

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.845 of 2017

ORDER:

The petitioner, who is A-6, filed the present application under Sections 437 and 439 Cr.P.C., to enlarge him on bail in S.C.No.110 of 2016 on the file of the IX Additional District and Sessions Judge, Chittoor, which arose out of Crime No.130 of 2015 of Chittoor I Town Police Station, registered for the offences punishable under Sections 147, 148, 302, 307, 120-B, 109 read with 149 IPC and Sections 212, 216, 201 of IPC and Sections 25(1A), 25(1AAA), 25(1B)(a), Section 25(1B)(c), Section 27(3) & Section 30 of the Arms Act, 1959.

The case of prosecution is that since last 15 years there has been Arch rivalry between the two groups, one group headed by Ex.MLA - C.K.Babu, and other headed by the deceased Katari Mohan. In order to establish their supremacy in the area both the groups have confronted with each other on several issues. It is to be noted that A-1 herein was a staunch follower of D-3 being none other than his nephew. A reading of the charge-sheet discloses that on 28.12.2005 one C.K.Babu along with his henchmen is alleged to have attacked Deceased No.2-Katari Mohan, with axes etc., which is the subject matter of Crime No.179 of 2005 registered under Section 307 IPC of Chittoor I-Town Police Station. The said case ended in an acquittal on 08.03.2015. In retaliation to the above incident D-2 entered into a criminal conspiracy with A-1 and 13 others to kill C.K.Babu. An attempt was made on 16.05.2006, but it failed. A-1 was arrested in Crime No.14 of 2006 as he master minded the plan. On 09.02.2007 there was an

attempt to kill C.K.Babu in his office room, though fired, Sri C.K.Babu escaped narrowly, but it resulted in the death of his gunman by name D.Hussain Basha and one of the employee of Municipality by name Navarasu. The said incident was subject matter of Crime No.15 of 2007 registered for the offences punishable under Sections 147, 148, 302, 307, 120-B read with 149 IPC. After that incident D-2 and A-1 herein went underground. In order to eliminate C.K.Babu they conspired with their followers and hatched a plan to explode a landmine on 31.12.2007, in a drainage channel situated at the entrance of Reddy & Reddy colony in Chittoor town. The said Babu received injuries but one C.Surendra, A.R.P.C. 982 died. This incident is subject matter of Crime No.145 of 2007 registered for the offences punishable under Sections 324, 326, 307, 302 read with 120(B) IPC and Section 3 & 5 of E.S. Act of Chittoor I Town Police Station. In this Case D-2 figured as A-1 and A-1 herein was shown as A-2 therein. The first accused herein was released on bail earlier to D-2 and during his absence the first accused herein was carrying out all the operations which D-2 used to take care of. After the release of D-2 from the Jail in the year 2011, he noticed that the importance of A-1 was going down. A-1 who was living in the house of D-2 during his absence came out of the house and started living independently. Thus differences between A-1 and D-2 cropped up. Differences also arose between the two with regard to granite quarrying and also with regard to awarding of contract to A-1 for collection of market fee or cess from vendors in vegetable market. A-1, who took the bid on his benami A-7 for an amount of Rs.40 lakhs but surprisingly for the said current year it was shooted up abnormally to Rs.91,40,000/-. A-1 suspects D-1, who is wife of D-

2, is responsible for the abrupt rise in price thereby causing loss to one Veeresh, who is a close associate and benami of A-1.

The present petition is filed mainly on four grounds:

- (1) Accused Nos.17 to 23 filed the application for splitting up of the case and the same was dismissed and accused No.17 also filed an application under Section 482 of Cr.P.C., which was allowed quashing the proceedings against accused No.17. On the basis of these two changed circumstances, the petitioner renewed his request to enlarge him on bail.
- (2) The wife of the petitioner and petitioner are suffering from ill-health.
- (3) Accused No.5, who allegedly participated in the above crime along with accused Nos.1 to 4 is already enlarged on bail, but this petitioner though not actually participated except allegedly accompanying with accused No.1 from his office to the Municipal Corporation office and thereafter drove the car from Municipal Corporation Office to other place, cannot be denied bail.
- (4) The Court has to maintain parity between accused Nos.5 and 6, who are similarly placed and thereby the petitioner is entitled to claim bail under Section 439 of Cr.P.C. and prayed to enlarge the petitioner on bail.

