

SMT JUSTICE T. RAJANI

CRIMINAL PETITION Nos.351, 352, 353, 354, 355, 356,
357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367,
368, 369, 370, 371, 372, 373, 374 AND 375 OF 2018

ORDER:

The above petitions are taken up for common consideration, as the basis for filing of the complaints in these cases is the same and hence, they are being disposed of by this common order.

2. These petitions are filed seeking for grant of anticipatory bails to the petitioners, who is the accused, in Crime Nos.249, 250, 260, 257, 269, 275, 262, 258, 264, 272, 254, 268, 276, 263, 251, 265, 267, 255, 261, 259, 256, 252, 253, 266 and 270 of 2017 on the file of the Station House Officer, Utnoor Police Station, Adilabad District. The offences alleged are under Sections 147, 148, 120(b), 427 r/w 149 IPC.

3. The case of the prosecution, as reflected in the report given by the *de facto* complainant in Crime No.249 of 2017, is that on 15.12.2017 at about 05:30 hours, about 250 Adivasis came upon the house of the *de facto* complainant and attacked the house. When the complainant and his family members were inside the house, they also damaged the two motor cycles, which were kept in front of their house, causing a loss of about Rs.50,000/-. When he questioned as to why they are doing so, they informed that on the 9th of that month, in the Adivasis meeting, their leaders Sayam Bapurao, Athram Sakku, Pydi Bojja expressed that from 15th of that month they have to wage a militant war and attack Lambadas, till they are removed from

the category of Scheduled Tribes and they called upon all the Advasis to fight without any fear and putting their lives at stake and that the petitioner-Premasagar Rao and Viswaprasad are cooperating and lending monetary support to their agitation. Speaking about the people, who attacked his house, he stated that they are residents of Takkugudem and Chinngudem. He also stated that he can identify the culprits if he sees them. The allegations against the petitioner are the same in all the complaints made in all the above Crimes. It is on the basis of the said information, which was allegedly given by the attackers that investigation was caused with regard to the complicity of this petitioner in the alleged offences and crime was registered.

4. The counsel for the petitioner contends, that except saying that the attackers informed about the monetary support promised to be given by the petitioner and another, there is no evidence collected in proof of said fact. The counsel further contends that no custodial interrogation of the petitioner is required. He relies on a ruling of the apex court reported in *Bhadresh BipinBhai Sheth vs. State of Gujarat*¹, to contend that the petitioner need not make out a special case for the exercise of the power to grant anticipatory bail. It was also observed therein, that this virtually, reduces the salutary power conferred by Section 438 Cr.P.C. to a dead letter; a person seeking anticipatory bail is still a free man entitled to the presumption of innocence; he is willing to submit to restraints and conditions on his freedom, by the acceptance of conditions

¹ (2016) 1 SCC 152

which the court may deem fit to impose, in consideration of the assurance that, if arrested, he shall be enlarged on bail.

5. The Public Prosecutor, on the other hand, submits that the same ruling lays down certain aspects, which have to be considered before granting anticipatory bail and they include the impact of grant of anticipatory bail, particularly, in cases of larger magnitude, affecting a very large number of people. He contends that this is a case where there was attack on several Lambadas and that a movement is being carried on against the Lambadas being included in the list of Scheduled Tribes and the grant of anticipatory bail in these cases would have a far reaching effect and there is a likelihood of the peace of Lambada people being disturbed.

6. On facts, the counsel for the petitioner assails the genuinity of the statements of the witnesses, which are filed by the prosecution, on the ground, that the statements were recorded on 04.10.2018 though the offence took place on 15.12.2017; and that the statements of the witnesses are nothing but reproduction of the pre-typed matter and the statements do not show that the said witnesses met the petitioner and that it is only a hear say statement with regard to the petitioner lending financial support; the dates on some statements is discrepant, it being mentioned as 4.10.2017.

7. The Public Prosecutor counters the said contentions and explains the delay in giving the report, by drawing the attention

of this court to the magnitude of the offence, wherein several Lambadas and their houses were attacked and huge properties of the Lambadas were destructed and submits that the police had to attend on the said issue and had to safeguard the Lambada community from such attack and hence the delay. The said explanation seems to be cogent. When there is a law and order problem, the police are expected to control the situation and bring the law and order to normalcy. Moreover, the manner in which the attacks were done would show that the houses and the property of the Lambadas were destroyed and hence, the grief under which Lambadas would be placed is evident from the nature of the attacks and in such circumstances, they cannot be expected to rush to the police station, to give report, before initially restoring their normal life.

9. The second contention that the statements are reproduction of a pre-typed matter is answered by saying that when the substance of the statements of the witnesses is the same, there is nothing wrong in recording the statements, which may, *prima facie*, look as a reproduction. The Public Prosecutor also contends, that regarding the overtacts and the particulars of the properties, there is a specific statement given by each of the witnesses. It is only the common facts stated by the witnesses that were recorded in a similar manner. Due to the pressure under which the police would be and can be assumed to be in this case, no fault can be found on the part of the police officials, who recorded the statements, by adopting an easy method of recording. As regards, the discrepancy in the

dates mentioned in some of the statements, the date mentioned under the signature of the officer is rightly mentioned, which gives an opinion that the date mentioned as 04.10.2017 is a mistake, caused by the pressure of work.

10. The contention that the statements would only show that the financial support lent by this petitioner is only an information passed on to the witnesses and that they did not, *in fact*, meet the petitioner, can be considered in the light of not only the statements, but also the call records of the mobile phone of the petitioner, which would show that he made calls to A1, A2 and A5. The call records show the call made to one Athram Sakku on 08.12.2017, which is very close to the date of the alleged incident. There are several calls made to the said person on various dates, which are proximate to the date of offence. From the call records, a *prima facie* inference can not only be drawn, that the statements of the witnesses, wherein they stated that Atram Sakku and others informed them that this petitioner would be lending financial support, are true, but also that the information given by said Atmaram sakku is true. Their statements include the statements of the witnesses, who did not participate in the attacks, but they also spell about information that financial support was lent to the agitation by the petitioner, though it is a hear say version.

11. In the light of the above, this court opines that, leaving aside the need to make out a special case, the petitioner could not make out any case for grant of bails in these petitions and

hence, this court considers these, as cases, not fit for grant of anticipatory bail.

12. Accordingly, the Criminal Petitions are dismissed. Interim orders granted by this court, dated 18.01.2018, in these petitions shall stand vacated.

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

February 1, 2018
LMV

T. RAJANI, J

