

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CrI.P.No.3307 of 2018

ORDER

This petition under Sections 437 and 439 of Cr.P.C., is filed to enlarge the petitioner/A1 on bail in Cr.No.434 of 2017 of P.M.Palem Police Station, Visakhapatnam City, registered for the offences punishable under Sections 395, 120-B and 118 of IPC. The petitioner is in judicial custody since 12.11.2017.

2. The case of the prosecution, in brief, is that on 29.08.2017, one Balla Venkata Ramana, R/o.Sainagar, Mangalagiri, Guntur District, lodged a report with the police alleging that he was manufacturing gold ornaments and also running jewellery shop, namely, Varalakshmi Jewellers and used to visit Koraput, Jamaput of Odisha State and also Visakhapatnam and during the course of business, he developed acquaintance with A1, who was doing silver business at Visakhapatnam. It is alleged that at about one month back, A1 telephoned the de-facto complainant that he was planning to do gold business and asked him to supply the gold ornaments and accordingly he prepared the gold ornaments as ordered by A1, and that on 29.08.2017 at about 5.00 hours, he went to Visakhapatnam by Ratnachal express (train) and at about 12.30 hours, A1 came to railway station, picked him up on bike, took him to Flat No.202, Sai Santhosh Nilayam, Visakhapatnam, when he was displaying the gold ornaments, five persons, who were secured in another room, came there, attacked him, closed his mouth with a plaster, tied his hands, at the point of knife, threatened him with dire consequences and committed theft of gold ornaments weighing

about 3 Kgs, and after some time, they removed plaster from his mouth and locked the doors from outside and escaped from the spot along with stolen property. On the strength of the complaint given by the de-facto complainant, a case in Cr.No.434 of 2017 was registered against the petitioner/A1 and other accused for the offences punishable under Sections 395, 120-B and 118 IPC. The police, after completion of investigation, filed charge sheet before the Magistrate on 14.02.2017 against 11 persons including the petitioner/A1.

3. The main contention of petitioner/A1 before this Court is that he is languishing in jail since 12.11.2017 as pre-trial detenu and he had no criminal antecedents and that he was carrying on business in silver articles, whereas the de-facto complainant was manufacturing gold ornaments and carrying on business in gold at different places and therefore, the commission of offence by the petitioner along with others would not arise and that as the entire investigation is completed and charge sheet is filed, no purpose would be served if he is detained in prison and prayed to enlarge him on bail.

4. Learned Public Prosecutor for the State of Andhra Pradesh contended that total 11 accused were involved in the crime, but six persons were arrested including the petitioner and five other accused are yet to be arrested and the charge sheet was filed showing them as absconding and if the petitioner is enlarged, there appears to be bleak chances of apprehension of other accused and prayed for dismissal of the petition.

5. As seen from the material on record, the de-facto complainant was doing gold business and used to visit Koraput, Jamaput of Odisha State and also Visakhapatnam and due to acquaintance with the petitioner, who was carrying on business in silver, he went to Visakhapatnam with gold ornaments weighing about 3 Kgs and A1 himself picked him from the railway station, took him to a Flat No.202 at Visakhapatnam, where it appears from the allegations made in the complaint that the petitioner hatched a plan and kept five other persons in another room of the same flat and when the de-facto complainant and A1 entered into the room, they surrounded the de-facto complainant, fixed a plaster to his mouth, tied his hands and at the point of knife, they stolen the entire gold ornaments weighing about 3 Kgs. This itself is clear that there is a *prima facie* case of pre-mediated plan to do the offence and apart from that, recovery of 1.78 Kgs of gold from A2 to A6 is another strong circumstance to conclude that this petitioner was conspired with the other accused to attract the offence punishable under Section 120-B of IPC, and in pursuance of pre-plan, they committed theft of gold ornaments at the point of knife in the manner narrated above.

6. No doubt, the investigation is completed, but still five accused are yet to be arrested. In case the petitioner is enlarged on bail, the chances of apprehension of the other accused are bleak. Therefore, at this stage, it is difficult to enlarge the petitioner on bail by exercising power under Sections 437 and 439 of Cr.P.C.

