

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

Criminal Petition No.5463 of 2018

ORDER :

The petitioner is A.5 in S.C.No.84 of 2018 on the file of the II Addl.Metropolitan Sessions Judge, Visakhapatnam which is outcome of committal proceedings from the final proceedings that was covered by Cr.No.357 of 2017 registered for the offences punishable u/ secs.397, 452 and 506 r/w 34 IPC of III Town Police Station, Visakhapatnam and in the course of time, the husband of the defacto-complainant since breathed last, it is also taken cognizance for the offence u/ sec.302IPC and the petitioner is in judicial custody since 08.08.2017.

2. The contentions in the bail application are that as per the written complaint of the defacto-complainant-Jyothi Dhamija, on 17.07.2017 at about 16 hours 4 unknown persons trespassed into their house located in Flat No.1 and 6, sixth floor, Sea Surf Apartment, opposite to Palm Beach Hotel, Visakhapatnam, and questioned about her husband and while they were searching their house, her husband asked them as to who they were and why came to their house, for which one of the accused persons beat him with hands on his face and when she tried to interfere, she was threatened of killing and attacked with knife on her left hand and left side of back and one person wearing white shirt threatened to kill her daughter with gun and also attacked with knife on her husband who sustained grievous injuries and they were shifted to New Care Hospital for treatment by the neighbours. The confession of co-accused during the course of investigation to the police is hit by Section 25 of the Indian Evidence Act(for short, 'the IE Act') but for to the to the extent of any admissibility from any discovery u/ sec.27 of the IE Act and to implicate the petitioner there is no basis including to take

cognizance in the Sessions Case for the offences supra against him and he was originally a driver working at Saudi Arabia and after the tenure of his contract as driver, he returned back to India and performed marriage of his sister and while he was in Visakhapatnam in search of a job, he was arrested by the police and later he was shown officially arrested in the remand report by false implication though he is innocent thereby entitled to concession of bail and the earlier bail application of him was dismissed by the learned II Addl. Metropolitan Sessions Judge, Visakhapatnam, in CrI.MP. No.373 of 2018, dt.12.4.2018 and further submits that he is ready to furnish solvency and abide by conditions.

3. Heard the learned counsel for the petitioner and the learned Public Prosecutor representing State and perused the material on record.

4. In the course of hearing the learned counsel for the petitioner- A.5 produced an order copy passed by the learned IV Addl.District & Sessions Judge-cum-II Addl.Metropolitan Sessions Judge, dt.11.06.2018 in CrI.M.P.No.545 of 2018 where the A.6 was granted bail. The observations in the bail order shows the learned Public prosecutor not objected for grant of bail by imposing any necessary conditions for his due appearance saying the A.6 was driver of the vehicle in which the culprits came to Visakhapatnam on the date of offence and bail can be granted.

5. Thus what the bail granted to the A.7, though originally dismissed for A.5 and A.6, by order of this Court dt.18.12.2017 in CrI.P.No.11946 of 2017 is in a different footing saying the allegations against the A.5 and A.6 are grave and so far as the A.7 concerned, there is no participation in the commission of the offence and at the time of commission of the alleged offence, he was at Jamshedpur of Jharkhand State and kept a watch on the local police. The said order also speaks

that A.8 to A.12 are yet to be arrested and the A.1 to A.4 not granted any bail and the accused persons belong to different States and habitual offenders in commission of grave crimes of dacoits and murder for gain.

6. The chargesheet speaks that L.W.19 is the known person of A.2 who taken amount from him for investment of business. LW20 stated about the A.2 given amount to L.W.19 for investment in business and the LW21-the Technician of CCTV who installed the CCTV Cameras in Sea Surf Apartment. LW22 is the owner and LW23 is the receptionist In Gemini Lodge, beside Gokul theatre, Visakhapatnam, LW24 is the Asst.Manager in Vijaya Bank who collected the CCTV footage from his bank CCTV cameras, LW25 is the Home Guard in Police Command Control, Police Commissionerate, Visakhapatnam. LW26 is the Trustee of Hazarat Tajuddin Baba Trust, Dakamarri, Bheemili Mandal, Visakhapatnam District, LW52 is the Sub Inspector of Police, Parawada Crime Police Station who arrested the A5, LW51 is the Inspector, Dwaraka Sub Division, who arrested the A6 and A7 on 20.07.2017 who in the course of interrogation made disclosure of the commission of the offences along with A.1 to A.5, A.8 to A.12 and consequently Bolero van bearing Regn.No.JH 01BR 9469 and two cell phones were seized from them under mediatorsnama and with transit permission obtained from the Chief Judicial Magistrate, Purulia Court having jurisdiction and later produced them before the IV ADDL. Chief Metropolitan Magistrate, Visakhapatnam. The Scooter bearing Regn.No.AP 32A 1382 was identified from CC TV footages and the owner traced is mother-in-law of A.1 and she was examined as LW-12 who disclosed that A-1 was using the Scooter. The A.2 who was arrested on 22.07.2017 also made a disclosure of he along with A.1 set up the other accused in commission of the dacoity and their disclosure lead to discovery of the motor bike bearing

