

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CRIMINAL PETITION NO.1022 of 2015

ORDER :

The petitioner, who is accused No.3, filed the present application under Sections 437 and 439 Cr.P.C. seeking enlargement on bail in S.C.No.97 of 2010 on the file of the Mahila Sessions Judge, Vijayawada. A charge sheet came to be filed against the petitioner and two others for the offences punishable under Sections 302, 384, 201 and 120-B read with 34 IPC.

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

On 30.01.2010 at about 8.05 a.m. deceased No.2 along with elder brother, LW.2 started in Tavera Car bearing No. AP 03-R-2223 being driven by deceased No.1 (driver) and were proceeding towards N.S.M.School through B.R.T.S. Road. It is alleged that on the way accused Nos.1 and 2 way laid them. Accused No.1 is alleged to have hurled a stone on rear side glass of Car bearing No. AP 03 R 2223. On hearing the sound, deceased No.1 got down from the car to observe the damage caused to the rear side glass. LW.2 also got down from car. Accused Nos.1 and 2 are alleged to have stabbed deceased No.1 with knives causing bleeding injuries. Thereafter, accused Nos.1 and 2 boarded the car, while accused No.1 drove the car and accused No.2 sat by the side of deceased No.2 in the back seat. While, LW.2 was running away from the scene, accused Nos.1 and 2 are alleged to have chased LW.2 and attempted to murder him, but LW.2 escaped himself by jumping over the wall. LW.4 who was present at the scene of offence is said to have witnessed accused Nos.1 and 2 stabbing the deceased No.1 with knives and accused Nos.1 and 2 chasing LW.2. Later, accused Nos.1 and 2 are alleged to have kidnapped and killed deceased No.2 by burning her in a

furnace.

Insofar as the petitioner/accused No.3 is concerned the allegations in the charge sheet disclose that he hatched a plan to do away with the life of deceased No.2. He is alleged to have disclosed the disputes to accused No.1 and sought his help in kidnap and murder of deceased No.2, for which the petitioner/accused No.3 offered to pay Rs.50,00,000/-. From the averments in the report, it is clear that there were disputes between the parents of deceased No.2 and accused No.3 and it was accused No.3, who hired accused Nos.1 and 2 to execute the plan.

Heard learned counsel for the petitioner and learned Public Prosecutor appearing for the respondent-State.

Learned counsel for the petitioner mainly 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 prove the alleged conspiracy and except the confession of co-accused there is no material to link the petitioner with the alleged incident. He further submits that the Apex Court while rejecting the application on 21.06.2013 gave liberty to the petitioner to move the High Court for regular bail if the trial is not completed within four months. In view of the above, he submits that the petitioner is entitled for bail.

Learned Public Prosecutor opposed the application contending that the Apex Court dismissed an application for bail on 04.07.2014 on merits and as such, the petitioner is not entitled for any relief.

The material placed before the Court would show that earlier the petitioner herein moved Criminal Petition No.6209 of 2012 seeking bail. By an order dated 17.08.2012 a learned Single Judge of this

Court dismissed the application holding that the petitioner does not deserve bail during trial and that there are no changed circumstances to alter the said opinion. Subsequent to the said order, the petitioner filed S.L.P.No.4799 of 2013 before the Apex Court. By an order, dated 21.06.2013, the Apex Court while rejecting the application observed that if the trial is not completed within four months from that day, it is open for the petitioner to move the High Court for regular bail. Thereafter, in the month of November 2013 the petitioner filed Criminal Petition No.12307 of 2013. On 04.11.2013 this Court after referring to the rival arguments and also the observations of the Apex Court in Criminal Appeal No.2178 of 2011 held as under:

“Most part of the trial has been completed and only official witnesses have to be examined in the present case. The trial was not held up on account of the laches on the part of the prosecution, it was held up for some time because of the recent strike by the advocates in connection with the Seemandhra agitation.

Therefore, this Court is of the view that the trial would certainly be concluded within a short period, if the accused proceeds to cross-examine the witnesses. Bail applications were rejected by this Court obviously having regard to the serious nature of the crime and one of the learned Single Judges of this Court took the view that the petitioner is not entitled for bail during trial.”

Challenging the same, the petitioner moved the Apex Court in S.L.P.(Crl.) No.10398 of 2013. By an order, dated 04.07.2014, the Apex Court passed the following order.

“Having considered the nature of the allegations against the petitioner namely that a 10 year old girl was stated to have been killed in a furnace and the docket order of the trial Court dated 27.06.2014 reveals that witnesses are being examined on day to day basis and the schedule further discloses that more witnesses (amounting to 88) are likely to be examined by 20.08.2014, it will not be appropriate for this Court to interfere with the order of the High Court for not granting bail to the petitioner. We only request the trial Court to proceed with the trial as per its schedule without

any further delay and conclude the same expeditiously. The petitioner is also directed to extend full cooperation for expediting the trial of the case.”

Thereafter, the present application is filed before this Court seeking bail.

A perusal of the material on record would show that so far 77 witnesses are examined and the chief examination of 78th witness, who is the Investigating Officer, is completed. It is brought to the notice of the Court that the Investigating Officer is being cross examined by the accused since 01.12.2014. It is stated that though the case is being taken up every day in the afternoon session the accused are prolonging the cross examination of PW.78 on one pretext or the other. The said fact of PW.78 being cross examined by the accused is not disputed by the learned counsel for the petitioner. It is also brought to the notice of the Court that the cross examination of PW.78 by accused No.3 commenced yesterday i.e. 24.02.2015. From the above, it is clear that the prosecution is not in any way responsible for the delay in completion of the trial. Learned Public Prosecutor submits that on behalf of the prosecution only one more witness namely Additional Superintendent of Police has to be examined as PW.79. That being the position, the argument of the learned counsel for the petitioner that the accused is being detained and that no opportunity was given to him to defend the case or disclose his defence to his counsel cannot be accepted. Since the prosecution has completed the entire evidence; as the trial is being taken up on day today basis and since there is every likelihood of entire trial being completed in the near future, and in view of the orders passed by the Apex Court referred to above, I see no reason to grant bail to the petitioner.

Accordingly, the Criminal Petition is dismissed. It is needless

to mention that the trial Court shall complete the trial as expeditiously as possible.

JUSTICE C. PRAVEEN KUMAR

25.02.2015
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