

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No. 3373 OF 2018

ORDER:

This criminal petition is filed by the petitioner/A-7 under Section 437 & 439 of Criminal Procedure Code, to enlarge the petitioner on bail in connection with S.C.No.03 of 2018 pending on the file of VII Additional District & Sessions Judge, Vijayawada, Krishna District, for the offences punishable under Sections 120-B, 148,302,440,212 r/w 149 IPC & Sections 25 & 27 of Indian Arms Act.

The case of prosecution in brief is that, on 24.09.2014, during morning hours, the petitioner along with other accused committed murder of deceased 1 to 3 and the family members of A-1 and others in order to take revenge in connection with the death of their relative Babu Rao, decided to eliminate the deceased persons, in the process, they hired A-7,A-8& A-9 and other persons from Delhi who are the hired killer to eliminate the deceased. It is further alleged that, on 24.09.2014, 1st deceased hired one Tavera car bearing No.AP 20 Y 0500 from LW41 from SVS Travels and they came to Gannavaram Airport at about 9:45 AM to receive D-2 & D-3. On that day, D-2 & D-3 came to Gannavaram from Mumbai, D-1 received them all the deceased three persons, sat in the middle of the car along with A-7 and A-9, showed the deceased to them and their place of seating in the car. It is further alleged that there after when the vehicle of the deceased moved from Airport it was followed and chased by the Mahindra XUV Driven by A11 along with A6, A8 and A10. Whereas A7 and A9 followed and chased on Pulsar Motor Bike. When the vehicle of the deceased crossed Gannavaram centre and

reached Vegi Tatayya Gardens of Pedavutupalli village towards Eluru side on Chennai to Calcutta NH16, A11 drove the car at high speed chased, overtook the car of the deceased, stopped the car of the deceased by moving their Mahindra XUV Car in front of the car of the deceased. In the meantime, A7 and A9 also reached the spot.

It is submitted that immediately A6, A8 and A10 got down from the car while A11 in driver seat having country made pistol remained in the car. A8 and A10 armed with pistols fired with both hands, A6 armed with iron rod, A7 armed with pistol and A9 armed with country made pistol. A10 fired the pistol on D3 from the right side of the car. A6 broke the glasses of the car of the deceased with iron rod. A7, A8 and A9 opened fire with pistol against the deceased indiscriminately from the left side of the car pointing at the deceased resulting which all the three persons died on the spot. After the incident all the accused escaped from the scene of offence and reached their places. On such allegations the police registered crime and arrested the petitioner on 06.10.2014 at Kalyanapuram, New Delhi and remanded to judicial custody. Subsequently the police filed charge sheet and the same was numbered as Sessions Case of S.C.No.03 of 2018, pending on the file of the VII Additional District & Sessions Judge, Vijayawada.

It is further submitted that, in earlier application in Crl.P.No.646 of 2018 seeking bail and this Court vide order dated 31.01.2018 dismissed the said criminal petition. However, considering that the petitioner has been languishing in jail since 06.10.2014, this Court directed the Court below to complete the trial expeditiously, preferably

within six months from the date of receipt of copy of the order. As the trial was not completed, the petitioner renewed his request within three months from the date of passing the order.

It is submitted that the petitioner recently filed bail application before the Sessions Judge at Vijayawada in CrI.MP.No.16 of 2018 in S.C.No.03 of 2018 and the same was dismissed on incorrect appreciation of the facts and law.

Whereas, learned Public Prosecutor for the State of Andhra Pradesh contended that this petitioner is a dangerous and notorious criminal who is having dossier criminal sheet bearing No.94442 dated 25.08.2011 in Mehrauli Police Station, South District, New Delhi and he is involved in another 15 crimes.

Thus, the key role played by the petitioner is obvious from the allegations made in the charge sheet and from the material collected by the Investigating Agency, it appears that the petitioner is a hired assassin and involved in other crimes, including theft, rape and dacoity. When the petitioner is a hired assassin, involved in notorious criminal activities with criminal background and criminal sheet bearing No.94442 dated 25.08.2011 in Mehrauli Police Station, South District, New Delhi, he cannot be enlarged on bail, as he is a hired assassin, engaged by A-1 to eliminate all the three persons and the role played by this petitioner is evident from the material on record. That apart, the petitioner renewed his request earlier in CrI.P.No.646 of 2018 seeking bail i.e. within 2 ½ months without any substantial changes in the circumstances and no additional material is brought to the notice of this Court.