Sri K.Veera Reddy, learned senior counsel for the petitioner, contending that the wife of the petitioner is suffering from chronic ill-health and drawn the attention of this Court to the contents of letter addressed by the petitioner to the District Court dated

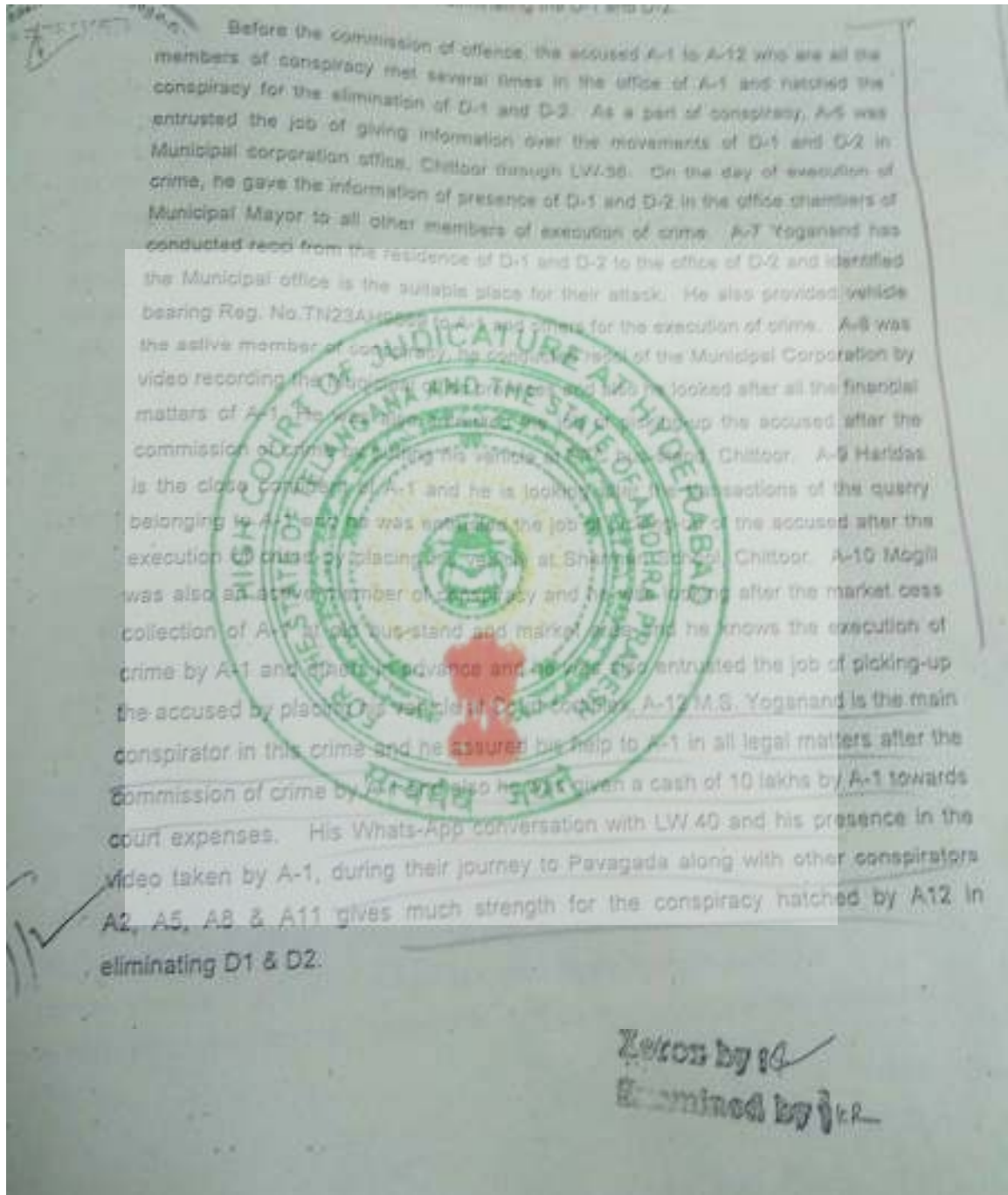
12.01.2017, which is taken as an application for grant of bail by the Sessions Court and the same was withdrawn by the counsel for the petitioner before the trial Court, therefore, based on the allegations contained in the said letter, the petitioner sought for bail on the ground of ill-health of both the petitioner and his wife. It is also contended that when accused No.5, who allegedly participated in the perpetration of offence released on bail, the petitioner is on better footing than him, but denial of bail to the petitioner would amount to treating the two individuals, who are similarly placed, differently, apart from that the changed circumstances, which he pointed out are sufficient to enlarge the petitioner on bail and prayed for bail.

