

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.3420 OF 2017

ORDER:

This criminal petition, under Sections 437 and 439 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.'), is filed by the petitioners/A.3 to A.5 to enlarge them on bail in Crime No.50 of 2017 of Ghanpur (W) Police Station, Warangal District, registered for the offences punishable under Sections 120-B, 364, 302 read with 34 of the Indian Penal Code, 1860 (for short 'I.P.C.'), as they are in judicial custody from 15.03.2017.

The case of the prosecution, in brief, is that the petitioners allegedly with a pre-plan to murder Shivarathri Mallaiah, kidnapped him and shifted to outskirts of the Village Waddergudem H/o.Pallagutta Village, Warangal, the petitioners along with A.1 and A.2 with a common intention brought him to the leased agriculture lands at Pallagutta, attacked at the agricultural crop field of the deceased, of which A.5 beat on the neck of the deceased from his behind, due to which Mallaiah (deceased) fell down and became unconscious. Later the petitioners along with A.1 and A.2 laid the deceased in supine position on the edge of paddy crop field, A.3 caught hold of legs, A.5 caught hold of hands and A.2 caught the head of the deceased and then A.4 beat the deceased on his head about 2 to 3 times with an iron rod and A.2 cut the copper amulet thread from the neck of the deceased and at last A.4 stabbed on the throat of the deceased with same iron rod, due to which he sustained bleeding injuries and succumbed. On the strength of the same, the police registered the crime and issued F.I.R.

According to the counsel for the petitioners, the entire investigation is completed, the petitioners are not concerned with the offence and they were falsely implicated in the crime, however question of their inference with the further investigation after examination of 15 witnesses does not arise. It is also brought to the notice of this court that the petitioners filed CrI.P. No.2890 of 2017, it was dismissed by this court on the sole ground that A.1 was not apprehended by the police and in case the petitioners/A.3 to A.5 were enlarged on bail, there is every likelihood of fleeing away from justice by A.1, and now A.1 surrendered before the court on 27.03.2017, thereby the ground on which earlier application was dismissed is no more available and prayed to enlarge the petitioners/A.3 to A.5 on bail.

The Public Prosecutor for the State of Telangana, while reiterating the contentions raised in the earlier application, contended that earlier bail application was dismissed not only on the ground that A.1 and A.2 were absconding, but also on merits, and in the absence of changed circumstances after dismissal of earlier bail application, the present petition cannot be ordered, prayed for dismissal of the criminal petition.

The allegations made against the petitioners are that A.3 caught hold of legs, A.5 caught hold of hands, and A.2 caught the head, of the deceased - Shivarathri Mallaiah and then A.4 beat the deceased on his head about 2 to 3 times with an iron rod and A.2 cut the copper amulet thread from the neck of the deceased and at last A.4 stabbed on the throat of the deceased with same iron rod, due to which he sustained bleeding injuries and succumbed. These allegations directly narrated the role played by each of the accused including A.1 and A.2. This court dismissed earlier bail application in CrI.P.No.2890 of 2017 by

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order dated 13.04.2017 on the ground that A.1 and A.2 were not apprehended and in case of enlarging these petitioners, chances of arrest of A.1 and A.2 are bleak. This court also observed that, *prima facie*, there is a material against the accused to establish their involvement in the murder of Sivarathri Mallaiah after his kidnap and the way in which they caused injuries and killed itself suffice to conclude that the murder after his kidnap with pre plan and dismissed the petition.

Now the contention of the petitioners is that 15 witnesses were already examined and the changed circumstance is surrender of A.1 by filing CrI.M.P.No.277 of 2017 on 27.03.2017.

Earlier bail application was dismissed not only on the ground that A.1 was absconding, but also on the other grounds, and it appears from the material produced before this court that A.1 surrendered even before dismissal of the earlier bail application in CrI.P.No.2890 of 2017. Therefore, there are absolutely no major changed circumstances after dismissal of earlier bail application, except examining one or two witnesses, which is not a major changed circumstances. Unless there are major changed circumstances in the investigation, after dismissal of earlier bail application and in view of the principle laid down by the Apex Court in **State of Tamil Nadu v. S.A. Raja**¹, this court cannot enlarge the petitioners on bail, and consequently the criminal petition is liable to be dismissed.

In the result, the criminal petition is dismissed.

M.SATYANARAYANA MURTHY, J

28.04.2017
BV

¹ 2005(8) SCC 580