No. AP 31CH 353 that was used to receive the gangsters and also seized 2 mobile phones from his possession under Mediatordnama and A.1 was arrested on 02.08.2017, LW-58 arrested A-1 on 02.08.2017 and seized his Glonee mobile phone from his possession in the presence of LWs 37 and 38 and in pursuance of his confession about the commission of offence along with other accused, the house of A-1 was searched on 02.08.2017 and promissory notes, bank books, cheque books, chit books under mediatordnama were seized and later A-1 was sent to judicial custody. A.5 who was arrested by LW-52-Sub Inspector of Police, Parawada made disclosure regarding privy of the crime by participation was produced with transit permission from Chief Judicial Magistrate, Dhanbad and later produced before the IV Add. Chief Metropolitan Magistrate, Visakhapatnam, and A.3 and A.4 respectively were arrested by LW-58 also made similar disclosure of the complicity of all to the crime and in the Bolero van seized fingerprints and dried blood stains found stucked to the vehicle and also blood stained cloths available in the crime vehicle and seized under the cover of mediatordnama and L.W.58 seized the Admission Register of Gemini Lodge from L.W.22, at the reception counter beside Gokul Theatre, Visakhapatnam city which shows the movements of A.3 to A.6, A.8 to A.11 in relation to their participation in the crime. It is therefrom shown the entire investigation discloses that the A.1 and A.2 who incurred financial loss and in need of money being close friends of whom A.2 working as Maintenance Manager of Sea-surf Apartment, had an eye on the deceased family from he is a rich businessman with sound financial position and wanted to loot his house chalked out a plan and as part of their plan from A.1 got friends at Tatanagar, Jemshedpur with criminal contacts in commission of such crimes as he was going to Jemshedpur for purchase of kites for sale in

Visakhapatnam in every January and A.1 visited Tata nagar in the year 2017 January, met his friend A.12(absconding) and appraised him of their plan to Ashruf who agreed to execute and introduced the absconded A.8 to A.1 over phone, who also agreed to join in that operation as of the nefarious plan and A.9, A.10 and A.3 arrived Visakhapatnam, the A.1 cause arranged accommodation to them at Gemini Lodge, beside Gokul Theatre, Visakhapatnam, to where A.8 also came but for A.7, all others participated in the commission of the offence among the A.1 to A.12 for A.7 remained at Jemshedpur to keep watch on the movements of the local police or any information relating to the offence as privy to the plan and in pursuance of that, the A.3, A.4, A.9 and A.10 entered into the flat of the deceased while A.5 and A.11 remained in the cellar of the apartment to watch the movements and A.1 and A.8 were waiting at beach road, at elephant portrait along with the scooter of A.1, opposite to the Apartment supra, A.10 carried one file, A.3 carried duplicate pistols and gloves to avoid fingerprints and plaster to use if necessary and A.3 held his knife with jungle pouch, one knife, injunctions in a bag making themselves to be believed as special police officers and entered into the plot and introduced themselves as officers came from Delhi to conduct search and even L.W.1 opened door and asked them to wait, they did not care and enter inside and took out dummy pistols and threatened L.W.1 and committed the offences.

7. Having regard to the above, for the act of one is the act of all remaining as parties to the privy and conspiracy to the nefarious plan implemented u/ sec.10 of the IE Act, r/w 120-B IPC and Sections 14 and 15 of the IE Act, it is premature to say from the prima facie accusation

as there is no accusation against the A.1 and he entitles to concession of bail.

8. Accordingly and in the result, the Criminal Petition is dismissed. Even the fact that others granted from any concession from the learned Public Prosecutor that from so far as A.6 has no specific role from A.7 was at Jemshedpur at the time of commission of the offence at Visakhapatnam, any granting of bail to the petitioner-A.5 not at all entitles A.5 and equally a bar with any of them leave about others are in judicial custody and for some still in abscondence.

9. Consequently, miscellaneous petitions, in this Criminal Petition, pending if any, shall stand closed.

Date:03.07.2018
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Dr. B. SIVA SANKARA RAO J,

