

**HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH
TUESDAY, THE TWELFTH DAY OF DECEMBER
TWO THOUSAND AND SEVENTEEN**

:PRESENT:
THE HON'BLE DR. JUSTICE SHAMEEM AKTHER

CRL. P. NO:10822, 11289 & 11716 of 2017

CRL.P. NO. 10822 OF 2017:

Between:

1. S.V.Seshagiri Rao, S/o. Late Sri Purnachandra Rao
2. Ch.Johnson, S/o. Late Sri C.H.Subramanyam
3. M.Srinivasa Rao, S/o. Late Sri Rama Rao
4. P.Vijayananda Sarma, S/o. Late Sri Vijaya Saradhi
5. Ch.L.N.Krishnan, S/o. Late Sri Dhruveshwar Rao

Petitioners/Accused 3 to 5, 7 & 8

AND

The State of Andhra Pradesh, rep. by its Public Prosecutor, through Eluru III Town Police Station, West Godavari District, High Court of Judicature at Hyderabad, for the State of Telangana and the State of A.P.

Respondent

Petition under Section 438 of Cr.P.C. praying that in the circumstances stated in the grounds filed herein, the High Court may be pleased to enlarge the Petitioners/Accused No. 3 to 5, 7 and 8 on bail in the event of their arrest in connection with FIR. No. 207 of 2017 dated. 11-10-2017 on the file of the Eluru III Town Police Station, West Godavari District in the interest of justice.

Counsel for the Petitioners : SMT. M.SHALINI

Counsel for the Respondent : ADDL. PUBLIC PROSECUTOR (AP)

CRLP .NO:11289 of 2017

Between:

Nelluru Balaji Singh S/o. Nelluru Subbu Singh, Retd. Executive Director, West Godavari District Scheduled Castes, Service Cooperative Society Ltd., Regd. No.E.1161, R/o. D.No.5-64-93/1, 1/19, Broadipet, Guntur

..... Petitioner/Accused No.1

AND

The State of Andhra Pradesh, Rep. by its Public Prosecutor, High Court Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh.

.....Respondent/Complainant

Petition under Section 438 of Cr.P.C., praying that in the circumstances stated in the petition and the grounds filed herein, the High Court may be pleased to direct the Station House Officer, Eluru III Town Police Station, W.G. Dist., to release the petitioner on bail in the event of his arrest pursuant to Crime No. 207/2017 of Eluru III Town Police Station, W.G. Dist. A.P. State..

Counsel for the Petitioner : SRI I.V.N. RAJU

Counsel for the Respondent : ADDL. PUBLIC PROSECUTOR (AP)

CRLP .NO:11716 of 2017

Between:

Gollaboina Bharat Bhushan Jaya Babu S/o Anand Kumar, Retd. Executive Officer,
West Godavari District Scheduled Castes Service Cooperative Society Ltd., R/o D.No.
4/134, Brahmin Street, Satrampadu, Eluru-7,W.G.District

..... Petitioner/Accused No.2

AND

The State of Andhra Pradesh, Rep.by it's Public Prosecutor, High Court Judicature at
Hyderabad for the State of Telangana and the State of Andhra Pradesh.

.....Respondent/Complainant

Petition under Section 438 of Cr.P.C., praying that in the circumstances stated in the petition and the grounds filed herein, the High Court may be pleased to direct the Station House Officer, Eluru III Town Police Station, W.G. Dist., to release the petitioner on bail in the event of his arrest pursuant to Crime No.207/2017 of Eluru III Town Police Station, W.G. Dist. A.P. State..

Counsel for the Petitioner : SRI I.V.N. RAJU

Counsel for the Respondent : ADDL. PUBLIC PROSECUTOR (AP)

The Court made the following COMMON ORDER:

These Criminal Petitions are filed under Section 438 Cr.P.C. to grant anticipatory bail to the petitioners-A.1 to A.5, A.7 and A.8 in Crime No.207 of 2017 of III Town Police Station, Eluru, West Godavari District, registered for the offences punishable under Sections 176, 177, 406, 409, 420, 468, 471 I.P.C. r/w Section 34 I.P.C.

