

THE HON'BLE DR. JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION No.13417 OF 2018

ORDER:

The petitioners are A-1 & A-2 in Crime No.601 of 2018 of Uppal Police Station, registered for the offences punishable under Sections 302 & 201 of Indian Penal Code (for short, 'IPC') and Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2016 (for short, 'Act 1 of 2016'). A-1 is in judicial custody since 05.07.2018 and A-2 is in judicial custody since 30.06.2018 undisputedly. A-3 was later enlarged on bail.

2. Heard. Perused the material on record.

3. A-1 and A-2, who are the petitioners herein, pending investigation from the remand period exceeded 90 days in claiming entitlement to the default bail under Section 167(2) of Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.'), filed application before the learned III Metropolitan Magistrate on 01.11.2018 and the same was returned and re-submitted on 02.11.2018 before the learned Special Sessions Judge for Trial of Cases under SC & ST (POA) Act-cum-VII Additional District & Sessions Judge, Ranga Reddy District, at L.B. Nagar, and ultimately after hearing, ended in dismissal on 08.11.2018 covered by the impugned order with observation of the learned Special Sessions Judge, particularly at para 6 that the petitioners/A-1 & A-2 hail from Bihar State and there is every likelihood of their absconding and difficult to secure their presence, as contended by the learned Public Prosecutor in dismissing. Same is the impugnement saying an indefeasible and

statutory right of entitlement to the bail for the failure of the investigation to complete within the statutory period could not have been interdicted with such an observation by the learned Special Judge instead of imposing any necessary conditions.

4. There is nothing to oppose the same even from the learned Public Prosecutor, but for the attempt to reiterate what was submitted by the learned Public Prosecutor before the lower Court and observation of the learned Special Judge of difficult to secure the presence, if released on bail.

5. Entitlement to bail is different from securing the presence in future with necessary bond though both are inter-related and that also to be part of consideration. However, sofar as the default bail concerned, there is no discretion for the failure of Investigating Agency to complete the investigation, to grant or not, as it is an indefeasible right accrued, Court is bound to recognize and once such is the case, the petitioners are entitled to the default bail on completion of 90 days from the non-completion of investigation under Section 167(2) of Cr.P.C.

6. Even, it is not a case of charge sheet filed as on date, default bail moved thereby by following the expressions by this Court referring to Constitution Bench expressions of the Apex Court in ***Rambeer Shokeen v. State (NCT of Delhi) (9)***¹ besides ***Rakesh Kumar Paul v. State of Assam (6)***² as referred in ***Avva Venkata Rama Rao v. State of A.P., Kadapa District and Deputy Superintendent of Police***³.

¹ (2018) 4 SCC 405

² 2017 (3) ALT (Crl.)141 (SC)

³ 2018 (2) ALT (Crl.) (A.P) 261 (S.B)

7. Having regard to the above, the dismissal order of the lower Court is unsustainable and set aside and default bail is granted, subject to condition of their executing self-bond for Rs.50,000/- (Rupees fifty thousand only) each with two sureties of Rs.1,00,000/- (Rupees one lakh only) for the like sum each, either cash security or immovable property security or fixed deposit receipt or salary certificate of public servant, as the case may be, to the satisfaction of the Station House Officer, Uppal Police Station. Needless to say the petitioners shall furnish their present address and also from time to time change of address to the Investigating Agency and shall report before the Superintendent of Police of the concerned District where they are at least once a week for assurance of availability. They shall not leave the State of Telangana without prior permission of the Court.

8. With the above observations, the Criminal Petition is allowed.

Miscellaneous petitions pending consideration, if any, in this case shall stand closed in consequence.

DR.B.SIVA SANKARA RAO, J

Date: 14th February, 2019

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