

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.3184 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 petitioner/A3 to enlarge him on bail in Crime No.206 of 2017 of Banjara Hills Police Station, registered for the offences punishable under Sections 307, 384, 354, 506 read with 34 of IPC and Section 25(1-B)(b) of the Arms Act, 1959. He is in judicial custody since 28.02.2017.

It is a classic case where the petitioner and others chosen a best avocation to lead their lives by collecting amount from various business persons to meet their expenses and in the said process, the petitioner along with others allegedly collected amount from the *de facto* complainant-Mohammed Khaja, who is doing onion business on pushcart. On 22.02.2007 at about 3 P.M. when the *de facto* complainant was at his residence, Ishaq and Sadiq came to his house, demanded Rs.10,000/- and threatened him with dire consequences. When the *de facto* complainant refused to give the said amount, they left the house. But again Ishaq, Sadiq and the petitioner came to his house and demanded money at the point of knife. Out of fear, he paid Rs.15,000/- to them. Having dissatisfied with that collection, again on 26.02.2017 at about 7 P.M., Sadiq, the petitioner and two others came to the house of *de facto* complainant in his absence. At that time, only women were present. Thereupon, Ishaq threatened the *de facto* complainant brother's wife Fatima to give money and when she was afraid of and refused to give money, he along with Sadiq and the petitioner caught hold of her hand and outraged her modesty at the point of knife and took away Rs.2,000/-.

After sometime Ishaq, Sadiq, the petitioner and two others threatened the inmates of the house at the point of knife and demanded them to call the *de facto* complainant with a threat to kill all the family members, if they refuse to meet their demand. On receiving the information, the *de facto* complainant came to his house and there upon, Ishaq tried to stab him on his stomach, but he luckily escaped and later Ishaq and Sadiq weaved knives on his neck while uttering that they would kill her, but he managed to escape. Thus, the petitioner along with two others started collecting amount at the point of knife.

The contention of the petitioner is that in the remand case diary, there are lot of discrepancies with regard to scene of occurrence and the amount they collected at the point of knife and those allegations are sufficient to enlarge him on bail.

The remand report is only a report prepared by the police and the FIR is the report of the *de facto* complainant, which is the basis of setting criminal law into motion and the case diary is not a substantive piece of evidence. It is only for production of accused before the Magistrate concerned and to order remand of the accused to the judicial custody. Therefore, though the allegations will have no bearing on the case, however, those discrepancies have to be explained during trial. Hence, at this stage, discrepancies are insignificant.

On the other hand, learned Assistant Public Prosecutor contended that A1 and A2 are habitual offenders but the petitioner/A3 joined hands with him and participated in the incident at the point of knife and thereby the petitioner/A3 also cannot be enlarged on bail.

Taking into consideration of the facts and circumstances of the case, it is *prima facie* evident that the petitioner participated in the incident of collection of amount at the point of knife by putting the *de facto* complainant in fear and extracted money from him.

It is the contention of the learned counsel for the petitioner that the petitioner is languishing in jail for more than 50 days and the allegations made in the complaint would not constitute an offence punishable under Sections 307, 384, 354, 506 read with 34 of IPC and Section 25(1-B)(b) of the Arms Act, 1959.

It is difficult to accept the said contention because the petitioner along with others made sincere attempts to extract money at the point of knife and attempted to stab the *de facto* complainant on his stomach, which is a vital part of the body. Therefore, I am not in a position to accept his contention. Moreover languishing in jail for a long period is not a ground in view of the law declared in ***Chenna Boyanna Krishna Yadav v. State of Maharashtra***¹. Hence, I find no grounds to enlarge the petitioner on bail and the petition is liable to be dismissed.

In the result, the Criminal Petition is dismissed.

M.SATYANARAYANA MURTHY, J

Dt.26.04.2017
ssp

¹ (2007) 1 SCC 242