

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.4860 OF 2018

ORDER:

This criminal petition, under Sections 437 and 439 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.'), is filed to enlarge the petitioners/A1 and A2, who are in judicial custody since 15.02.2018, on bail in Crime No.34 of 2018 of Ananthapuramu III Town Police Station, registered for the offence punishable under Section 363-A read with 511 IPC and read with 34 IPC.

The case of the prosecution is that one Erikala Sathupati Ravi, A1, R/o Chigurumanpeta, Dhone Town, Kurnool District and Jeripiti Ramanjineyulu, A2 made an attempt to kidnap minor girl viz. Pasupuleti Pragathi, aged 5 years and pujitha, aged 4 years along with other accused for the purpose of begging and committing pick pocketing on 14.02.2018 at about 12.30 PM at Indira Nagar, Ananthapuramu town while they were playing in front of their house, on noticing the incident by their parents, the accused left the girls and flee away from the place. Thus, the petitioners attempted to commit serious offence punishable under Section 363-A IPC.

It is the contention of the petitioners that based on omni bus allegations made in the report with the police, the petitioners cannot be charged with the offence and apart from that three accused were enlarged on bail by the Sessions Court, who are similarly placed and by applying parity, these petitioners also entitled for bail and prayed to release the petitioners on bail.

Learned Additional Public Prosecutor opposed the petition on the ground that the petitioners are habitual offenders involved in three other crimes i.e. Crime No.62 of 2017 of Kadiri Rural Police Station, Crime No.72 of 2017 of Kadiri Town Police Station and Crime No.22 of 2017 of

Nallacheru Police Station for the similar offence of kidnap and attempting to kidnap minor children, who are in the custody of their parents and if the petitioners are released on bail, they may commit the same offence.

The first and foremost contention urged by learned counsel for the petitioner before this Court is that in the report omni bus allegations were made and no specific overt acts were attributed to the petitioners. The complaint is only an information to the police about the commission of cognizable offence and need not contain minute details. Therefore, absence of specific allegations in the complaint is not sufficient to enlarge the petitioner on bail on the ground that the petitioners are nothing to do with the offence. Hence, this ground is rejected.

The other ground urged before this Court is that the other accused were enlarged on bail, vide orders dated 16.04.2018 in CrI.M.P.No.351 of 2018 by the Sessions Judge, Ananthapuramu and by applying the principle of parity, the petitioners be released on bail. The principle of parity cannot be applied on the ground that the trial Court granted bail to the other accused. The petitioners are not entitled to claim bail as a matter of right in view of registration of various crimes as stated above. Whereas, against A3, no other crime was registered as per the material available on record.

Sri Kun Reddy Anji Reddy, learned counsel for the petitioners further argued that this Court can exercise inherent power being the High Court and that the petitioners are entitled for statutory bail and that his experience is 29 years as advocate and that the Judges in the High Court are exercising power granting statutory bail even in the applications filed under Section 437 and 439 Cr.P.C. In view of the peculiar argument advised by learned counsel for the petitioners, I am unable to understand, that the counsel is unable to draw distinction between regular bail and default bail under Section 167(2) Cr.P.C. When this Court asked the counsel to explain

difference between these two, he simply ignored and requested this Court to exercise power under Section 167(2) Cr.P.C. to grant statutory bail. Undoubtedly, the Court can exercise such power to grant bail either regular or statutory bail subject to claim in the petition and material if any placed in support of claim. The present petition is filed for grant of regular bail under Section 437 and 439 Cr.P.C., but not under Section 167(2) Cr.P.C. At this stage, learned counsel for the petitioners interfered and demanded to exercise jurisdiction to grant bail in the middle of the dictation. But such practice is not prevailing in the High Court to interfere in the middle of the dictation by the Judge.

Even if the petitioners are entitled for statutory bail under Section 167(2) Cr.P.C., it is for them to approach the Sessions Court initially for grant of default or statutory bail under Section 167(2) Cr.P.C. Having filed a petition under Section 437 and 439 Cr.P.C. demanding the Court to grant statutory bail is unknown procedure. Therefore, taking into consideration, criminal history of the petitioners having involved in other similar crimes referred above, I am afraid to grant bail to the petitioners as there is every possibility to repeat similar crime while on bail. However, it is left open to the petitioners to approach appropriate forum to seek statutory bail under Section 167(2) Cr.P.C, if they are entitled.

With the above observation, the criminal petition is dismissed.

Pending miscellaneous petitions in the petition, if any, shall stand closed.

M. SATYANARAYANA MURTHY, J

03.05.2018
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