

**HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH
FRIDAY, THE FIFTEENTH DAY OF JUNE
TWO THOUSAND AND EIGHTEEN**

**:PRESENT:
THE HON'BLE DR. JUSTICE B.SIVA SANKARA RAO**

CRIMINAL PETITION NOS: 5553 & 5539 OF 2018

CRL.P. NO. 5553 OF 2018:

Between:

Alapati Raghu S/o Balakrishna

Petitioner/Accused-2

AND

The State of A.P., rep. by its Public Prosecutor, High Court at Hyderabad, through the Station House Officer, Undrajavaram Police Station, West Godavari District.

Respondent

Petition under Section 438 of Cr.P.C, praying that in the circumstances stated in the petition and the grounds filed herein, the High Court may be pleased to grant anticipatory bail in the event of arrest of the petitioner/accused 2 in connection with the Crime No.93 of 2018 of Undrajavaram Police Station, West Godavari District;

Counsel for the Petitioner : SRI M.K. RAJ KUMAR

Counsel for the Respondent : PUBLIC PROSECUTOR (AP)

CRL.P. NO. 5539 OF 2018:

Between:

Alapati Narendra Prasad S/o Bala Krishna

Petitioner/Accused-1

AND

The State of A.P., rep. by its Public Prosecutor, High Court at Hyderabad.

Respondent/Complainant

Petition under Section 438 of Cr.P.C, praying that in the circumstances stated in the petition and the grounds filed herein, the High Court may be pleased to release the petitioner on bail in the event of his arrest in FIR. No. 93 of 2018 on the file of Undrajavaram Police Station;

Counsel for the Petitioner : SRI P. VAMSHEEDHAR REDDY

Counsel for the Respondent : PUBLIC PROSECUTOR (AP)

The Court made the following:

THE HONO'BLE Dr. JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION No.5539 & 5553 OF 2018

COMMON ORDER:

The petitioners are A.1 and A.2 of Crime No.93 of 2018 of Undrajavaram Police Station, West Godavari District. The crime registered is for the offences punishable under Section 147, 148, 307, 324, 120-B read with 149 of the Indian Penal Code, 1860 (for short I.P.C.).

Heard the learned counsel for the petitioners and the learned Public Prosecutor and perused the material on record.

The averments in the bail applications are that the petitioners/ A.1 and A.2 respectively are implicated by false accusation for the affect of the *de facto* complainant by A.3 to A.9, if any, and there are political rivalries between A.1 and the *de facto* complainant groups since panchayat elections for the A.1 belongs different political party and they no way involved in the case and none of the sections for which the crime registered are applicable to them. A.1 and A.2 are own brothers and they are sons of one Balakrishna.

The learned Public Prosecutor opposed the bail application saying from the investigation it reveals that A.1 is rowdy sheetler and rowdy sheet is opened against him and there are number of criminal cases between victim's party and A.1 group and thereby the petitioners are not entitled to the concession of any bail much less anticipatory bail sought for.

A perusal of the very report of the one of the injured/ *de facto* complainant shows the attack by A.3 to A.9 is at the instigation of A.1 and A.2.



It is the submission of the counsel for A.1 that A.1 is in Delhi and there are flight tickets and on the date of alleged occurrence he was not there.

The learned public prosecutor returned said the submission what is mentioned in the report is instigation and aiding by A.1 and A.2 other accused to attack and having instigated, he need not personally present and it is not the case of the prosecution, he instigated by his presence at the field or nearby. Thereby the said contention is no use.

However, the fact remains from perusal of the investigation material thoroughly as on date, but for the said averment contained in the very report, there is no very material to support so-called investigation by A.1, A.2, A.3 and A9 to attack the victim group. The fact that he is rowdy sheeter or there are cases and counters between two groups by itself is not a ground to deny the personal liberty, in the absence of basis to sustain the accusation from the F.I.R.

