C.No.44 of 2006 on the file of III Metropolitan Magistrate, Visakhapatnam, filed the present application under Section 438 Cr.P.C. seeking release in the event of his arrest in connection with the above proceedings. A charge sheet came to be filed against the petitioner and others for the offences punishable under Sections 302, 120-B IPC and Sections 25 & 27 of the Arms Act.

The allegations in the charge sheet are as under:

A.1 who hails from Ranchi in Jharkand State is alleged to have been running a mafia with his associates with headquarters at Kokalta. A.2 and A.3 are his close associates, while A.4 to A.6 are the residents of Kolar, Ranchi, Jharkand State. A.7 is a resident of Vijayawada while A.8 to A.11 are residents of Visakhapatnam and they are all scrap iron traders.

On 29.06.2006 at about 9.30 a.m. two unknown persons came on a numberless black colour Yamaha Motor cycle near to a building belonging to the deceased by name Samudrala Satyanarayana @ Baburao, who was a scrap iron merchant and resident of Old Karasa, Visakhapatnam. Immediately after reaching the spot, the pillion rider is alleged to have opened fire with a firearm against the deceased and thereafter both of them fled away from the scene on the same motor cycle threatening the local inhabitants on point of gun. The deceased fell down with bleeding injuries and when he was taken to Seven Hills Hospital for treatment, he was declared 'brought dead'. On the strength of a report given by L.W.1, a case in crime No.333 of 2006 of Kancharapalem Police Station, Visakhapatnam City came to be registered for the offences punishable under Sections 302, 120-B IPC and Sections 25 & 27 of the Arms Act. During the course of investigation, the police seized three empty bullet shells, blood stained earth and control earth from the scene of offence. After collecting all the relevant documents and also effecting the arrest of some of the accused, the police filed charge sheet showing the petitioner

and some others as absconding. The said case was taken on file as P.R.C.No. 43 of 2006 on the file of III Metropolitan Magistrate, Visakhapatnam. As the petitioner and some others were absconding, the learned Magistrate issued non-bailable warrants against them. Since non-bailable warrants could not be executed, the learned Magistrate separated the case against the petitioner and A.2 & A.3 as P.R.C.No.44 of 2006 and committed the case in so far as the other accused which came to be numbered as S.C.No.52 of 2007 on the file of the I Additional Metropolitan Sessions Judge at Visakhapatnam.

Learned counsel for the petitioner submits that even accepting the allegations in the charge sheet to be true, no offence is made out against the petitioner. According to him, there is no material to connect the petitioner with the crime. Relying upon the judgment dated 07.03.2014 passed in S.C.No.52 of 2007, learned counsel for the petitioner submits that since all the other accused, who faced trial, were acquitted, the petitioner deserves grant of anticipatory bail.

Learned Public Prosecutor strenuously opposed the application contending that the petitioner is the leader of a mafia operating from Kolkata. According to him, though the petitioner is lodged in Sitamarhi Mandal Kara Jail, Sitamarhi District, Bihar, the PT warrant dated 25.06.2014 could not be executed till date due to non-cooperation of the officials and authorities in the said State. He further submits that at present, the petitioner is lodged in Buxer jail and the State is taking all steps to serve the PT warrant. Learned Public Prosecutor, on instructions, submits that as many as 25 cases are pending against the petitioner in different places and if he is granted anticipatory bail in this crime, there is every likelihood of he evading the process of law. In view of the above, he submits that the petitioner is not entitled for any relief.

A perusal of the material placed before the Court would disclose that as on today, the petitioner is lodged in Buxer jail in connection with some crimes registered against him.

The allegations in the charge would disclose that the petitioner is the kingpin of the entire transaction and the offence was committed at his instance. The confession of A.4 to A.6 would show that they were deployed by A.1 and A.2 to

collect goonda tax from the scrap iron traders of Visakhapatnam, Vijayawada and Hyderabad. In pursuance of the confession made by A.4 to A.6, the Inspector of Police along with his staff proceeded to Akkayyapalem, Visakhapatnam and seized Yamaha motor cycle bearing registration No.AP 31 3257 used by A.1 and A.2 in the offence and purchased by A.3 and A.4 on 01.05.2006 in the name of one S.Mahesh.

As stated earlier, A.4 to A.11 faced trial in S.C.No.52 of 2007 on the file of the I Additional Metropolitan Sessions Judge at Visakhapatnam for various charges, and since most of the witnesses turned hostile, they were acquitted. In fact, the witnesses were examined only to speak to the complicity of A.4 to A.11 in the commission of the offence. Since A.1 to A.3 were not before the Court, the prosecution might not have lead any evidence to show the culpability of the petitioner in the crime. Be that as it may, the statement of P.W.4, who is the daughter of the deceased, would show that on 29.06.2006 i.e., about two years prior to the date of incident while she was at her house, received a phone call from a person by name Amit Singh (petitioner herein) from Kolkata who threatened to kill her father. On an enquiry made, her father is said to have informed her that the person who made the said phone call, was demanding him to pay Rs.200/- per ton towards his commission. In cross-examination, she states, she was not aware of the business dealings of his father and A.7 to A.11 who used to come to her father. The evidentiary value of the admissions in the cross-examination of P.W.4 has to be tested only during trial. Therefore, it cannot be said that there is no material against the petitioner.

The issue as to the relevancy of previous judgment with regard to acquittal of co-accused rendered in earlier trial arising out of same transaction is no more *res integra* in view of the judgment of the Apex Court in ***Rajan Rai Vs. State of Bihar***. In the said case the Apex Court while referring to Sections 40 to 44 of the Evidence Act held that earlier judgment of the acquittal rendered by the Sessions Court in the trial of other accused is irrelevant in the case of present accused who were tried separately. The Apex Court held that the said judgment is not admissible under Sections 40 to 44 of the Evidence Act. It has been held that each case has to be decided on the basis of evidence adduced during the trial of that case. Therefore,

the argument of the learned counsel for the petitioner that acquittal of co-accused entitles the petitioner for anticipatory bail cannot be accepted.

Apart from the evidence which was adduced during the course of trial, the conduct of the petitioner assumes significance in a case of this nature. As represented by the learned Public Prosecutor, the petitioner is involved in 25 cases in different states. The case against the petitioner and A.2 & A.3 could not be tried, since PT warrants issued against the petitioner could not be executed in spite of best efforts of the police at Visakhapatnam though the petitioner is in jail. In fact, the material on record discloses that the police at Visakhapatnam contacted the Deputy Superintendent of Police, Inspector of Police, Public Prosecutor, District Collector of Sitamarhi District of Bihar State, requesting them to oppose the bail applications filed by the petitioner.

Having regard to the circumstances stated above and taking into consideration the conduct of the petitioner in not attending the Court since 2006 and having regard to the gravity of the offence, I am not inclined to grant anticipatory bail to the petitioner.

Accordingly, the Criminal Petition is dismissed.

JUSTICE C. PRAVEEN KUMAR

23rd March, 2015

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THE HONOURABLE SRI JUSTICE C. PRAVEEN KUMAR

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