2. Heard Smt. M. Shalini, learned counsel for the petitioners-A.3 to A.5, A.7 and A.8 in Crl.P. No.10822 of 2017, Sri I.V.N.Raju, learned counsel for the petitioners-A.1 and A.2 in Crl.P.Nos.11289 and 11716 of 2017, and the learned Additional Public Prosecutor appearing for the respondent-State, apart from perusing the material available on record.

3. The learned counsel for the petitioners would submit that the petitioners-A.1 and A.2 are the Executive Director and Executive Officer and the petitioners-A.3 to A.5, A.7 and A.8 are the Junior Assistants working in the District Scheduled Caste Service Cooperative Limited, Eluru, West Godavari, they filed writ petitions against their employer before this Court for regularization of their services and this Court passed interim relief and directed their employer to release the

salaries of the petitioners forthwith; when the said orders were not implemented, the petitioners filed Contempt Cases and the contempt petition is posted for compliance of the orders; then the employer of the petitioners, in order to harass the petitioners, foisted the present crime with false allegations; the petitioners have not committed any irregularities, they are innocent persons and they are falsely implicated in this case; and ultimately, prayed to grant bail to the petitioners under Section 438 Cr.P.C.

4. On the other hand, learned Additional Public Prosecutor appearing for the respondent-State opposed the grant of bail to the petitioners under Section 438 Cr.P.C.

5. In view of the contentions putforth by both sides, the point for determination is, whether the petitioners can be granted bail under Section 438 Cr.P.C.?

6. The material on record reveals that the petitioners-A.1 and A.2 are the Executive Director and Executive Officer respectively and the other petitioners-A.3 to A.5, A.7 and A.8 are Junior Assistants working in the District Scheduled Caste Service Cooperative Limited, Eluru, West Godavari. It is alleged that the petitioners-A.1 and A.2 regularized the services of the petitioners-A.3 to A.5, A.7 and A.8 as Junior Assistants from the post of Section Writers. The Joint Collector was appointed as enquiry officer and he submitted a report to the District Collector, West Godavari District. Basing on the enquiry report, the increments granted to the petitioners were cancelled. The submissions made on behalf of the petitioners-A.1 and A.2 are that when they joined as Executive Director and Executive Officer in the years 2005 and 2009 respectively, the petitioners-A.3 to A.5, A.7 and A.8 were already appointed as Section Writers. The petitioners-A.3 to A.5, A.7 and A.8 joined as NMR/Daily Wage workers in the years 1985 and 1986, they fulfilled all the qualifications as required under G.O.Ms.No.212 dated 22.04.1994 and the petitioners-A.3, A.5 and A.7 filed W.P. No.12503 of 1997 before this Court and this Court passed an order, i.e., “relief sought in this writ petition is identical to one

sought in APCS Co-operative Finances Corporation v. T. Niranjan Rao [1993(3) ALT 527]”. Pursuant to those orders, these petitioners were promoted as Junior Assistants. The petitioner-A.4 and one K.Yohan filed W.P. No.7482 of 1990 and obtained similar orders. When the petitioners-A.3 to A.5, A.7 and A.8 were not paid minimum time scale, they filed W.P. No.41896 of 2015 with a prayer to regularize their services and to put them in minimum time scale. This Court passed an interim direction to pay the salaries of the petitioners forthwith. When the said order was not complied, C.C. No.145 of 2017 was filed. The vacate petition filed in W.P. No.41896 of 2015 was dismissed. The allegation is that the daily payment working Section Writers were appointed without any approval and also without any cadre post in collusion with the petitioners-A.1 and A.2 by creating an office note and obtained increments as Junior Assistant cadre, earned leave, surrender leave and thus, caused misappropriation of Government funds. As per the material placed on record, the *de facto* complainant is contending that the appointments and promotions of the petitioners-A.3 to A.5, A.7 and A.8 are illegal and the drawing of salary benefits are not permissible under law. It is not in dispute that the petitioners in Crl.P. No.10822 of 2017 were appointed in the year 1985 and 1986 as NMR/Daily Wage workers in the post of Section Writers. These petitioners said to have fulfilled the qualifications prescribed in G.O.Ms.No. 212 dated 22.04.1994 and their services were regularized and they are promoted as Section Assistants. In the capacity of the Section Assistants, they have withdrawn the increments and leave benefits. As per the orders passed by this Court, dated 27.08.1993 in W.P.M.P.No.15821 of 1993 in W.P.No.12503 of 1993, the petitioners-A3, A5 and A7 were directed to be paid minimum scale of Rs.910/- with usual allowances. The annual grade increments and increments under the automatic advance scheme and medical re-imburement granted to the petitioners-A3 to A5 and A7 and A8, vide order in R.C.No.821/93/E-1, dated 28.10.1999 was cancelled by the authorities, this Court by order on 05.01.2016 in W.P.M.P.No.347 of 2016 in W.P.No.41896 of 2015, directed to pay those benefits. The vacate petition filed by the Principal Secretary, Social Welfare Department and others in the above W.P.No.41896 of 2015 was dismissed by this

