

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.1805 of 2017

ORDER:

This Criminal Petition under Sections 438 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.'), is filed to enlarge the petitioner/A.6 on pre-arrest bail since he is apprehending arrest in connection with FIR No.228 of 2016 on the file of Station House Officer, Hussaini Alam Police Station, Hyderabad, registered for the offences punishable under Sections 147, 148, 302, 120(B) r/w 34 IPC.

The petitioner allegedly conspired with other accused and committed murder of father of *de facto* complainant in view of the disputes between them regarding the property. Initially, the names of assailants were not disclosed except making allegations that some unknown persons hatched a plan to do away the life of the father of *de facto* complainant. But, during investigation, it was found that this petitioner along with other accused conspired together and committed an illegal act by illegal means and therefore, the petitioner along with others perpetrated the murder of the father of *de facto* complainant.

The main contention of the petitioner is that except making allegation that he conspired along with other accused to commit murder, nothing is attributed against the him.

Conspiracy is defined in Section 120-A of IPC. According to Section 120-A of IPC, when two or more persons agree to do, or cause to be done any illegal act or an act which is not illegal by illegal means, such an agreement is designated a criminal

conspiracy and such a person, who is a member of conspiracy, to commit an offence punishable with death or imprisonment for life or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence. Thus, the petitioner is equally guilty along with real perpetrators of the murder though he is a member of criminal conspiracy, as defined under Section 120-A of IPC. Therefore, mere membership in the conspiracy is not sufficient to enlarge the petitioner on pre-arrest bail. However, the petitioner already filed a Petition before this Court in CrI.P.No.16945 of 2016 and the same was dismissed by its Order dt. 26.12.2016 and there are no major changed circumstances except repetition of the request by filing the present Petition.

In the absence of any major changed circumstances subsequent to the dismissal of earlier bail application, this Court cannot grant pre-arrest bail since it amounts to bad precedent, as held by the Apex Court in **State of Tamil Nadu v. S.A. Raja**¹. In another judgment in **Kalyan Chandra Sarkar v. Rajesh Ranjan @ Pappu Yadav**², the same principle is reiterated by the Apex Court.

In view of the law declared by the Apex Court, unless there are major changed circumstances subsequent to rejection of earlier bail, this Court cannot grant a bail or pre-arrest bail. But here, the petitioner failed to bring home any major changed circumstances except renewing his request usually. Therefore, I

¹ (2005) 8 Supreme Court Cases 380

² 2004 Cril LJ 1796

find no grounds to enlarge the petitioner on bail and the petition is liable to be dismissed.

In the result, this Criminal Petition is dismissed.

Miscellaneous petitions, if any, pending in this criminal petition, shall stand closed.

M. SATYANARAYANA MURTHY, J

Date:15.03.2017
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Dt.15-03-2017

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