

HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

Criminal Petition No.3974 of 2017

ORDER:

In the instant application filed under Section 438 Cr.P.C., petitioner/A2 seeks pre-arrest bail in Cr.No.311 of 2017 of Patamata PS, Vijayawada, wherein, he along with other accused allegedly committed offences under Sections 363, 341, 342, 324, 384 r/w 149 IPC.

2) The police of Patamata PS, Vijayawada City recorded the statement of the victim—Tammareddy Brahmaji Rao in Senthini Hospital and registered the crime. His statement is to the effect that he along with his wife and mother lives in Patamata, Vijayawada; he has no children; he used to do business in exporting granite stones to Taiwan and Japan etc. and now due to old age he is not doing any business since last three years; he has acquaintance with Allam Tataji of Kakinada who is doing real estate and finance business; he also got acquaintance with A.1 and petitioner/A2, who is the Managing Director of Help Hospitals, Vijayawada; two years back A1 and A2 requested him to arrange for finance and in that context he introduced them to Tataji; however, Tataji did not extend loan to them as the documents shown by them were not proper; Tataji and *de-facto* complainant were in touch with each other by phone; on 14.05.2017 at about 5 PM, Tataji telephoned to him and informed that he was in Room No.203 of Key Hotel at Ramvarppadu and asked him to come there; on receiving the message the complainant started at his house in a Innova car bearing No.AP 16 BM 2324 sent by

Tataji; when the car reached NTR Circle, four persons, aged about 30 years, entered the car and forcibly took his cell phone and threatened him that they were police and took him to a mango grove in the outskirts; there A1, A2 and Sunny (A3) who were known to complainant were present; A3 forcibly removed diamond rings, gold pen, omega wrist watch and cash of Rs.11,500/- from the complainant; then, A1 to A3 and six other persons who were present there, demanded him to give money available at his house and severely beat him with sticks, plastic tubes and halters; half an hour thereafter, Sravan (A5) beat the complainant with a stick black and blue and cautioned him that he would come to the house of complainant on the 10th of next month and he should be ready with Rs.10 lakhs lest he should beat him in his house; thereafter, A1 telephoned to one Chalapati Venkateswara Rao who is residing near the house of complainant; the said Venkateswara Rao came and advised the complainant to give away the amount demanded by the accused to avoid receiving injuries in their hands; then, the complainant sent said Venkateswara Rao to his house and contacted his wife through phone and instructed her to send red colour purse through Venkateswara Rao and she obliged; thereafter, out of the accused, six unknown accused took him in Black Pajero car to an apartment in Autonagar and confined him there for about 3 hours from 10 PM to 1 AM and at about 3 AM on 15.05.2017, they took him in Black Pajero car and left him in his house; his brother Ashok admitted him in Senthini Hospital for treatment.

The complaint is under investigation.

3) Denying the allegations and seeking bail, learned senior counsel, Sri Vedula Venkata Ramana would submit that about 3 years back the *de-facto* complainant fraudulently collected nearly 25 to 30 lakhs from the petitioner on the false promise that he would provide loans to him at a lower rate of interest and thus cheated the petitioner. He came to know that the *de-facto* complainant cheated some others also in the same manner. It is further revealed that the *de-facto* complainant collected amounts from the Doctors of Time and Help Hospitals by making false promises and the victims are lodging complaints against him. In order to avoid prosecution in the hands of petitioner and other victims, the complainant gave a false complaint against them. He would thus submit that the transaction is purely a civil transaction relating to payment of the money, but the complainant gave a different colour as if he was beaten by the petitioner and others. Learned counsel would further submit that petitioner is a law abiding citizen, as he worked as Executive Director of Help Hospital previously and since 1½ years, he has been working as Managing Director and there is no occasion for him to abscond from the jurisdiction of the police and court if granted bail. Further, except the offence under Section 384 IPC all other offences are bailable offences and even the offence under Section 384 IPC is concerned, there is no specific allegation in the FIR that petitioner/A2 extorted money or valuable security from the complainant. Considering all these, bail may be granted, he pleaded. The decision in ***R.S.Nayak vs. A.R.Antulay and another***¹ is relied upon by the petitioner.

¹ AIR 1986 Supreme Court 2045

4) Severely opposing the bail, learned Public Prosecutor would argue that it is a case of diverting an old man to an unknown place and belabouring him indiscriminately and robbing of his precious rings and other articles and cash by the accused. He would argue that petitioner/A2 was very much present and participated in the offence, whom the complainant identified and therefore, it is preposterous for the petitioner to contend that a false case was foisted against him. Learned Public Prosecutor would further submit police are investigating into the real cause for the offence and the transactions that took place between accused and complainant and the police are also trying to nab the six unknown offenders and unless A1 to A3 are interrogated thoroughly, the particulars of other accused and other valuable information cannot be secured and as the investigation is still in the nascent stage, bail may be refused.

5) As can be seen from the FIR and other material available in CD file, the presence and participation of petitioner/A2 in the offence is writ large. Since the main offences, including Section 384 IPC are tacked with Section 149 IPC, petitioner/A2 cannot gain say that Section 384 IPC has no application to him on the plea that no specific overtact of extortion attributed against him. In this backdrop of facts, the cited decision (1 supra) has no application. In that decision due to the facts peculiar to that case, it was held the charge under Sec.383 IPC has no application to the respondent. The Apex Court observed thus:

“Before a person can be said to put any person to fear of any injury to that person, it must appear that he has held out some

threat to do or omit to do what he is legally bound to do in future. If all that a man does is to promise to do a thing which he is not legally bound to do and says that if money is not paid to him he would not do that thing, such act would not amount to an offence of extortion. We agree with this view which has been indicated in Habibul Razak vs. King Emperor A.I.R. 1924 All 197. There is no evidence at all in this case that the managements of the sugar cooperatives had been put in any fear and the contributions had been paid in response to threats. Merely because the respondent was Chief Minister at the relevant time and the sugar co-operatives had some of their grievances pending consideration before the Government and pressure was brought about to make the donations promising consideration of such grievances, possibly by way of reciprocity, we do not think the appellant is justified in his contention that the ingredients of the offence of extortion have been made out. The evidence led by the prosecution falls short of the requirements of law in regard to the alleged offence of extortion.”

In the instant case, as already observed, all the accused allegedly perpetrated the offence including one under Sec.384 IPC in prosecution of their common object.

6) Thus, at this stage, there is strong *prima facie* accusation against the petitioner and other accused. The complaint allegations if true, would pose a serious offence as the accused allegedly beat the complainant who is an old man of 66 years and forcibly took his valuable rings and other articles and cash. The CD file shows police are trying to unearth the particulars of other six unknown offenders and real cause for the offence. Having regard to the gravity of the offence and the manner in which it was perpetrated as alleged in the FIR and as the investigation being in

the infantry stage, it is not a fit case to grant anticipatory bail to the petitioner/A2.

7) The petition is accordingly dismissed.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

U.DURGA PRASAD RAO, J

Dt: 27.06.2017
Murthy

