

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.7069 of 2018

ORDER:

This petition is filed under Sections 437 and 439 of Criminal Procedure Code (for short "Cr.P.C.") by accused No.1 in Crime No.143 of 2018 of Amalapuram Town Police Station, East Godavari District, registered for the offences punishable under Sections 498-A, 384, 326 (B), 458 and 307 read with 34 of Indian Penal Code (for short "I.P.C."), to enlarge him on bail as he is in judicial custody since 26.05.2018.

The case of the prosecution, in brief, is that the marriage of the defacto complainant was performed with the petitioner herein on 18.10.2013. At the time of marriage, her mother gave Rs.20,00,000/- as dowry, Rs.4,00,000/- as adapaduchu lanchanams, 50 sovereigns of gold and two kgs of silver articles to her in-laws. On 31.10.2013 the petitioner herein and other accused called her to a room and asked for Rs.15,00,000/- which was deposited in her name and convert into FDR in the name of the petitioner herein and herself, keeping her mother-in-law as nominee. In pursuance of the same, on 11.03.2015 the petitioner herein along with other accused necked out her from the house. The defacto complainant went to her parents house and placed the matter before elders and stated that the accused demanded additional dowry and valuable documents from the mother of the complainant. On 09.04.2018, the petitioner herein along with other accused forcibly trespassed into her house at Amalapuram, harassed the complainant for dowry and extorted some valuable

documents, also thrown an acid bottle on her and tried to kill her. On the complaint lodged by the defacto complainant, police registered a case against the petitioner herein and other accused for the offence punishable under Sections referred above.

The contention of the petitioner is that the petitioner did commit no offence much less offence punishable under Sections 498-A, 384, 326 (B), 458 and 307 read with 34 of I.P.C., major part of investigation is completed and the question of petitioner fleeing from justice would not arise and requested to enlarge him on bail.

Sri Pappu Srinivasarao, learned counsel for the petitioner contended that major part of investigation is completed and keeping the petitioner behind the bars would not serve any purpose. As major part of investigation is completed, the question of interfering with the investigation by the petitioner does not arise.

Learned Public Prosecutor for the State of Andhra Pradesh opposed the bail application on the ground that part of investigation is completed and contended that some more witnesses are to be examined while expressing apprehension that the petitioner may interfere in the further investigation.

As seen from the material on record, the petitioner committed serious offence of throwing acid bottle on the defacto complainant, which is punishable under Section 326 - B of I.P.C. and 307 of I.P.C. and so far 11 witnesses were examined; police observed scene of offence and found acid bottle at the scene of offence and noted the damage to the property. The investigation so far done would *prima facie* show that the petitioner made an attempt to kill the defacto complainant by throwing acid bottle

against her.

The offences allegedly committed by the petitioner are serious in nature and the Sessions Judge dismissed the Crl.M.P.No.727 of 2018 on the ground that if the accused is released on bail, there is every possibility of his interference with the further investigation and fleeing from justice he being the native of Kakinada. As seen from the paragraph No.8 of the order in Crl.M.P.No.727 of 2018, only 11 witnesses were examined and even as per Case Diary produced before this Court, only 11 witnesses were examined so far and no progress in the investigation and the trial Court recorded a finding that the investigation is still pending and in the absence of any changed circumstances, this Court cannot enlarge the petitioner on bail at the same stage of investigation.

Renewing request for the same relief without any changed substantial circumstances in investigation and/or without producing additional material before this Court, this Court cannot grant bail to this petitioner.

In “**Kalyan Chandra Sarkar v. Rajesh Ranjan alias Pappu Yadav**”¹ the Apex Court held that the principles of *res judicata* and such analogous principles although are not applicable in a criminal proceeding, still the Courts are bound by the doctrine of judicial discipline having regard to the hierarchical system prevailing in our country. The findings of a higher Court or a co-ordinate bench must receive serious consideration at the hands of the Court entertaining a bail application at a later stage when the

¹ AIR 2005 SC 921

same had been rejected earlier. In such an event, the Courts must give due weight to the grounds which weighed with the former or higher Court in rejecting the bail application. Ordinarily, the issues which had been canvassed earlier would not be permitted to be re-agitated on the same grounds, as the same it would lead to a speculation and uncertainty in the administration of justice and may lead to forum hunting.

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.**”²)

In “**State of Tamil Nadu v. S.A.Raja**”³ 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.

Similarly in “**Parvinder Singh v. State of Punjab**”⁴ the Apex Court held that dismissal of earlier bail application would not

² 1987 Cr.L.J. 242 (All)

³ (2006) (Supp.) (CrL.) 25 (SC)

⁴ (2003) 14 SCC 615

render fresh bail application legally not maintainable and Court can always consider fresh circumstances and subsequent events.

Thus, the law consistently laid down by the Apex Court and other Courts is that if there are major changed circumstances subsequent to dismissal of earlier bail application, the Court can entertain application for bail, consider the same and decide afresh. Merely, on the ground that the earlier application was dismissed, the Court cannot straightaway dismiss the fresh bail application and if major changed circumstances are shown to the satisfaction of the Court, the Court can grant bail.

But, in the present case, no major changed circumstances are brought to the notice of this Court except filing the present petition without any substantial changes, after dismissal of Crl.M.P.No.727 of 2018 on 26.06.2018 by the Sessions Judge. Hence, those circumstances are not suffice to conclude that same are major subsequent developments in investigation etc. to enable the Court to grant bail.

In view of the law declared by the Apex Court in various judgments, it is difficult to accept the contention of the learned counsel for the petitioner that there are major changed circumstances which entitled the petitioner to claim bail under Sections 437 & 439 of Cr.P.C. Therefore, filing of successive bail applications without any major changed circumstances would not serve any purpose and even incarceration in jail for long period as pre-trial detention is also not a ground to enlarge the petitioner on bail, in view of the principle laid down in “**Kalyan Chandra Sarkar v. Rajesh Ranjan alias Pappu Yadav.**” (referred supra)

In view of my foregoing discussion, I am not inclined to grant bail to this petitioner. Consequently, the petition is liable to be dismissed.

In the result, the criminal petition is dismissed.

Consequently, miscellaneous applications pending if any, shall also stand dismissed.

JUSTICE M. SATYANARAYANA MURTHY

23.07.2018
Ksp