Per contra, learned Public Prosecutor for State of Andhra Pradesh mainly contended that unless there are changed circumstances filing of two applications for splitting up and filing quash petition by the other accused would not enable the Court to grant bail to the petitioner since there are no changed circumstances. In support of his contentions he placed reliance on “**State of T.N. v. S.A.Raja**”¹. Hence, on the ground that there are no changed circumstances, this Court cannot grant bail to the petitioner.

Undisputedly, the entire investigation is completed, charge sheet was filed and the Sessions Case is coming up for trial. In view of the specific allegations made against the petitioner, it is relevant to have a glance at the contents in *toto* of the charge sheet, which form a part of the order and they read as follows:

¹ (2005)8 SCC 380

“A-6 Murugan is the husband of 47th Division Corporator. He has got differences with D-2 over non-sanctioning of bills to the works done by him and also D-2 was supporting one Siva, who is rival to A-6 in 47th Division and also when A-6 asked for the financial help, D-2 humiliated him. As there was rivalry between A-1 and D-2, A-6 became closer to A-1 and he extended help to A-1 in the elimination of D-1 and D-2.”



Facts of the case -

On 17-11-2015 in the morning, the accused A1 to A6 & A8 assembled in the premises of the Office of A1 Chandrasekhar @ Chintu situated opposite to H.No.28-761/1, Kanniah Naidu colony, Gangasapalli, Chittoor. At about 11.05 AM, as per the plan, the accused A6 received information over phone through LW.36 about the presence of the deceased-1 and 2 in the Mayor's chamber, Municipal Corporation, Chittoor. It is pertinent to mention here that LW.36 was specially employed and detailed in the premises of Municipal Corporation office just to pass on the information about the movement of the deceased-1 & 2. Accordingly, LW.36 who was using a cell phone with a mobile No.9576271005, rang up to A6 Muruga to his cell phone No.7032041434 who was waiting along with A1 to A5.

On receipt of this information, the accused A1 and A2, who specifically wore black coloured burkhas through LW.35, which generally being worn by Muslim ladies, in order to camouflage their movements. Having wore this burkhas, A1 carried the hand bag and A2 carried the sticks handle bag with apparently visible vegetables and curry leaves, taking all steps to conceal their identity, arrived to the premises of the Municipal Corporation, Chittoor in a black Maruthi Swift VXI car No.TN23AH5689, which belongs to the accused A7 Yoganand, who has spared his car specially meant for this purpose. Whereas the accused A3 and A4 followed the car on Yamaha Cbx motorcycle No.PY81WV3540, being driven by the accused A4 Manjunath and arrived to the premises of Municipal Corporation, Chittoor. The car was driven by A5 M.Venkatesh wherein A6 was sat adjacent to the driver seat, whereas the accused A1 and A2 sat in the rear seat of the car. Thus, the accused A1 to A6 arrived near to the premises of Municipal Corporation office in the said car via KMC junction, WSR Junction, eGB Junction, RTC bus stand.

Having arrived, the accused A1 and A2 in the guise of petitioners/visitor's, went into the said office giving an appearance as if to meet the Mayor along with several other visitors. The accused A1 carried lady's hand bag and A2 sticks handled bag. Whereas the accused A3 Jayaprakash Reddy, A4 Manjunath and A5 M. Venkatesh followed the accused A1 and A2 in some distances. The accused A6 Muruga remained in the car, keeping it ready to meet any emergency, if any. The accused A1 to A5 reached the entrance of Mayor's chamber, where the accused A2 Venkatachalapathi handed over each one sickle to the accused A3 Jayaprakash Reddy, A4 Manjunath and A5 M.Venkatesh by taking out the sickles from the sticks handled bag. The accused A1 Chandrasekhar @ Chintu has given the air pistol to the accused A2, after taking the weapons, the accused A1 & A2 proceeded ahead towards the Mayors chamber. At that time, on suspicion, LW.2 Kishore, the brother-in-law of the Deceased-2 Katari Mohan has tried to stop them at the entrance, questioning their identity. The accused A1 Chandrasekhar opened his face mask of

