

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CRIMINAL PETITION No. 412 of 2015

ORDER :

The petitioner, who is accused No.8 in Crime No. 315 of 2014 of Pahadisharief Police Station, Cyberabad, filed the present application under Section 438 Cr.P.C. seeking release in the event of his arrest in connection with the above crime registered for the offences punishable under Sections 448, 323, 354, 382, 506, 509 r/w Section 34 IPC.

A charge sheet came to be filed against nine accused. The gist of the allegations made in the charge sheet is as under:

The petitioner herein is the father of A.2. L.W.1 is a resident of Keshavagiri, Chandrayangutta, Hyderabad and L.W.2 is a friend of L.W.1. L.W.3, who is a watchman, was examined as an eyewitness to the incident, while L.Ws.4 to 8 were examined as circumstantial witnesses. A.1 is alleged to be the leader of the entire incident. A.2 to A.7 were his associates, while A.8 and A.9 harboured A.1 to A.7. On 31.07.2014 L.Ws.1, 2, 4, 6 and 7 went to a farm-house in two cars. After some time, all of them left the farm-house except L.Ws.1 and 2. On coming to know about the same, A.1 to A.7 criminally trespassed into the said farm-house, started beating L.Ws.1 and 2 and took photographs by removing their clothes. L.W.1 is a girl aged about 18 years while L.W.2, who is a student, is also aged about 18 years. A.1 to A.7 are alleged to have taken videos and photographs in their mobile phones and threatened L.Ws.1 and 2 of uploading the same in face book. A.1 to A.4 are alleged to have sexually assaulted L.W.1. A.1 to

A.7 are alleged to have robbed gold chain, gold ring and cash of Rs.6,000/- from L.Ws.1 and 2 before leaving the scene. In so far as the role of the petitioner is concerned, he is alleged to have harboured the offenders and also provided money to abscond after commission of the offence. On 20.08.2014 the petitioner was arrested and produced before the Court on the next day. On 28.08.2014 A.1 to A.9 were taken to police custody vide Court orders and they were examined in the presence of L.Ws.15 and 16. After completing the investigation, the police filed a charge sheet.

The learned counsel for the petitioner submits that the petitioner, who is aged about 63 years, is a physically handicapped person and it is impossible to believe that he would have involved in the commission of the offences. The learned counsel placed on record the disability certificate issued by the Osmania General Hospital, Hyderabad to show the physical disability and the earning capacity. Since the petitioner was arrested on 20.08.2014 and as the entire investigation is over, requests for bail.

The learned Additional Public Prosecutor opposed the application contending that the petitioner is a notorious offender and if he is released on bail, there is every likelihood of he tampering with the evidence. He submits that though the offence alleged against him attracts Section 212 IPC only, but still he is not entitled for grant of bail at this stage as he is involved in two more offences.

A perusal of the averments in the charge sheet would

show that the petitioner was involved in Crime No.166 of 2014 and also in Crime No.141 of 2006 for an offence punishable under Section 302 IPC. Though the case registered for the offence punishable under Section 302 IPC ended in an acquittal, but the case registered for the offence of kidnap is still pending trial. The disability certificate, which is placed on record, would show that the petitioner is aged about 60 years having Bipolar Hemiaspastic Paralysis (right HP side). It is not the case of the prosecution here that the petitioner has committed an offence of rape or dacoit. It is the case of the prosecution that the petitioner harboured the offenders and thereafter provided money to them so as to enable them to escape from the clutches of the police. Therefore, the disability if any shall not come in the way of the petitioner in commission of an offence under Section 212 IPC. The public prosecutor apprehends that there is every likelihood of the petitioner, who is a notorious criminal, tampering with the evidence, more particularly L.Ws.1 and 2 who are the victims in the crime. The averments in the charge sheet show that A.1 to A.4 raped the victim girl by showing a live snake and threatened to upload the said pictures in face book with a view to defame them. Though the petitioner is not involved in the said offence, but still, he gave shelter to the persons who got themselves involved in the commission of such offences. In my view, aiding or abetting the offenders of such crime is equal to commission of said offences. Apart from that, the petitioner was involved in two other offences which are grave and serious in nature. Though he was acquitted in one case, but the case of kidnap is pending trial. Having regard to the said circumstances, I am not inclined to grant anticipatory

bail to the petitioner at this stage.

Accordingly, the Criminal Petition is dismissed. However, as the charge sheet is already filed, the learned Magistrate is directed to commit the case to the Court of Sessions forthwith and thereafter the learned Sessions Judge is advised to proceed with trial and dispose of the case at the earliest. The petitioner is at liberty to renew his request after examination of L.Ws.1 and 2.

JUSTICE C. PRAVEEN KUMAR

10th February, 2015
cbs

THE HONOURABLE SRI JUSTICE C. PRAVEEN KUMAR

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