Having regard to the above, anticipatory bail is granted subject to following conditions:

1. The petitioners are directed to surrender before the Station House Officer, Undrajavaram Police Station, West Godavari District, within 15 days from today, and on such surrender, the petitioners shall execute a self-bond for Rs.50,000/- [Rupees fifty thousand only] with two sureties each for the like sum each to the satisfaction of the arresting authority, otherwise giving liberty to the petitioners to submit before the Judicial Magistrate of First Class having the jurisdiction for taking to custody and enlarge. The bond to be obtained is not only to appear before the Court pending investigation and after filing of final report in the form of charge sheet or the like for



enquiry/trial before said Court, but also thereafter before any other Court and even after trial before such Court to appear before revisional or appellate Court or other superior Court - vide decision-Pre-Legal Aid Committee, Jamshedpur vs State of Delhi 1982[2]APLJ 43(SC); so that at stage of committal or other proceedings obtaining of fresh bond from accused and even affidavits of sureties of bonds and solvency earlier produced are ratifying and in existence and enforceable, without even insisting their further presence, such recourse quickens the proceedings at other stages before that Court or other Court without loss of time and it also to some extent complies with the requirement of Section 437A Cr.P.C.

2. The petitioners shall report before the Investigating Officer on every alternative day till filing of charge sheet and thereafter once in a month on 1st Sunday between 6.00 p.m to 7.00 p.m until further orders of learned Magistrate for assurance of their availability and non-interference in any manner with the witnesses. The relaxation of this condition in future can be sought before learned trial Magistrate to whom by this order power is conferred.

3. The petitioners shall attend before the Court of law regularly in enquiry and trial without fail, if not their bail shall be cancelled forthwith, without any further order so that, the learned Judge concerned can also issue NBW by canceling the bail from the power under section 439 [2] Cr.P.C. delegated by this order during pendency of proceedings before the Court.

4. The petitioners shall not leave the State pending enquiry/trial without prior permission of the learned trial Judge.

5. The petitioners shall furnish their full address with property and bank account particulars and submit their passport, if any, after enlargement of bail on the next hearing date before the Court concerned (for



collecting by police as part of their duty to investigate-also the means of accused and to furnish the same in the final report of investigation to enable the trial Court in the event of considering the need of awarding compensation under section 357 Cr.P.C. so to award from such material and evidence, apart from securing presence and obtaining of bond with sureties under section 437A Cr.P.C. etc.), failing which it is open to the learned Judge concerned by virtue of the power conferred by this order to cancel the bail.

6. The bail now granted is since a anticipatory one, till end of trial (without prejudice to the right to cancel meanwhile in case of need and/or for non-compliance of conditions supra) any absence of petitioners for hearing/enquiry or trial, issuance of non-bailable warrant-NBW (unless cancelled before execution) and even its execution and production of petitioners as per the NBW; that does not tantamount to cancellation of bail including from the wording of Section 439(2) Cr.P.C. and as such in such an event no fresh bail application can be entertained. As it tantamount to only cancellation of bail bonds earlier executed, (leave about the power of the court to issue surety notices by forfeiting bonds and for imposing penalty on the bonds forfeited); the proper course is to direct the petitioners to work out the remedy to pay penalty on the previous forfeited bonds as per Section 441 to 446 Cr.P.C and to submit fresh solvency with self bond for enlarging their by release from custody on payment of penalty of the earlier bonds forfeited without need of enforcing against earlier sureties again.

Sd/- T.NAGESH BABU
ASSISTANT REGISTRAR

//TRUE COPY//

For ASSISTANT REGISTRAR

To,

1. The IV Additional Sessions Judge, West Godavari District, Tanuku.
2. The Station House Officer, Undrajavaram Police Station, West Godavari District.
3. Two CCs to Public Prosecutor, (AP), High Court of Judicature, at Hyderabad (OUT)
4. one CC to Sri M.K. Raj Kumar, Advocate (OPUC)
5. One CC to Sri P.Vamsheedhar Reddy, Advocate (OPUC)
6. One spare Copy

HIGH COURT

DR.SSRB,J

DATE: 15-6-2018



ORDER

CRL.P. NOS. 5553 & 5539 OF 2018

DIRECTION