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burkha and told in high pitch of tone as 'NENERAA'. Later the accused A1 and A2 entered into the chamber of Mayor, by that time Deceased-1 Katari Anuradha Deceased-2 Katari Mohan, LWs.1, 16 to 29 and others were discussing the Janachaitanya Yatra programme scheduled to be held in the next month i.e. December 2015. After entering into the Mayor's chamber, the accused A1 pointed his pistol towards Mayor's Head and fired at her, he did not even listening to her plea. The pistol round pierced into her head and she fell down instantaneously. When the accused A1 and A2 pointed their weapons towards the Deceased-2 Katari Mohan, there was struggle between the witnesses and accused A1 and A2. In that struggle the face mask of burkha worn by the accused A2 was got removed and fell down on the floor. The driving license of A2 and copper pellet rounds of the air pistol were also fallen on the floor. When the de-facto complainant (LW.1), who was in the Mayor's chamber came to the rescue of the Deceased-2, the accused A4 Manjunath hacked LW.1 over his back with the dagger, while A2 Venkatachalapathi fired with his air pistol towards the deceased-2. Meanwhile, the Deceased-2 Katari Mohan ran towards the Council Conference hall, the accused A5 M. Venkatesh who was at the entry door of the Mayor's Chamber alerted and shouted them that Katari Mohan was escaping. The accused A1 to A5 chased the deceased Katari Mohan in the Council Conference hall, at first the accused A4 Manjunath pushed down the Deceased-2 Katari Mohan and stopped him with the dagger, while the accused A3 Jayaprakash Reddy hacked the Deceased-2 Katari Mohan on his neck 4 or 5 times with the sickle in his hand, whereas the accused A5 M. Venkatesh hacked the Deceased-2 Katari Mohan over his shoulder and chest, which was witnessed by LWs.11 & 12. After commission of the offense, the accused A1 to A5, one after another, retreated towards the office of the Health Officer situated in the ground floor of the same building. In the process of escape, the lady's handbag containing pistol fallen down at the conference hall. The accused A3 Jayaprakash Reddy went into the bathroom situated underneath the staircase leading to first floor, washed his hands and left the blood stained sickle there. The accused A1 to A5 scaled the compound wall one after the other and fled away. While fleeing the accused A2 Venkatachalapathi thrown his air pistol and burkha at the office of the Health officer in the ground floor situated adjacent to the compound wall, whereas the accused A4 Manjunath has thrown the blood stained sickle used by him in commission of the offence, on the road itself. A6 was ready with the said black Maruthi Swift VXI car No.TN-23AH9669 and the accused A1 and A5 boarded the car and absconded, while the accused A2 to A4 proceeded towards Bus stand and absconded. The accused A2 and A4 proceeded towards the fly over bridge, hidden the pellet rounds and the blood stained pant. heavy Railway track. SL

In view of the specific allegations made in the charge sheet, the active role played by the petitioner/accused No.6 is that he received information from L.W.36 – Shaik Yousuf Malik about the movements of both wife and husband (deceased) i.e. Chairperson and her husband, and in turn informed the same to accused No.1 and others, later they started from accused No.1's office to Municipal Corporation, Tirupathi. The petitioner was sitting by the side of the driver of the car (accused No.5) and reached the Municipal Corporation office, later he occupied the seat of driver in Black Swift car kept outside the Municipal Corporation Office so as to meet any emergency to shift the culprits to any other place, but whereas accused Nos.1 to 4 armed with deadly weapons went to the Municipal Office and accused No.5 accompanied them. But accused No.5 was released on bail though he allegedly participated in the commission of offence. Thus, the role played by the petitioner/accused No.6 is only part of alleged conspiracy and assisted accused Nos.1 to 5 in commission of offence at different times. When accused No.5 was released on bail, the petitioner/accused No.6, whose role is minimal than the role played by accused No.5, is also entitled to bail on the principle of parity between the similarly placed persons, but this Court dismissed the earlier applications in Crl.P.Nos.400 of 2016, 10552 of 2016 and 14870 of 2016. This Court cannot review the order passed in the earlier applications and dismissal of earlier bail applications is not a ground to enlarge the petitioner on bail.

