

**HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

TUESDAY, THE ELEVENTH DAY OF SEPTEMBER
TWO THOUSAND AND EIGHTEEN

:PRESENT:

THE HONOURABLE DR. JUSTICE B.SIVA SANKARA RAO

CRLP .NO: 9359 of 2018

Between:

G.Muni Raju @ Muniraja S/o Chinnabba Raju

..... Petitioner/A1

AND

The State of Andhra Pradesh, SHO of M.R Palli P.S., Tirupati Urban Police
District., Rep., by Public Prosecutor, High Court Hyderabad

.....Respondent/Complainant

Petition under Section 438 of Cr.P.C. praying that in the circumstances stated in the petition filed herein, the High Court may be pleased to direct the respondent (The Station House Officer MR Palli PS. Tirupati Urban Police) to enlarge the petitioner on bail in the event of his arrest in ~~Cy~~ No.230 of 2018 of MR Palli PS., Tirupati Urban Police.

The petition coming on for hearing, upon perusing the Petition and the grounds filed in support thereof and upon hearing the arguments of Sri M S P KAMARAJU, Advocate for the Petitioner, and of Public Prosecutor(TG) for the respondent, the Court made the following.

ORDER

HON'BLE Dr. JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION No.9359 OF 2018

ORDER:

The petitioner is A.1 among 4 accused in crime No.230 of 2018 of M.R. Palli Police Station, Tirupati, registered for the offences punishable under Sections 354, 324, 323, 506 r/w 34 IPC on 30.07.2018 from the report of the defacto complainant aged about 34 years is the area manager in TTK Health Care and he is residing with his parents and sister in their house. On that day morning while attending repairs to the compound wall A.1-Muniraju (petitioner) who is paternal uncle by courtesy, his brother Krishnamraju and their respective wives Saraswathy and Varalakshmi came and attacked against him and his mother by bet with hands and abused out of fear they went inside their house sometime later when going into their zinc sheet shed nearby which is about 09.00 AM said Muniraju caught hold of mother of the defacto complainant and attacked with knife where her mother sustained bleeding injury to her right shoulder. It is by keeping in mind the earlier disputes said Muniraju attacked her with knife. It is for the cries of his wife Sujatha he came out and Muniraju fled away and he cause admitted his mother in Rua Hospital, Tirupati. It is further stated that even earlier there were physical attacks and to do away him and his family members the accused are threatening and attacking. His mother is dumb and requested to take action.

The contention of the learned counsel for the petitioner that it is a false implication and he is working as class-IV employee and law abiding citizen and there are civil disputes including in OS.No.369 of 2016 on the file Principal Junior Civil Judge, Tirupati, where there was temporary injunction order in their favour in IA.No.625 of 2016 in relation to the defacto complainant and others of their family, who are defendants. The plaintiff plan 'C' schedule lane and even against the temporary injunction order the defacto complainant and other defendants filed CMA.No.21 of 2017 before the learned X Additional District Judge, Tirupati, which is pending. It is at the instance of defacto complainant Gopi, the Panchayat Secretary Perur served notice dated 27.10.2017 on the petitioner in the attempt to demolish said wall with the assistance of subordinates and MR Palli police. A.1 and A.2 filed OS.No.616 of 2017 pending on the file of the learned Additional Junior Civil Judge, Tirupati, against the Panchayat officials etc., to declare the said notice as illegal and there is temporary injunction order against them. Said Gopi filed public interest litigation WP.No.331 of 2017 for demolition of the said wall and the writ petition was dismissed on merits later on contest. He is entitled to seek anticipatory bail as the very FIR is lodged with false allegations and malice.

The petitioner went unsuccessful in seeking anticipatory bail along with A.2 to A.4 and the learned X Additional Sessions Judge, Tirupati, by order dated 20.08.2018 granted anticipatory

bail only to A.2 to A.4 and dismissed so far as the petitioner-A.1 concerned.

Heard learned counsel for the petitioner and the learned Public Prosecutor in opposing the same and perused the FIR, bail application averments and the earlier dismissal order and the case diary.

