

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CRIMINAL PETITION No. 1585 of 2015

ORDER :

The petitioner, who is accused No.1, filed the present application under Sections 437 and 439 Cr.P.C. seeking release in P.R.C.No.24 of 2014 on the file of Judicial Magistrate of First Class at Achampet, Mahabubnagar District. A charge sheet came to be filed against the petitioner and others for the offences punishable under Sections 376 and 302 IPC.

The gist of the averments in the charge sheet is as under:

L.W.1 is the elder brother of the deceased while L.W.3 is the daughter of the deceased. The deceased by name Soudamoni Bakkamma and A.2 and A.3 are agnates and belong to same community. A.1 belongs to B.C. (Ediga community). The deceased married one Thirupataiah and, out of wedlock, they were blessed with one male and two female children. Later, Thirupataiah died due to snakebite. During the life time of Thirupataiah, all his family members divided their property. It may be noted here that A.2 and the husband of A.3 are the younger brothers of husband of the deceased. It is alleged that after the death of her husband, the deceased developed illegal contacts with A.1 and some others including the husband of A.3. A.2 and A.3 proposed to sell their lands including that of the deceased, but the deceased was not agreeing for the same. A.3 was also

having a grouse against the deceased, as the deceased caused loss to her conjugal life by developing intimacy with her husband. A.1 also developed grudge against the deceased, as she was having illicit intimacy with others in the village. In order to get rid of the deceased, A.1 to A.3 conspired to kill her. Accordingly, on 15.03.2012 A.1 to A.3 moved freely with the deceased and enjoyed by taking drinks and food. On the same day at mid night A.1 to A.3 went to the house of the deceased, knocked the door and when the deceased opened the door, A.1 entered the house while A.2 and A.3 stood in front of the house. A.1 is alleged to have taken the deceased to a mango garden abutting her house along with A.2 and A.3 where they fell her on ground. Then A.1 is alleged to have committed rape on her, while A.2 caught hold of her hands and closed her mouth. A.3 is alleged to have caught hold of her legs. It is further alleged that A.1 tortured the deceased by inserting a bamboo stick in her vagina and then killed her by strangulating. Thereafter, they threw the body of the deceased in her bathroom.

The learned counsel for the petitioner mainly submits that a perusal of the averments in the charge sheet would show there are no witnesses to the incident. According to him, L.W.3, who is the daughter of the deceased, did not refer the names of the petitioners in her statement. In the absence of any material connecting the petitioner with the crime, he submits that the petitioner is entitled for bail more

so when he is in jail from 11.10.2014. The learned counsel further submits that having regard to the character of the deceased, no credence can be given to the case of the prosecution.

The learned Public Prosecutor opposed the application contending that the offences alleged are serious and grievous in nature and in a case of this nature, no indulgence be shown. He further submits that there is every likelihood of petitioner tampering with the evidence if he is released on bail.

The issue as to whether the petitioner is entitled for bail, having regard to the character and conduct of the deceased came up for consideration in ***Narendra K.Amin (Dr.) Vs. State of Gujarat and another***^[1]. In the said case, the Apex Court set aside the findings of the trial Court in releasing the accused on bail on the ground that Sohrabuddin, husband of Kausarbi, had shady reputation and criminal antecedents. The Apex Court held that shady reputation and criminal antecedents shall not be a factor which has to be considered while granting bail and only the nature of acts ought to be considered. Though it has been held by the Apex Court that pre-trial conviction should normally be avoided, but at the same time the Court also held that gravity of the offence and its impact on the Society also should be taken into consideration while dealing with an application for bail. Though the learned counsel for the

petitioner tried to contend that there is no material connecting the petitioner with the crime, the same in my view appears to be incorrect.

A perusal of the case diary would show that during the course of investigation, the Investigating Officer suspecting the involvement of nine persons produced all of them before the FSL, Hyderabad, with a request to (a) collect blood samples from them, (b) extract the DNA profile, (c) compare with seminal stains found on item Nos.1, 2, 4 and 5 shown in FSL report file No.SER/304/2012, dated 23.06.2012 and (d) furnish a report. The Assistant Director, FSL, Hyderabad, in turn, sent a report dated 08.05.2014 wherein it is observed as under:

"The Autosomal STR analysis and Y.TSR analysis conclusively proves that the source of item No.1 of DNA/SER/305/2012 (stains on petty coat) and the source of item No.4 of DNA/208/2013 (blood sample of Yedula Balapeer) are of same biological origin."

From the above report, the involvement of the petitioner in the commission of the offence stands prima facie established. The said report is dated 08.05.2014. Thereafter i.e., on 11.10.2014 the petitioner is alleged to have made extra judicial confession before the V.R.O. narrating the manner in which the offence was committed. It is true that extra judicial confession is a weak type of evidence, but at the same time, the same cannot be ignored

if there is other material connecting the petitioner with the crime.

Apart from those two circumstances, L.W.3 was examined as an eyewitness to the incident. She is a young girl aged about 9 years and present in the house at the time of the incident. She speaks about a person coming into their house and dragging her mother. She also speaks about the presence of three persons outside their house. Though L.W.3 did not refer to the names of the persons who took her mother, but her version disclose the involvement of three persons in the incident. It may be true that there were some disputes between the accused and the deceased who are related to each other, but having regard to the cruel manner in which the offence was committed, I am not inclined to grant bail to the petitioner.

Accordingly, the Criminal Petition is dismissed.

JUSTICE C. PRAVEEN KUMAR

10th March, 2015
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[\[1\]](#) (2008) 13 SCC 584