Court on 26.08.2017. The petitioners-A3 to A5 and A7 and A8 have filed W.P.M.P.No.54030 of 2015 in W.P.No.11896 of 2015 to release the salaries of the petitioners and this Court by order, dated 18.11.2017 was pleased to direct the respondents 4 and 5-District Collector/Chairman, District Scheduled Castes Service Co-operative Society Limited, Eluru, West Godavari District and Executive Director, District Scheduled Castes Service Co-operative Society Limited, Eluru, West Godavari District to pay the salaries to the petitioners applicable in the cadre of Junior Assistants from September, 2015 onwards, pending disposal of the main writ petition. It is evident from the above orders that the petitioners are being paid their salaries and increments etc., time to time pursuant to the G.O.Ms.No.212, dated 22.04.1994 and also the orders passed by this Court. The allegations that the petitioners were illegally appointed and they are not entitled for salaries, increments and medical benefits etc., is yet to be determined by competent Court. Further, the lis relating to the appointment, promotion and payment of salaries is pending before this Court in the writ petition referred above. As long as the petitioners are working with the A.P. Scheduled Caste Co-operative Finance Ltd., it cannot be said that they are not entitled for the salaries and other benefits. The allegations levelled in the police report against all the petitioners are yet to be determined. Having regard to the facts and the circumstances of the case, it cannot be said that the petitioners have committed offences under Sections 176, 177, 406, 409, 420, 468 and 471 r/w 34 IPC. Therefore, the petitioners-A3 to A5 and A7 and A8 are entitled for bail under Section 438 Cr.P.C.

7. In the result, the petitioners in all the Criminal Petitions, who are A.1 to A.5, A.7 and A.8 in Crime No.207 of 2017 of III Town Police Station, Eluru, West Godavari District, are directed to surrender before the Station House Officer, III Town Police Station, Eluru, within a period of 15 days from today. On such surrender, the Station House Officer, III Town Police Station, Eluru, shall release the petitioners-A.1 to A.5, A.7 and A.8 on bail on petitioners-A.1 to A.5, A.7 and A.8 executing a personal bond for a sum of Rs.10,000/- (Rupees ten thousand only) each with two sureties each for a like sum to the satisfaction of the same S.H.O. On

release, the petitioners-A.1 to A.5, A.7 and A.8 shall abide by the conditions mentioned in Section 438(2) Cr.P.C. and cooperate with the investigating officer. The petitioners-A.1 to A.5, A.7 and A.8 shall also attend before the Station House Officer, III Town Police Station, Eluru, West Godavari District, on every Sunday between 9-00 a.m. and 10-00 a.m. till filing of the charge sheet.

8. Accordingly, all the Criminal Petitions are allowed.”

ASSISTANT REGISTRAR

//TRUE COPY//

For ASSISTANT REGISTRAR

To

1. The Special Judge for Trial of Cases under SCs & STs (POA) act cum VIII Addl. District and Sessions Judge, West Godavari District, Eluru.
2. The Station House Officer, Eluru III Town Police Station, Eluru, West Godavari District.
3. Two CCs to Public Prosecutor, (AP), High Court of Judicature, at Hyderabad (OUT)
4. One CC to Sri I.V.N. Raju, Advocate (OPUC)
5. One CC to Smt. M.Shalini, Advocate (OPUC)
6. One Spare Copy



HIGH COURT

Ab
Drafted on 14-12-2017

DR.SA,J

DATE: 12-12-2017



ORDER

CRL.P. NOS. 10822, 11289 AND 11716 OF 2017

DIRECTION