

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.4482 OF 2018

ORDER:

This Criminal Petition, under Section 438 of Cr.P.C., is filed by the petitioner, who is arrayed as accused No.2 in Crime No.34 of 2018, on the file of the Station House Officer, Penukonda Police Station, Anantapur District, apprehending her arrest in connection with the above Crime, initially, registered for the offences under Sections 323, 324 and 506 R/w.34 of I.P.C. and, later, altered to Sections 341, 333, 323, 324 and 506 R/w.34 of I.P.C.

2. Heard, the learned counsel for the petitioner, learned Public Prosecutor (A.P.) appearing for the respondent-State, and perused the record.

3. The case of the prosecution, in brief, is that the de-facto complainant Nagaraju has a dispute with one Jayachandra Reddy, father of accused No.1, regarding a house site. On 14.03.2018 at about 01:45 P.M., when the de-facto complainant and another were proceeding to the house of the de-facto complainant for lunch on the motorcycle in Penukonda town and when reached near Shami Water Plant in Madakasira road, accused Nos.1 and 2 along with others came from their behind on two motorcycles and dashed against the motorcycle of the de-facto complainant. As a result of which, the de-facto complainant and another fell down, accused Nos.1 and 2 along with others attacked the de-facto complainant and beat him with hands and kicked with legs and when one of the unknown offender tried to attack the de-facto complainant with a penknife, due to intervention of friend of the de-facto complainant, all the accused ran away from the scene of offence. The de-facto complainant

sustained a contusion at his right eye and abrasion on his fingers, basing on which the instant crime was registered against the accused.

4. The present petition is filed on the ground that the de-facto complainant was settling the disputes taking advantage of his office as Additional Public Prosecutor and when a suit in O.S. No.60 of 2017 on the file of Senior Civil Judge, Penukonda, was filed by accused No.3 against Hemalatha and Uma for specific performance, on 17.07.2017, the de-facto complainant knowing very well about the litigation, obtained a registered sale deed from Hemalatha and Uma on 19.08.2017 and, subsequently, when impleadment petition was filed by accused No.3, the de-facto complainant threatened accused Nos.1 to 3 to withdraw the suit and when they declined to comply with his demand, attacked the father of accused No.1 and also beat accused No.2 on her head and hands and caused bleeding injuries; for which accused No.2 admitted in the hospital on 20.03.2018 and discharged on 21.03.2018.

5. Learned counsel for the petitioner submits that there is a civil dispute between the petitioner and the de-facto complainant, who is Additional Public prosecutor, the de-facto complainant tried to influence accused Nos.1 to 3, taking advantage of his office, and no incident as alleged occurred but, in fact, the de-facto complainant himself along with others caused bleeding injuries to the petitioner, for which the petitioner also lodged a complaint against the de-facto complainant, which is registered as a case in Crime No.35 of 2018 on the file of Penukonda police station for the offences under Sections 323 and 324 of I.P.C. and, thus, a case and counter-case are pending against the parties for the very same incident occurred at the same place and, in the absence of any material, the petitioner is entitled for grant of anticipatory bail.

6. Learned Public Prosecutor (A.P.), appearing for the respondent-State, opposed the Petition on the ground that only 5 witnesses were examined so far, and all the witnesses state that this petitioner caused injuries on the body of the de-facto complainant and produced a copy of the wound certificate to show that the de-facto complainant sustained injuries in the incident and, hence, requested for dismissal of the Petition.

7. Admittedly, the occurrence of the incident is not in dispute but who is the aggressor of the incident is in question and needs to be decided, as the petitioner pleads that a case and counter-case are registered against them for the aforesaid offences. Sustaining injuries by the petitioner as well as the de-facto complainant are also not in dispute and this fact is substantiated by material on record including the positive photographs and photostat copy of the discharge card, which shows that the petitioner underwent treatment for the injuries sustained by her on 20.03.2018 and discharged from the hospital on 21.03.2018 and the de-facto complainant also sustained injuries as per the wound certificate issued by the Civil Assistant Surgeon, Community Health Centre, Penukonda, dated 18.03.2018, wherein the doctor opined that the de-facto complainant sustained four injuries and they are grievous in nature.

8. Thus, both the petitioner and de-facto complainant received injuries in the allege incident and, at this stage, while deciding a petition under Section 438 of Cr.P.C., it is difficult to decide who is the aggressor. However, investigation in this matter is not completed and, taking into consideration the facts and circumstances of the case, it is not a fit case to grant anticipatory bail to the petitioner. However, acceding to the innocuous request of the petitioner's counsel, the petitioner/accused No.2 is directed to surrender before the concerned Court and, on such surrender, if any application is filed by her, under Sections 437 and 439 of

Cr.P.C., the Magistrate concerned is directed to dispose of the same, after serving notice on the Public Prosecutor, in accordance with law.

9. Accordingly, with the above observation, the Criminal Petition is disposed of.

In consequence, miscellaneous petitions, if any, pending in this Petition shall stand closed.

M.SATYANARAYANA MURTHY, J

Date: 23.04.2018.
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HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

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CRIMINAL PETITION No. 4482 OF 2018

Date. 23.04.2018

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