

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL PETITION No.7741 of 2017

ORDER:

1 This Criminal Petition is filed, by the petitioner/accused No.1, under Section 438 of Cr.P.C., seeking pre-arrest bail in Crime No.34 of 2017 on the file of the Station House Officer, Veldurthy Police Station, Guntur district registered for the offences punishable under Sections 147, 148, 324, 302 r/w 149 and 120-B of IPC.

2 Sri N.Subba Rao, the learned counsel for the petitioner submitted that the petitioner was falsely implicated in this case due to village politics. He further submitted that at the time of the alleged incident, the petitioner was taking treatment in Vijaya Nursing Home, Narsaraopet, this itself indicates the false implication of the petitioner in the case. He further submitted that almost all the material witnesses were examined and even if the petitioner is granted anticipatory bail, there is no chance of tempering the prosecution witnesses.

3 *Per contra*, the learned Public Prosecutor submitted that the petitioner is the prime accused and he created a medical certificate in order to gain sympathy of the Court. He further submitted that investigation is still in progress. He further submitted that whatever the points urged by the learned counsel for the petitioner, were considered by this Court in the earlier bail application, therefore, this is not a fit case to grant anticipatory bail to the petitioner.

4 The case of the prosecution is that on 17.5.2017 at about 6.00 AM, the petitioner along with other accused formed into an unlawful assembly with deadly weapons in Kandlakunta village of Veldurthy Mandal with a common intention to kill Thadiparthi Papireddy (hereinafter referred to as 'the deceased') due to village politics. In pursuance of the said common intention, the petitioner and other accused attacked the deceased and beat him with sticks and axe. Immediately after the incident, the deceased was shifted to government hospital at Macharla and from there to GBR hospital at Narsaraopet where the duty doctor declared him dead. Basing on the complaint lodged by the brother of the deceased by name Thadiparthi Srinivasa Reddy the above case was registered.

5 It is the case of the prosecution that the petitioner herein along with other accused killed the deceased on 17.5.2017. As rightly pointed out by the learned counsel for the petitioner, the possibility of false implication cannot be ruled in faction villages. In order to appreciate the contention of the learned counsel for the petitioner, this Court carefully perused the material available on record. The incident occurred on 17.5.2017; however, the complaint was lodged on the same day at 12.30 PM after declaring the death of the deceased. In the complaint itself the name of the petitioner was shown as accused No.1. The complaint was lodged without any delay. While deciding the anticipatory bail petitions, the court has to strike a balance between the individual liberty of a person and the statutory right of the investigating agency. If the Court comes to a conclusion that a particular accused was falsely implicated, certainly, the Court has to come to the rescue of such accused. At the same time, the court has to consider the

involvement of the petitioner in commission of the alleged offence. It is the case of the petitioner that he was admitted in Vijaya Nursing Home at Narsaraopet on 16.5.2017 at about 6.30 PM due to epilepsy. As rightly pointed out by the learned Public Prosecutor, the possibility of creating medical certificate in order to escape from the clutches of law cannot be ruled out completely. The defence of the petitioner is that he was not present in the village on the date of the alleged incident. While deciding the bail applications, the Court shall not express any opinion with regard to these aspects which will ultimately affect the rights of one of the parties to the proceedings. A perusal of the record reveals that L.W.1 as well as the other witnesses spoke about the presence of the petitioner at the time of the alleged incident.

6 The petitioner filed CrI.P.No.3844 of 2017 on the file of this Court and the same was dismissed on 27.6.2017 with the following observations:

4) Sofaras petitioner/A.1 is concerned, learned Senior Counsel would argue that he is the brother of petitioner/A.13 and both the petitioners are leaders of YSR Congress Party and A.1, is the General Secretary of Youth Wing of the said party and besides he is an Advocate. He too was implicated in the case due to political rivalries. Learned counsel would further submit that A.1 also accompanied his brother on 16.05.2017 on the eve of visit of President of YSRCP to Davulapally village and he stayed back at Macherla as he suffered fits at about 5pm on 16.05.2017. Hence, his family members shifted him to GBR Super specialty Hospital at Narsaraopet and admitted him at about 7:30pm and he was discharged only on 19.05.2017. The petitioner/A.1 occasionally suffers from epilepsy since more than two years. Learned counsel produced the medical record purported to be that of A.1 He further argued that there was an inordinate delay in lodging the FIR as the offence took place at 6:00am and the FIR was lodged at 12:30pm, which implies a false case is foisted. He thus prayed to grant bail to the petitioners/A.1 and A.13.

5) Severely opposing the bail application learned Public Prosecutor would argue that A.1 is concerned, his presence and participation in the crime is specifically mentioned in the FIR and in fact he is the prime accused in the offence. He argued that the medical record was later concocted to create an alibi. He vehemently argued that alibi is a question of fact which the accused has to plead and establish in the trial and therefore, the plea of alibi setup by A.1 cannot be considered at this stage. Regarding petitioner/A.13, learned P.P argued that though A.13 was not present at the scene,

he was giving instructions to the other accused by phone to execute their plan. The police are trying to get his call data particulars to establish his connection with the offence. He would submit that investigation is in progress and not yet completed. He thus prayed to dismiss the petitions.

7 From a perusal of the above paragraphs at a glance, it is manifest that whatever points urged by the learned counsel for the petitioner were considered by this Court and the same were negatived.

8 The other contention of the learned counsel for the petitioner is that material part of investigation is completed, therefore, the petitioner is entitled to anticipatory bail. The learned Public Prosecutor submitted that the investigation is still in progress.

9 A perusal of the record reveals that the investigation is still in progress. Mere completion of part of the investigation by itself will not automatically create any right in favour the accused person to seek anticipatory bail. A perusal of the record prima facie reveals the role played by the petitioner in commission of the alleged offence.

10 Taking the gravity of offence alleged to have been committed by the petitioner and the stage of investigation into consideration, this Court is of the considered view that this is not a fit case to grant anticipatory bail to the petitioner.

11 Accordingly, this petition is dismissed.

T. SUNIL CHOWDARY, J.

Date: 14th September, 2017
Kvsn