

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CRIMINAL PETITION No.11701 of 2016

ORDER :

1) The petitioner, who is accused No.3, filed the present Criminal Petition under Sections 437 and 439 Cr.P.C., seeking enlargement on bail in Crime No.60 of 2011 of CCS I Town Police Station, Rajahmundry. A charge sheet came to be filed against the petitioner and five others for the offences punishable under Sections 395 and 412 IPC and Section 25 (1) (b) of the Arms Act.

2) The allegations in the charge sheet are as under:

3) One Kailash Pramanik was a Goldsmith and was running gold workshop in Main Road, Rajahmundry though he is native of West Bengal. On 29.09.2011 at about 4.00 p.m. he lodged a report stating that he along with 13 members are running gold work shops at Rajahmundry and on that day at about 1.45 p.m. four unknown accused armed with a fire arms entered into the work shop and on point of knife robbed gold ornaments weighing 350 grams. During the course of investigation, the clues team obtained chance prints at the scene of offence and also prepared a panchanama of the scene. The Charge sheet also indicates that apart from gold ornaments three cell phones of LWs.1 to 3 were stolen. LW.37 collected IMEI numbers of all the mobiles and kept them under track with the assistance of Nodal Officer, Rajahmundry. On 30.09.2011 Docomo SIM bearing No. 8019122785 was activated in the stolen mobile pertaining to LW.2. Later, he collected the call detail record of the said number and found that SIM was in activation from 18.09.2011 to 01.10.2011 and used in four mobile phones. Out of four mobile

phones first one pertains to LW.23, who sells SIM cards to the public, sold the above SIM to accused No.2. The second one pertains to the stolen mobile of LW.2, and remaining two phones pertain to the accused. Through the electronic evidence available the police could trace out accused No.4 and accordingly arrested him on 04.11.2011 at his residence in Dubha Village. He confessed that he committed the offence along with accused Nos.1, 2, 3 and 5 under the sketch and guidance of accused No.2. He further confessed that he received Rs.40,000/- and one gold ring from accused No.1 towards his share. His confession led to recovery of two cell phones, and one gold ring. He led the police party to the house of accused No.5 situated at Mallikaur village, where a gold ring was recovered from the possession of accused No.5. Accused Nos.4 and 5 led the police party to the house of accused No.3 situated at Jagathpur village, from whom, one gold ring was recovered. The concealed fire arm used in the commission of offence was recovered at his instance. In the test identification parade LWs.1 to 4 identified accused Nos.1, 3 to 5. Accused No.6 was arrested on 10.01.2012 and is alleged to have confessed about receiving of a ring from his elder brother-accused No.2. Finally on 08.01.2013 the police arrested accused Nos.1 and 2. Both of them are alleged to have confessed about the commission of offence and substantial amount of cash and two gold chains were recovered from them.

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

5) As seen from the record, the petitioner herein was arrested on 07.11.2011 and since then he is in Central Jail, Rajahmundry. Learned counsel for the petitioner mainly relies

upon the order passed by the trial Court in releasing the other accused on bail in the year 2011 and 2012 itself but however his request was rejected on the grounds that 1) P.R.C. could not be committed to the Court of Sessions since the Court could not secure the presence of the other accused, who were released on bail; and (2) another case is pending against the petitioner.

6) A perusal of the material on record would disclose that all the other accused in this case are also residents of Bihar and West Bengal and they were released on bail in the year 2011 and 2012 itself. A charge sheet was filed in the year 2013 and the case was numbered as P.R.C.No.18 of 2013. The fact of another case registered against the petitioner in Maharastra is not in dispute. It is also not in dispute that the petitioner is in jail from November, 2011. It may be true that all the other accused in this crime are released on bail, but at the same time it is to be noted that the accused, who were released on bail are not attending the Court and committal proceedings are held up due to their non-availability. It is stated that non-bailable warrants issued against them are still pending execution. The learned Public Prosecutor would submit that if the petitioner is released on bail, it would be impossible to trace him again. Having regard to the above circumstances, I am of the opinion that it is not a fit case to grant bail at this stage.

7) Accordingly, the Criminal Petition is dismissed.

JUSTICE C. PRAVEEN KUMAR

17.08.2016
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