

HON' BLE DR. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION No.7489 of 2018

ORDER:

The petitioner, who is A2 in Crime No.69 of 2017 on the file of Yadamari Police Station, Chittoor District, filed the present application under Sections 437 and 439 Cr.P.C. seeking enlargement on bail in the above crime, registered for the offences punishable under Sections 447, 302, 307, 324, 341 r/w 34 & 109 I.P.C.

2. Heard learned counsel for the petitioner and learned Public Prosecutor representing the State.

3. The police after investigation filed final report that was taken cognizance for the offences supra before the IV Additional Munsif Magistrate, Chittoor, by allotting PRC No.4 of 2018. The petitioner is in judicial custody since 16.12.2017. A3 is father of A1 was granted regular bail undisputedly. A1 is no other than friend of the petitioner/ A2.

4. The factual matrix shows that there is a civil dispute between the deceased family and A1 and A3 family and having succeeded in the civil dispute by the deceased family, on 08.12.2017 at the noon time, they engaged tractor bearing No.AP 03 BS 2257 of one Bhaskar Naidu, when tried to plough, A3, father of A1 objected who went unsuccessful in the civil litigation, for said ploughing and A1 reached the place on intimation of A3, he drove the vehicle over the deceased,

from which the deceased died instantaneously and A1 picked up an iron pipe and beat on the head of husband of the deceased by name Jagannadh Reddy. So far as the petitioner/ A2 concerned, he was already there in support of A1 came with him and he even prevented brother of the deceased LW1 when trying to save the deceased from the hands of A1 while driving the tractor over the deceased.

5. Though the learned counsel for the petitioner made an effort to say that when A3 granted regular bail, who is the main perpetrator of the crime. Even taken it is not accidental and intentional at the hands of A1 at the instigation of A3, the mere presence from the prosecution case of the petitioner/ A2 concerned disentitled to the concession of bail having been in judicial custody with long incarceration on 06.12.2017 for more than seven months in recognition of his personal liberty for no exceptional circumstances to refuse bail and the impugned dismissal order of the learned Sessions Judge dated 12.07.2018 in CrI.MP.Nos.1350 and 1351 of 2018 of the bail application of A2 along with that of A1 is unsustainable and with no application of judicial mind.

6. The learned Public Prosecutor opposed the said bail application saying A1 and A2 are the friends and they are involved in several crimes including jointly. So far as A2 concerned, he was involved in five or more crimes including one crime with his wife stated compromised later and though

it is the submission of the learned counsel for the petitioner at this stage that in all the cases he was acquitted but for in an offence under Section 321 I.P.C. only pending and so far as case facts concerned, those are not coming in the way even police allegedly opened any rowdy sheet against him for entire investigation is completed and the proceedings are to be committed soon to take up the trial.

7. A perusal of the dismissal bail order of the learned Sessions Judge against the petitioner and A1 clearly shows the manner in which the investigation record with final report discloses the role of A2 and A1 no way entitles to the concession of bail that is the reason why, their applications for bail ended in dismissal even earlier more than 8 or 9 times in saying character and conduct of accused is also relevant in considering the personal liberty or not as laid down by the Apex Court in *Prasanta Kumar Sarkar v. Ashis Chatterjee and another* (2010(14) SCC 496).

8. Having regard to the above, the petitioner does not deserve the concession of bail under the clog of personal liberty, which is a qualified fundamental right from the propensity of crime and past record, but for, to direct the learned Magistrate to commit the case early, since it is practically post office duty subject to compliance of conditions of Section 209 (a) to (d) Cr.P.C. for the learned Sessions Judge to hear before the charges there from on

allotting Sessions Case number for early disposal. The request of the learned counsel for the petitioner to withdraw the application, at this stage, is refused.

9. Accordingly, the Criminal Petition is dismissed.

10. Consequently, miscellaneous petitions, if any shall stand closed.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 30.07.2018
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