Renewing request for the same relief without any changed substantial circumstances in investigation and/or without producing additional material before this Court, this Court cannot grant bail to this petitioner.

In “**Kalyan Chandra Sarkar v. Rajesh Ranjan alias Pappu Yadav**¹” the Apex Court held that the principles of *res judicata* and such analogous principles although are not applicable in a criminal proceeding, still the Courts are bound by the doctrine of judicial discipline having regard to the hierarchical system prevailing in our country. The findings of a higher Court or a co-ordinate bench must receive serious consideration at the hands of the Court entertaining a bail application at a later stage when the same had been rejected earlier. In such an event, the Courts must give due weight to the grounds which weighed with the former or higher Court in rejecting the bail application. Ordinarily, the issues which had been canvassed earlier would not be permitted to be re-agitated on the same grounds, as the same it would lead to a speculation and uncertainty in the administration of justice and may lead to forum hunting.

When a bail application is rejected there is no bar to entertain another application afresh since principle of *res judicata* has no application, however there must be some new ground to be made out to apply for bail again after rejection of earlier bail application (vide: “**Gama v. State of U.P.**”²)

¹ AIR 2005 SC 921

² 1987 CrL.J. 242 (All)

In “**State of Tamil Nadu v. S.A.Raja**³” the Apex Court held in paragraphs 8 & 9 when a learned Single Judge of the same Court had denied bail to the respondent for certain reasons and that order was unsuccessfully challenged before the appellate forum, without there being any major change of circumstances, another fresh application should not have been dealt with within a short span of time unless there were valid grounds giving rise to a tenable case for bail. Of course, the principles of *res judicata* are not applicable to bail applications, but the repeated filing of the bail applications without there being any change of circumstances would lead to bad precedents.

Similarly in “**Parvinder Singh v. State of Punjab**⁴” the Apex Court held that dismissal of earlier bail application would not render fresh bail application legally not maintainable and Court can always consider fresh circumstances and subsequent events.

Thus, the law consistently laid down by the Apex Court and other Courts is that if there are major changed circumstances subsequent to dismissal of earlier bail application, the Court can entertain application for bail, consider the same and decide afresh. Merely, on the ground that the earlier application was dismissed, the Court cannot straightaway dismiss the fresh bail application and if major changed circumstances are shown to the satisfaction of the Court, the Court can grant bail.

But, in the present case, no major changed circumstances are brought to the notice of this Court except filing the present petition within 2 ½ months without any substantial changes, after dismissal of

³ (2006) (Supp.) (Crl.) 25 (SC)

⁴ (2003) 14 SCC 615

CrI.P.No.646 of 2018 on 31.01.2018. Hence, those circumstances are not suffice to conclude that same are major subsequent developments in investigation etc. to enable the Court to grant bail.

In view of the law declared by the Apex Court in various judgments, it is difficult to accept the contention of the learned counsel for the petitioner that there are major changed circumstances which entitled the petitioner to claim bail under Sections 437 & 439 of Cr.P.C. Therefore, filing of successive bail applications without any major changed circumstances would not serve any purpose and even incarceration in jail for long period as pre-trial detention is also not a ground to enlarge the petitioner on bail, in view of **Pappu Yadav¹** case.

In view of my foregoing discussion and considering the criminal history, I am not inclined to grant bail to this petitioner. However, the VII Additional District & Sessions Judge, Vijayawada, Krishna District is directed to dispose of Sessions Case No.3 of 2018, in accordance with law, within the time prescribed by this Court vide earlier order in CrI.P.No.646 of 2018 dated 31.01.2018.

In the result, the criminal petition is dismissed.

Consequently, miscellaneous applications pending if any, shall also stand dismissed. No costs.

JUSTICE M.SATYANARAYANA MURTHY

Date: 16-04-2018.

SP