7. One of the major contentions raised by the counsel for petitioner before this Court is that A2, from whom the major part of gold was seized, was already enlarged on bail under Section 167(2)

of Cr.P.C., i.e., statutory bail, and that since nothing was recovered from the petitioner allegedly and he had no criminal antecedents, he prays to enlarge the petitioner on bail. But that may not have any major role in exercise of power under Sections 437 and 439 of Cr.P.C.

8. To release the petitioner, who is in judicial custody, certain principles were laid down by the Apex Court in **State through C.B.I v. Amarmani Tripathi with State of U.P. through C.B.I v. Madhumani Tripathi**¹. They are as follows:

- (i) Whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;
- (ii) nature and gravity of the charge;
- (iii) Severity of the punishment in the event of conviction;
- (iv) danger of accused absconding or fleeing, if released on bail;
- (v) character, behaviour, means, position and standing of the accused;
- (vi) likelihood of the offence being repeated;
- (vii) reasonable apprehension of the witnesses being tampered with; and
- (viii) danger, of course of justice being thwarted by grant of bail.

While a vague allegation that accused may tamper with the evidence or witnesses may not be a ground to refuse bail, if the accused is of such character that his mere presence at large would intimidate the witnesses or if there is material to show that he will use his liberty to subvert justice or tamper with the evidence, then bail will be refused.

Thus, in view of the guidelines laid down by the Apex Court, unless the Court satisfied with all these conditions, it cannot grant

¹ (2005) 8 SCC 21

bail as a matter of course in a grave and serious offences, and apart from that, while granting bail, one of the considerations in deciding grant of bail to the accused, who has been in jail, the Court has to take into consideration the other facts and circumstances in the interest of the society. Therefore, the Court has to strike the balance between the right of individual liberty guaranteed under Article 21 of the Constitution of India and the interest of the society. In view of the law declared by the Apex Court in **Rajesh Ranjan Yadav @ Pappu Yadav v. CBI through its Director**², the societal interest must also kept in mind while granting bail to the person, who is in custody, besides other circumstances narrated above.

9. Here in this case, the gravity of the offences allegedly committed by the petitioner is serious in nature and that committing theft of gold weighing about 3 Kgs in a broad daylight confining in the room is a matter of serious concern and that most of the accused are from different places and the gold recovered from A2 is a resident of Jodhpur of Rajasthan State. Therefore, taking into consideration the gravity of the offence, it is difficult to exercise power under Sections 437 and 439 of Cr.P.C., at this stage.

10. The other contention raised by the counsel for petitioner is that A2 was already enlarged on statutory bail under Section 167(2) of Cr.P.C. Mere enlargement of another accused on statutory bail, this Court cannot exercise jurisdiction under Sections 437 and 439 of Cr.P.C. The counsel for petitioner has relied upon the decision of the Apex Court in Abdul Quasim v. National Investigation Agency to contend that when the charge sheet was not filed within the statutory

² (2007) 1 SCC 70

period, the petitioner is entitled to statutory bail under Section 167(2) of Cr.P.C. But the present petition is filed under Sections 437 and 439 of Cr.P.C., and therefore, the petitioner is at liberty to approach the appropriate Court under Section 167(2) of Cr.P.C., if the charge sheet is not filed within the statutory period under Section 167 of Cr.P.C. and that on the ground that the other accused were enlarged on statutory bail, the petitioner is not entitled to claim the same.

11. Therefore, considering the facts and circumstances of the case, gravity of the offence and the manner in which the offence was committed, I am of the view that it is not a fit case to enlarge the petitioner on bail at this stage. However it is clear that the petitioner is at liberty to avail appropriate remedy before the appropriate Court under Section 167(2) of Cr.P.C., if advised.

12. In the result, the Criminal Petition is dismissed. Miscellaneous petitions, if any, pending in this petition shall stand dismissed.

M. SATYANARAYANA MURTHY, J

28th March, 2018

sj