

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.1940 OF 2017

ORDER:

This petition is filed under Section 438 of Criminal Procedure Code (for short "Cr.P.C.") by accused No.8, apprehending his arrest, in Crime No.419 of 2016 on the file of Pahadi Shareef Police Station, Cyberabad, registered for the offences punishable under Sections 302 read with 20-B of Indian Penal Code (for short "I.P.C.") to direct the Station House Officer, Pahadi Shareef Police Station to release him on bail in the event of his arrest in connection with the above crime.

The case of the prosecution is that on 19.09.2016 at about 17.00 hours on receipt of phone call by the defacto complainant about finding of body of his brother Omer Amshan, S/o Mubarak Amshan, aged 38 years with bleeding injuries near Jalpally gate, H.P.Petrol pump, immediately he went there and shifted him to Owasi Hospital at Santhosh Nagar for treatment, but while undergoing treatment he succumbed to injuries. Defacto complainant suspected several persons by name Hassan Bahamed, Omer Bahamed, Kaled Bahamed, Osman Bahamed, Mohsin Bin Siddiq, Hussain Bin Siddiq, Hassan Bin Siddiq and others have killed the Omer Amshan due to previous enmity. Based on the above complaint, police registered the crime and issued the F.I.R.

The main contention of the learned counsel for the petitioner is that the petitioner is closely related to the family of deceased and accused persons and he made an attempt to settle the disputes between those two families, on account of such interference, he

was allegedly implicated in the above crime and arrayed as accused No.8.

Learned Public Prosecutor for the State of Telangana contended that the other accused Nos.6 and 9 were absconding, whereas the remaining accused were enlarged on bail, but the same is not a ground to enlarge the petitioner herein on bail.

As seen from the material on record, more particularly remand report, it is clear that accused Nos.1 to 9 have decided and joined hands, conspired together to eliminate the Omer Amshan to resolve the disputes as he became hindrance for compromise and waited for an opportunity. While the matter stood thus, on 19.09.2016 at 04.45 p.m. as the Omer Amshan left his house, the accused persons Osman Bin Bahamad, Hussain Bin Mohsin, Sayyed Bin Abdul Raheem have followed by Innova vehicle and when Omer Amshan had passed Shaheennagar and proceeding towards Pahadishareef, on the way when crossed HP Petrol Pump, the accused No.1, who was waiting near his shopping complex, had noticed the same and took one iron rod from the welding shop followed Omer Amshan, on his Bullet motor cycle and overtook the scooter of the Omer Amshan from left side and assaulted him with iron rod and caused severe bleeding injuries, due to which Omer Amshan had fell down along with the scooter. Accused No.1 stopped his bullet motorcycle, came near to the deceased and assaulted him with the same iron rod, as a result of which he died on the spot.

Basing on the said material, learned counsel for the petitioner contended that accused No.1 is responsible for the offence, if any, but the petitioner is not responsible for same.

The petitioner herein is also a member of criminal conspiracy and he being closely related to both families allegedly made an attempt to settle the disputes between them.

Section 120-A of I.P.C. defines criminal conspiracy that when two or more persons agree to do, or cause to be done an illegal act or an act which is not illegal by illegal means, such an agreement is designated as a criminal conspiracy. The person, who is a member of criminal conspiracy as defined under Section 120-A of I.P.C. is also liable punishment under Section 120-B of I.P.C. Therefore, it is not open to the petitioner to contend that he was falsely implicated in the above crime.

The petitioner filed CrI.P.No.16556 of 2016 for bail, which ended in dismissal by order dated 14.12.2016, later he filed another application CrI.P.No.299 of 2017, and the same was dismissed as withdrawn by order dated 25.01.2017.

The present petition is filed renewing his request on the same grounds, which he raised in CrI.P.No.16556 of 2016. This Court, though, did not refer the allegations turned down his request by order dated 14.12.2016.

Major changed circumstances brought to the notice of this Court by the learned counsel for the petitioner is that the remaining accused were enlarged on bail, but that is not a changed circumstance to grant pre-arrest bail to the petitioner.

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.

In “**State of T.N. v. S.A.Raja**¹” 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**²” the Apex Court held that dismissal of earlier bail application would not render fresh bail application legally not maintainable and Court can always consider fresh circumstances and subsequent events.

In “**Kalyan Chandra Sarkar v. Rajesh Ranjan alias Pappu Yadav**³” the Apex Court held that the principles of *res judicata* and such analogous principles although are not applicable in a criminal proceeding, still the Courts are bound by the doctrine of judicial discipline having regard to the hierarchical system prevailing in our country. The findings of a higher Court or a co-ordinate bench must receive serious consideration at the hands of the Court entertaining a bail application at a later stage when the same had been rejected earlier. In such an event, the Courts must give due weight to the grounds which weighed with the former or higher Court in rejecting the bail application. Ordinarily, the issues

¹ (2005)8 SCC 380

² (2003) 14 SCC 615

³ AIR 2005 SC 921

which had been canvassed earlier would not be permitted to be re-agitated on the same grounds, as the same it would lead to a speculation and uncertainty in the administration of justice and may lead to forum hunting.

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.**”⁴)

In view of the law declared by the Apex Court in the above judgments it is clear that enlarging some of the petitioners on regular bail cannot be said to be major changed circumstance after dismissal of earlier application. On the other hand, accused Nos.6 and 9 were absconding and successfully avoided their arrest. Moreover, in the present case, the offence committed by the accused is a heinous crime and it will have its own impact on the society. Therefore, I find no ground to grant pre-arrest bail to the petitioner. Hence, the petition is liable to be dismissed.

In the result, the petition is dismissed. No costs.

The miscellaneous petitions pending, if any, shall also stand closed.

JUSTICE M. SATYANARAYANA MURTHY

13.03.2017
Ksp

⁴ 1987 Cr.L.J. 242 (All)