The other contention raised by the learned counsel for the petitioner is that the petitioner and his wife are suffering from

serious health problems and drawn the attention of this Court to the letter addressed by the petitioner from the jail to the Sessions Judge, where he pointed out about the serious health condition of his wife and petitioner himself due to paralysis. But this was considered earlier and this Court concluded that it is not a ground to enlarge the petitioner on bail. Therefore, this Court need not consider afresh the said ground to grant bail.

Learned counsel for the petitioner contended that there are changed circumstances as accused Nos.17 to 23 filed application to split up the case against them as the incident occurred at different places, which are beyond the territorial jurisdiction of the Sessions Judge and the proceedings against accused No.17, advocate, who allegedly legally advised the accused in commission of offence, were quashed. But these changed circumstances pointed out by the learned counsel for the petitioner are not the major changed circumstances, it is only filing of petitions inviting order of dismissal and quashing of proceedings against accused No.17.

It is settled principle of law that filing of successive bail applications without any changed circumstances would not serve any purpose and the Court cannot grant bail unless there are major changed circumstances after dismissal of the earlier bail applications.

When a bail application is rejected there is no bar to entertain another application afresh since principle of *res judicata* has no application, however there must be some new ground to be made out to apply for bail again after rejection of earlier bail

application (vide: “**Gama v. State of U.P.**”²)

Whereas Delhi Court in “**Rajender Singh v. State**”³ held that after rejecting bail application 12th time, allowed bail when the application was filed for 13th time on the ground that there are new developments in the investigation.

In “**Kalyan Chandra Sarkar v. Rajesh Ranjan @ Pappu Yadav**”⁴ the Apex Court held that when earlier application for bail has been rejected in a murder case, a subsequent application has been filed. The past conduct of the accused indicated that if released on bail, the accused would tamper with evidence. Number of witnesses have turned hostile and many of them when the accused was let on bail. So, the fresh application for bail cannot be entertained.

In “**State of Tamil Nadu v. S.A.Raja**” (referred supra) the Apex Court held in paragraphs 8 & 9 when a learned Single Judge of the same Court had denied bail to the respondent for certain reasons and that order was unsuccessfully challenged before the appellate forum, without there being any major change of circumstances, another fresh application should not have been dealt with within a short span of time unless there were valid grounds giving rise to a tenable case for bail. Of course, the principles of *res judicata* are not applicable to bail applications, but the repeated filing of the bail applications without there being any change of circumstances would lead to bad precedents.

Similarly in “**Parvinder Singh v. State of Punjab**”⁵ the Apex Court held that dismissal of earlier bail application would not

² 1987 Cr.L.J. 242 (All)

³ 1988 Cr.L.J 749 (Del.)

⁴ AIR 2005 SC 921

⁵ (2003) 14 SCC 615

render fresh bail application legally not maintainable and Court can always consider fresh circumstances and subsequent events.

Thus, the law consistently laid down by the Apex Court and other Courts is that if there are major changed circumstances subsequent to dismissal of earlier bail application, the Court can entertain application for bail, consider the same and decide afresh. Merely, on the ground that the earlier application was dismissed, the Court cannot straightaway dismiss the fresh bail application and if major changed circumstances are shown to the satisfaction of the Court, the Court can grant bail.

But in the present case, no major changed circumstances are brought to the notice of this Court except filing some applications and getting orders either dismissal or allowed. Hence, those circumstances are not suffice to conclude that same are major subsequent developments in investigation etc. to enable the Court to grant bail.

Though the role played by the petitioner is minimum and this Court is required to maintain parity, but because of the law declared by the Apex Court in ***“State of Tamil Nadu v. S.A.Raja”*** (referred supra) I am unable to exercise the discretion to grant bail to the petitioner and consequently the petition is liable to be dismissed.

In the result, the petition is dismissed.

Consequently, miscellaneous applications pending if any, shall also stand dismissed.

JUSTICE M. SATYANARAYANA MURTHY

13.03.2017
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