A perusal of the case diary shows from the wound certificate issued by SVRG Hospital, Tirupati dated 30.07.2018 admitted about 09.00 AM as assaulted and beaten by known persons the injuries are laceration over right shoulder and abrasion of right side of the neck to the mother of the defacto complainant one of the witness to the prosecution. If that is taken into consideration the alleged injury is out of beating and not with attack by knife to say the FIR shows attacked by knife besides not co-relating with what victim stated before the hospital authorities to the injury supra. Undisputedly the record shows there is a civil dispute between the parties. No doubt the learned Public Prosecutor opposed the same as the petitioner is earlier involved in crime No.111 of 2016 for the offences punishable under Sections 448, 324, 427 & 506 IPC and another crime No.431 of 2017 under Sections 353 r/w 34 IPC. So far as 2 crimes concerned are by the selfsame police station, one is out of the dispute with the defacto complainant and the other with Panchayat secretary and others for the demolition and there is a civil suit where injunction granted to

the Panchayat and police not to demolish. It is not a case he is involved in any other crimes.

Having regard to the above and taking into consideration of these facts and particularly from the version in the report to the nature of injury to the mother of the defacto complainant and as the duty of the Court to balance the personal liberty with propensity of the crime, this Criminal Petition is allowed by granting anticipatory bail to the petitioner subject to the following conditions:

[1] Petitioner-A.1 shall surrender before the Station House Officer concerned within fifteen (15) days from today and on such surrender he shall be enlarged on bail on his executing a self-bond for Rs.50,000/- [Rupees fifty thousand only] with two sureties for the like sum each to the satisfaction of the arresting authority, otherwise giving liberty to the petitioner to submit within said 15 days from now before the Judicial Magistrate of First Class having the jurisdiction, for taking to custody and to enlarge as above. 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 or pre-committal enquiry before said Court, but also thereafter on committal before the Court of Sessions or by virtue of any transfer of proceedings for want of jurisdiction or otherwise 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

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 Magistrate concerned by virtue of the power conferred by this order to cancel the bail.

[7] In the event of the police making out a case for police custody for the purpose of interrogation, the petitioner shall be liable to be taken in police custody for facilitating the further investigation remained if any, with the permission of the Magistrate concerned who can grant such police custody within 15 days from today, not exceeding 36 hours in the presence of a male member, subject to necessary precautions and instructions as per the Constitutional Bench expression of the Apex Court in guideline No.iv in **Gurbaksh Singh Sibbia Vs. State of Punjab**¹.

[8] The bail now granted is since 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 petitioner as accused for hearing/enquiry or trial, issuance of non bailable warrant-NBW (unless cancelled before execution) and even its execution and production of accused as per the NBW; that does not tantamount to cancellation of bail including from the wording of Sec.439(2) Cr.P.C. and as such in such event no fresh bail application can be entertained. As it tantamounts 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 accused 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

¹ (1980)2 SCC 565

ratifying and in existence and enforceable, without even insisting their further presence, serves the purpose. Such recourse quickens the proceedings at such committal or other stages without loss of time and it also to some extent complies with the requirement of Section 437A Cr.P.C.

[2] Petitioner shall report before the Station House Officer concerned on every Monday and Wednesday till filing of the charge sheet and thereafter once in a month on 1st Monday till completion of trial/enquiry between 05.00 PM and 06.00 PM for assurance of his availability and non-interference in any manner with the witnesses.

[3] Petitioner shall not enter the area where the victim and witnesses reside, until further orders being passed by the learned Magistrate relaxing the same empowering him by virtue of this order.

[4] Petitioner shall attend before the Court of law regularly in enquiry and trial without fail, if not his bail shall be cancelled forthwith, without any further order so that, the Magistrate can also issue NBW by cancelling the bail from the power under section 439 [2] Cr.P.C. delegated to the learned Magistrate by this order during pendency of proceedings before the Magistrate.

[5] Petitioner shall not leave the State pending enquiry/trial without prior permission of the Court of concerned Magistrate/trial Judge.

[6] Petitioner shall furnish his/her full address with property and Bank Account particulars and submit his/her passport if any, after enlargement of bail on the next hearing date before the Magistrate 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

self bond for enlarging him by release from custody on payment of penalty of the earlier bonds forfeited without need of enforcing against earlier sureties again.

Miscellaneous petitions, if any, shall stand closed.

//TRUE COPY//

Sd/- A.SARASWATHI
ASSISTANT REGISTRAR

For ASSISTANT REGISTRAR

To

1. The Station House Officer, MR Palli Police Station, Tirupati Urban Police Chittoor District
2. Two CCs to the Public Prosecutor (AP), High Court at Hyderabad (OUT)
3. One CC to Sri M S P KAMARAJU, Advocate (OPUC)
4. One spare copy.

Gk

HIGH COURT

DR.SSRB,J

DATED: 11.09.2018

ORDER:

CRLP. NO:9359 of 2018

BAIL

