

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CRIMINAL PETITION NO.11577 of 2016

ORDER :

1) 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 V Additional Sessions Judge-cum-Mahila Court, 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.

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

3) On 30.01.2010 at about 8.05 a.m. deceased No.2 along with elder brother, LW.2 started in a 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.

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

5) As seen from the charge sheet the petitioner is alleged to have 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.

6) Though the various grounds are raised, learned counsel for the petitioner restricted his prayer seeking release on the ground that the prosecution failed to comply with the conditions imposed by this Court while rejecting the request of the petitioner for grant of bail.

7) The record shows that earlier the petitioner filed 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. Subsequently, the petitioner filed Criminal Petition No.1022 of 2015, wherein this Court on recording the representation of the learned Public Prosecutor that only one more witness ie. Additional Superintendent of Police has to be examined as PW.79, rejected the request as the trial is likely to be completed shortly.

8) Subsequently, the petitioner preferred Criminal Petition No.13879 of 2015. By an order dated 04.01.2016 a learned Single Judge of this Court dismissed the application and directed the trial Court to dispose of the case as expeditiously as possible preferably

within a period of six months from that day.

9) Learned counsel for the petitioner mainly contends that the accused is languishing in jail since 2010 and no prejudice would be caused to the prosecution if he is released now since all the material witnesses are already examined. The same is strenuously opposed by the learned Public Prosecutor contending that in view of the orders passed by the Apex Court in S.L.P.No.10398 of 2013 the request of the petitioner cannot be accepted. He further submits that the State is not at all responsible for the delay in trial and it is only the petitioner, who is not co-operating with the progress of the case.

10) As seen from the record, the request of the petitioner was rejected on merits not only by this Court but also by the Apex Court. While rejecting the request, the Apex Court directed the trial Court to proceed with the trial as per its schedule without any further delay and conclude the same expeditiously. The petitioner was also directed to co-operate with the trial.

11) Though the order of the Apex Court dated 21.06.2013 in S.L.P.(CrI.)No. 4799 of 2013 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, but the subsequent order dated 04.07.2014 passed in S.L.P.(CrI.) No.10398 of 2013 only directs the trial Court to complete the case expeditiously. The record show that so far 78 witnesses have been examined and PW.79 is being examined since quite long time. The record further discloses that even in the year 2015, when this Court rejected the request of the petitioner basing on the representation made by the learned Public Prosecutor that the examination of PW.79 is still in progress. As the material placed before the Court would show that from 04.01.2016 the case underwent about 20

adjournments. The chief examination of PW.79 was completed on 21.01.2016 and the cross examination by counsel for the petitioner commenced on that day. On couple of occasions the counsel for the petitioner could not cross examine him due to ill health or due to lack of time. It appears that the case is not being taken up on day-to-day basis and on the other hand it is taken up once in a week and that too in the afternoon session giving very little time for the counsel to cross examine the witness. In a case of this nature and more particularly when one of the accused is in jail since 2010, the trial Court ought to have given importance to proceed with the matter on day-to-day basis. At this stage, it is brought to the notice of the Court that an application was made by the prosecution to recall PW.79 and also examine some witnesses, who were not shown as witnesses in the charge sheet. It is also brought to the notice of the Court that accused No.3 also filed an application to recall some of the witnesses. If both the parties co-operate, definitely the trial can be completed at the earliest provided the same is taken up on day-to-day basis.

12) Having regard to the facts and circumstances of the case and taking into consideration the earlier orders; more particularly the order of the Apex Court, the trial Court is directed to take up the case on day-to-day basis and dispose of the same as early as possible. Having regard to the time limit fixed by the Apex Court in the earlier order, the applications, if any, filed either by the prosecution or the petitioner should be taken up forth with.

13) With the above direction, the Criminal Petition is disposed of.

JUSTICE C. PRAVEEN KUMAR

18.08.2016
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