

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.737 OF 2017

ORDER:

This criminal petition is filed under Section 438 of Cr.P.C to enlarge the petitioners/A2, A5 to A7 on bail, apprehending their arrest in connection with Crime No.434 of 2016 of Kurnool III Town Police Station, Kurnool District, registered for the offences punishable under Sections 324, 307 and 506 read with 34 of IPC.

2. The case of the prosecution, in brief, is that the petitioners allegedly beat the *de facto* complainant with an intention to kill him. The *de facto* complainant and his wife are running mobile canteen in Tata ACE auto at Nannur Town Plaza. Besides the *de facto* complainant's mobile Canteen, one Mohd. Basha also running mobile canteen in his TATA ACE auto. There were disputes between the *de facto* complainant and Mohd.Basha with regard to the business. On 17.10.2016 in the morning hours when father of the petitioner's carrying on business, Mohd.Basha picked up quarrel and threatened them to remove the mobile canteen van. On the same day, at about 07.30 PM while the *de facto* complainant and others were in Swamyreddy Nagar there was a quarrel between them and in the said quarrel Mohd. Basha received injuries and on the complaint, the police registered

crime against six persons and that the police arrested his family members and remanded to judicial custody. Apprehending arrest of the *de facto* complainant and others they were moving outside the house. While so, on 31.10.2016 at about 07.00 PM the *de facto* complainant, his brother Saleem Basha and his maternal uncle Imam Baig reached Vinayak Point Park, Swamyreddy Nagar, all the accused i.e. Mohd. Basha, Sultan Fayaz, Chotu Hussain, Lateef, Fatima and Khajabee suddenly attacked on them holding iron rods and sticks. Mohd. Basha and Sultana beat him with iron rod and others beat him indiscriminately and caused injuries. As he lost conscious his paternal uncle and brother admitted him in the hospital and that he regained his consciousness on the next day and gave statement to the police.

3. It is the contention of the petitioners that there is a case and counter case between them and this fact is admitted in the complaint itself. The earlier incident took place on 17.10.2016 at about 07.30 PM and crime was registered against the family members of the *de facto* complainant, but the present incident took place on 31.10.2016 i.e. almost 13 days after the earlier incident. Therefore, these two cases cannot be treated as case and counter case arising out of the same incident, *prima facie*.

4. In any view of the matter, the two incidents are different and the intention of the parties i.e. petitioners and other

accused can be inferred from the circumstances as they way laid and attacked on the *de facto* complainant and others holding iron rods, sticks etc. and caused injuries. The *de facto* complainant received as many as five injuries. They are as follows:

1. *contusion over left thigh,*
2. *blunt injury on chest.*
3. *contusion over left leg.*
4. *restricted movement over pelvis i.e. lacerations.*
5. *contusions over back of the body, left cheek and shoulder.*

5. It is contended by the learned counsel for the petitioners that the petitioners are students and in case they are arrested, it would be a stigma in their carrier. Therefore, requested the Court to grant pre-arrest bail.

6. No doubt granting pre-arrest bail is discretion of the Court. But such discretion has to be exercised based on settled principles. Grant of pre-arrest bail is not a mechanical and it is a matter of exception. Unless the petitioners show certain exceptional circumstances entitling them to claim the pre-arrest bail in the event of their arrest, the Court cannot exercise such discretion in favour of the petitioners on the allegation that they did commit offence and being students, prosecuting their education. The prime requirement to grant pre-arrest bail is that the Court has to record satisfaction that there is no *prima facie* material that

the accused committed offence and that there is no possibility of interference with the investigation in the event of enlarging them on bail or tampering with the offence. It appears from the record that both parties developed bitter enmity on account of their business and picked up quarrel on the earlier occasion and that the members of the family of the *de facto* complainant allegedly caused injury on the body of Mohd. Basha and later taking advantage of the situation, the petitioners along with others way laid holding iron rods, sticks etc. and caused severe injuries. Therefore, it is difficult to record *prima facie* satisfaction that there is no material against the petitioners. If the petitioners are enlarged on bail, there is every possibility of repeating similar crime in view of the bitter enmity. Therefore, I find that it is not a fit case to grant pre-arrest bail.

7. The criminal petition is accordingly dismissed.

Miscellaneous applications pending, if any, shall also stand dismissed.

M. SATYANARAYANA MURTHY,J

Date: 08.02.2017
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