

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.3854 OF 2018

ORDER:

The petitioners/A.4, 9 and 10 in Crime No.21 of 2018 of I town police station, Nellore, SPSR Nellore District, filed the present petition under Section 438 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.'), to grant pre-arrest bail in the event of their arrest in connection with the above crime, apprehending their arrest.

The case of the prosecution in brief is that A.1 to A.12 and some others formed themselves into unlawful assembly, armed with deadly weapons, waiting for an opportunity to wreck vengeance against Javeed, who is the friend of the complainant namely Syed Fazil Ahmed, due to enmity, On 10.02.2018 while the complainant and four others who were sat on pial at Janda street and chit chatting themselves, by that time A.1 to A.12 and some others came to spot on their motor cycle while carrying sticks with intent to do away the life of Javeed, in turn A.1 beat the complainant with stick and caused head injury, A.2 beat Inthiyaz with hands and legs and caused bleeding injury over the left eye, A.3 to A.12 and others beat Sharuk, Irshad with sticks, resulting which complainant Fazil Ahammad and four others sustained bleeding injuries when neighbours rushed to the spot, the accused flee off on their motor cycle by leaving one motor cycle at the spot. Later the five injured persons were hospitalized for medical aid through police escort. Thereafter, they were discharged from the hospital.

The main contention of the petitioners is that in the absence of any specific allegations, they are entitled to claim pre-arrest bail as

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there is reasonable ground for their apprehension of arrest in connection with the above crime for various offences punishable under Sections 147, 148, 324, 307 read with 149 IPC. Even otherwise, the injured persons discharged from the hospital after taking treatment and that apart in the absence of any specific overt acts against the petitioners, they are entitled to be enlarged on bail and sought a direction to the Station House Officer, I town police station, SPSR Nellore District, to release them on bail in the event of their arrest.

It is an admitted fact that the petitioners filed CrI.P.No.2926 of 2018, wherein this Court granted liberty to file a petition seeking regular bail by surrendering themselves before the court below having jurisdiction, while dismissing the criminal petition.

Though the earlier bail application was dismissed with a specific direction, the petitioners again approached this Court renewing the same request on the ground that entire investigation is completed. But when a direction was given, renewing the request without any changed circumstances would not serve any purpose.

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.**”¹)

Whereas Delhi Court in “**Rajender Singh v. State**”² held that after rejecting bail application 12th time, when the application was

¹ 1987 CrI.L.J. 242 (All)

² 1988 Cr.L.J 749 (Del.)

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filed for 13th time on the ground that there are new developments in the investigation is impermissible.

In “**State of Tamil Nadu V. S.A. Raja**³” (referred supra) 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.

In view of the law declared by the Apex Court and in the absence of changed circumstances, it is difficult to accept the contention of the petitioners to direct the Station House Officer to release the petitioners on bail in connection with the above crime as no substantial changed circumstances or additional material is brought to the notice of this Court after dismissal of earlier bail application. Hence, the petitioners are disentitled to claim pre-arrest bail and the petition is deserves to be dismissed.

In the result, the criminal petition is dismissed.

M.SATYANARAYANA MURTHY, J

Date: 16-04-2018.

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³ (2005) 8 Supreme Court Cases 380