

HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

Criminal Petition No.3354 of 2017

ORDER:

Accused No.3, who along with other accused allegedly committed offences under Sec.147, 148, 120(B), 302, 506, 109 r/w 149 IPC in Crime No.232 of 2016 of Dachepalli P.S, Guntur District filed the instant petition under Sec.438 Cr.P.C, for granting anticipatory bail.

2) The FIR allegations are that on the night of 29.12.2016 when the deceased Galam Narendra @ Kistaiah and others were watering their chilli crops in Takkellapadu village, the accused who bore grudge due to the past disputes, conspired together and attacked the deceased with sickles, spears and other weapons and murdered the said Narendra and when the witnesses tried to rescue him, the accused threatened them and went away. The investigation is reported to be pending.

3) Pleading for bail, learned counsel for petitioner/A.3 argued that the petitioner was innocent and he was falsely implicated in the case due to political rivalries between the two groups. He further argued that the incident was occurred on the night of 29.12.2016 at about 10:00pm but surprisingly no report was lodged till 8:00am on 30.12.2016 and further the FIR did not reach the concerned Magistrate till 10:00pm on 30.12.2016 and the inordinate delay in lodging the FIR and sending the same to the Magistrate shows that the complainant and others deliberately roped in innocents due to political feuds. He cited the following decisions to canvass that the delay in lodging the FIR and also delay in sending the

same to the Magistrate in faction ridden cases would render the prosecution case highly doubtful:

- i) *Bijoy Singh and another vs. State of Bihar*¹
- ii) *Mohinder Singh and another vs. State of Punjab and others*²
- iii) *State of Andhra Pradesh vs. M.Madhusudhan Rao*³

Learned counsel submitted that the offence allegedly took place in the night time in agricultural fields, where there were no lights and as such it is highly doubtful as to how the complainant and other witnesses could identify the assailants. He further submitted that in fact the complainant in the present case was A.3 in Crime No.261 of 2014 of Dachepalli P.S, for his involvement in the murder of petitioner's father, paternal aunt and elder brother in a marital related issue and similarly most of the alleged eye witnesses were also accused in the said crime and therefore, *prima facie* case of the prosecution is highly doubtful and motivated. He thus prayed to grant bail.

4) Vehemently opposing the bail, learned Additional Public Prosecutor would submit that though the incident was occurred in the night time in the agricultural fields, the complainant and others who went to the fields to water them along with high powered battery lights could see the assailants and therefore, it is false to allege that the accused were

¹ AIR 2002 Supreme Court 1949

² (2004)12 Supreme Court Cases 311

³ (2008)15 Supreme Court Cases 582

implicated. Regarding the delay in lodging FIR, he submitted that when the complainant and other witnesses tried to rescue the deceased, all the accused threatened them with dire consequences and so out of fear, all of them ran away to their village and after informing about the incident to their villagers, they gave report to police on the next day. He would thus submit that whatever delay was occurred was quite natural. He submitted that the complainant cannot be blamed if the police failed to transmit the FIR to the Magistrate forthwith. He would submit that the 161 Cr.P.C statements of all the witnesses and also the confessional statement of A.1, who is none other than the elder brother of petitioner/A.3 would clearly show his involvement in the offence. He submitted that the investigation is pending and charge sheet is not yet filed. He thus prayed to dismiss the petition.

5) A perusal of FIR, 161 Cr.P.C statements and confessional statement of A.1, is none other than the elder brother of petitioner/A.3 would show the presence and participation of the petitioner/A.3 and other accused in the crime. In FIR it is mentioned that the complainant and other witnesses could witness the offence with the help of focus lights. The delay is concerned, in the FIR it is mentioned that when the witnesses went in rescue of the deceased, all the accused threatened them with dire consequences and therefore, they went away to the village. Thus the explanation offered for the time being appears to be a plausible one. Ofcourse, all the crucial aspects about the offence need a thorough scrutiny in the strength of the evidence placed by the prosecution during

the trial. Hence, at this stage the delay if any cannot be taken into consideration for deciding the bail application. In the cited decisions, no doubt it is observed that prompt lodging of FIR and transmission of the same to the Magistrate is the essential requisite and failure to observe the same may entail the prosecution case as doubtful. However, that aspect cannot be decided in this petition at this stage. As the matter stands, there is a strong *prima facie* case against the petitioner/A.3 and other accused and investigation is in the crucial stage and charge sheet is not filed.

6) Accordingly, this Criminal Petition is dismissed.

As a sequel, miscellaneous petitions pending if any, shall stand closed.

Date: 06.06.2017
scs

U. DURGA PRASAD RAO, J

