

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CRIMINAL PETITION NO.1503 of 2016

ORDER :

The petitioner, who is A25 in Crime No.295 of 2015 of Proddatur Police Station, Kadapa District, 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 against the petitioner and 33 others for the offences punishable under Sections 379, 353, 307, 109, 120(B) read with Section 34 of IPC, Sections 20(i)(c)(ii)(iii) (iv)(v), Section 29 and 68 of A.P.Forest Act read with Section 29(4) of A.P.Forest Act, Section 3 of PDPP Act, 1984 and Section 51 of Wild Life Protection Act. The petitioner was arrested on 20.09.2015 and since then he is in jail.

The case of the prosecution is as under:

On 19.12.15, at about 09.15 am while the Inspector of police along with the staff were conducting search they stopped the vehicle in which A1 and A2 were traveling. On seeing the police A1 and A2 drove the vehicle in a rash and negligent manner. But later, said vehicle was stopped and A1 and A2 got down from the vehicle along with stone bags and hurled stones upon the police and tried to escape. But, both the accused were caught and police seized ten red sander logs weighing 83 Kgs. Basing on the said seizure, the present case came to be registered.

Learned counsel for the petitioner mainly submits that even accepting the allegations in the report to be true, ingredients constituting the offences alleged are not made out against the petitioner. He submits that no incriminating material is seized at the time of arrest of the petitioner. He has been falsely implicated into

the said cases basing on the confessions made by the other accused, who were arrested and only with an intention to harass him. A perusal of the record shows that A1 confessed that the petitioner was not present at the scene of the offence and as per the confessions, the petitioner is alleged to have purchased the contraband. But as seen from the record no contraband was recovered from the petitioner at the time of seizure.

He further submits that though the petitioner is in jail, the police are waiting for his release in other crimes in order to arrest him in the present crime.

On the other hand, learned Public Prosecutor submits that the petitioner is involved in about 9 crimes and as such he is not entitled for any relief. He further submits that the present application is not maintainable as the petitioner is in jail.

Issue as to maintainability of application came up for consideration before this court in ***Tupakula Appa Rao Vs. State of A.P.***^[1] It was also a case where number of crime were registered against the accused and the police were arresting the accused as and when he is released in other crimes. Para Nos.16,17 and 18 of the said judgment reads as under:

“If the arrest is shown in all the cases, simultaneously there is no difficulty he can be said to be in custody in each of those cases. If for any reason his arrest is limited to one case like in the instant cases it is not as though he is remedy less. The fall out of the above discussion is that whether or not the custody of a person in one case should also be treated as custody in other cases wherein he is wanted is a question of fact and is to be decided with reference to facts and circumstances of each case. If the facts indicate that a person already detained in custody in one case out of more than one case and his arrest is not formally shown on account of the negligence of the concerned authorities and for no fault of the accused he can with all justification claim that his custody in one case should also be deemed to be in custody for the purpose of other case or cases.

The problem would arise only in cases where the accused is concerned in different cases pertaining to different police stations and pending before the different courts where no negligence on the part of the authorities can legitimately be shown. Whether it is a case where the accused is involved in series of offences pertaining to the same police station or a case where he involved himself in different offences pertaining to different police stations, if he is arrested in one case and produced before the Court in connection with the other case, the period of detention would endure to the benefit of the accused in both the cases. In view of the judgment of the Apex Court in Niranjana Singh's case, no person accused of an offence can move the Court for bail under Section 439 of the code unless he is in custody. In such cases, he cannot surrender himself before another Court on account of the fact that he has been in judicial custody in the former case. This situation would not arise when he is involved himself in series of cases pertaining to the same police station and within the territorial jurisdiction of the same Court where negligence on the part of the authorities can validly be attributed. Even if no negligence can be validly attributed to police, the accused can himself offer to surrender before the Court on his production before the Court in connection with one case when he is remanded to judicial custody, and as a result whereof he can be in custody in all cases. To surmount such contingency, an application seeking his production in connection with the case before it can be mooted in the other Court in which case that court after issuing notice to the concerned police can pass appropriate orders. The investigation agency can also seek police interrogation in that case or cases as the case may be. That appears to be the possible solution, in my considered view, which can obviate the difficulty of the accused who has been involved in more than one case pertaining to different police stations. The procedure suggested by me supra is consistent with administration of justice and would safe guard the interests of the accused as well as the investigating agency and would meet the ends of justice.

Turning to the instant cases, having regard to the fact all the cases registered against the petitioner pertain to the same police station and the fact that his arrest could have been shown in other cases also simultaneously but not shown the facts warrant a conclusion that he is deemed to have been in custody in respect of other crimes also although formal arrest is not shown in other cases also. However, it is needless to say whether the bail can be granted or not, depends upon the facts of each case and would be left to the discretion of the Court to exercise the same on merits in each case."

In view of the judgment of this Court referred to above and since the petitioner is deemed to be in custody in all other cases, the request of the petitioner for grant of anticipatory bail cannot be

sustained and accordingly, the Criminal Petition is dismissed.

JUSTICE C. PRAVEEN KUMAR

24.02.2016
vhb

[\[1\]](#) 2002 I ALD CrI.67 (AP)