

THE HONOURABLE SRI JUSTICE K. LAKSHMAN

**CRIMINAL PETITION Nos.5972, 5995, 5996, 5997, 5998, 5999,
6000, 6001, 6002, 6009, 6010, 6011, 6012 and 6088 OF 2020**

COMMON ORDER:

Mr. Shaik Saber @ Khaja Pasha @ Khaja is accused in all the above fourteen (14) crimes apart from Crime No.181 of 2020 on the file of Kosgi Police Station of Narayanpet District.

2. The details of crime number, police station, offences alleged and nature of allegations levelled against the petitioner herein including worth of stolen property etc. are as follows:

Sl. No.	Criminal Petition No.	Crime Number & Name of P.S.	Offences & name of <i>de facto</i> complainant	Nature of allegations
01.	5972/2020	233/2020 of Moinabad P.S.	454 & 380 IPC Pendyala Saikumar -	On 5.6.2020 <i>de facto</i> complainant and his wife after attending the Hospital came back to home at 14.30 hours, opened almirah and dressing table in their bed room and found gold ornaments and net cash of Rs.1.88 lakhs were missing. The suspects gained entry inside their house and committed theft. Worth of theft article were Rs.4.00 lakhs
02.	5995/2020	65/2020 of Hanwada P.S.	454 & 380 IPC Smt.Sajeeda Begum	On 13.06.2020 <i>de facto</i> complainant went to her sister's house by locking her house and came back at 16.00 hours and found that gold ornaments and net cash were missing; that in between 13.30 and 16.00 hours, some unknown culprits entered into her house by breaking open the door and almirah lock. Worth of theft articles were Rs.58,000/-.
03.	5996/2020	159/2020 of Sadasivpet P.S.	454 & 380 IPC Santhpally Susheela	On 08.06.2020 at 10.00 hours, <i>de facto</i> complainant went to attend labour work; that her neighbour made a phone call saying that her house doors were opened. She went and found that unknown offenders broke open the door lock and committed theft of gold ornaments and cash.
04.	5997/2020	51/2020 of Zaheerabad Town P.S.	454 & 380 IPC Dhannur Pentaiah	On 10.03.2020 at 17.00 hours, <i>de facto</i> complainant and his wife went to his son's tutorial and came back to his house and noticed that his house door locked was broke open. He found that gold ornaments were missing worth Rs.45,000/-. Some unknown offenders broke open the lock and committed theft of gold and silver ornaments.

05.	5998/2020	227/2020 of Jadcherla P.S.	454 & 380 IPC Lavudya Gopal	On 18.07.2020 at about 9.30 hours, <i>de facto</i> complainant and his wife left for mason work. At about 16.30 hours, came back and found that one unknown person came to his house and fled away by jumping his compound wall. He followed him for certain distance, but could not catch him. He found Rs.5,000/- net cash from his almirah was missing.
06.	5999/2020	64/2020 of Hanwada P.S.	454 & 380 IPC Nethikoppula Anjaneyulu	On 13.06.2020, <i>de facto</i> complainant went to attend mason work and came back at 14:00 hours and found his house door lock was broke open as well as almirah and found that some items were stolen worth Rs.19,000/-. His uncle also informed that in his absence some unknown culprits entered into his house and theft gold and silver items worth Rs.34,000/-. The property lost worth Rs.53,000/-.
07.	6000/2020	253/2020 of Moinabad P.S.	457 & 380 IPC Mohammad Jahangir	On 20.06.2020 at about 18:00 hours, <i>de facto</i> complainant locked his house and went to his mother-in-law house at Jeedimetla and returned on 23.06.2020 at about 17.30hours and found his man door lock was broke open and clothes fell cluttered on the ground and found missing gold ornaments all worth Rs.10,000/-.
08.	6001/2020	83/2020 of Kondurg P.S.	454 & 380 IPC Shivakumar Goud	18.06.2020 <i>de facto</i> complainant along with his family members went to attend a function and at 14:00 hours his mother-in-law made a call stating that their house doors were opened and articles fell on ground. They came and found two tolas of gold worth Rs.30,000/- and 20 tolas of silver worth Rs.20,000/- and net cash of Rs.20,000/- were missing.
09.	6002/2020	172/2020 of Pargi P.S.	454 & 380 IPC Sheshadrirao	On 12.05.2020 at about 8.30 hours <i>de facto</i> complainant locked his house and went to Kulkacherla on office work. At about 17.00 hours, he returned home and found the lock broke open and cracked all things and found missing of Rs.15,000/-. Some unknown offenders committed theft of cash.
10.	6009/2020	84/2020 of Kondurg P.S.	454 & 380 IPC Pushpamma Konda	On 18.06.2020 at 13.00 hours, <i>de facto</i> complainant went to attend a function and at 16.00 hours, she returned and found that articles are fell on the ground. Unknown offenders committed theft of net cash of Rs.95,000/-. Later they came to know that the offenders entered into her brother Ramesh at Kondurg, but offenders did not find any precious articles.
11.	6010/2020	144/2020 of Mahaboob- nagar - II Town P.S.	457 & 380 IPC Guddeti Narsimulu	On 13.06.2020 morning around 10.30 <i>de facto</i> complainant and his wife locked their house and went to their shop and in the night around 8.30 p.m. they returned and found the lock of main gate was in tact, but the locks of house door and almirah were broken and found missing the gold and silver articles, net cash of Rs.13,000/- and their children amount of Rs.4,000/-

				were missing. The stolen property worth is Rs.60,000/-.
12.	6011/2020	99/2020 of Kodangal P.S.	457 & 380 IPC Smt. Shabhana Begum	On 09.05.2020 at about 8.00 a.m., <i>de facto</i> complainant went to her mother house for delivery and came back on 12.05.2020 at about 8.00 hours and found her house door lock was broke open and found missing the gold and silver ornaments and cash of Rs.10,000/-. All worth Rs.85,000/-
13.	6012/2020	19/2020 of Nawabpet P.S.	454 & 380 IPC Narsimulu Kummari	On 09.03.2020 <i>de facto</i> complainant and his family went to agriculture fields by locking the house and came back at 18.00 hours and noticed two almirah were opened and found gold and silver articles missing and net cash of Rs.5000/-. Total worth Rs.4,00,000/-.
14.	6088/2020	65/2020 of Pedemul P.S.	454 & 380 IPC Purugurthi Mukund Reddy	On 16.05.2020 at 1000 hours <i>de facto</i> complainant went to purchase articles for her daughter's marriage at Mahabubnagar and came back at 17.00 hours and found the lock of house was broke open and also found theft of net cash of Rs.2,60,000/-. Total worth Rs.3,30,000/-.

3. Heard Mr. Habeen Ahsan Al Hashmi, learned counsel for the petitioner in all the above petitions and the learned Public Prosecutor appearing on behalf of the respondent - State.

4. Perusal of the crimes mentioned in the above tabular form would reveal that the petitioner has started involving in the commission of offences right from 09.03.2020 to 18.07.2020. During the said period, the initial offence committed by the petitioner is crime No.19 of 2020 registered by the Nawabpet Police Station for the offence punishable under Sections 454 and 380 of IPC. The worth of the stolen property is Rs.4.00 lakhs. The latest offence committed by him is vide Crime No.227 of 2020 registered by the Jadcherla Police Station for the very same offences, and the worth of stolen property is Rs.5,000/-. The allegations levelled against the petitioner in all the above crimes are that he broke open the house with an intention to

commit theft and also committing of theft. Particulars of theft including cash, gold and silver ornaments etc. are specifically mentioned in the above tabular form against each crime. The above tabular form would further disclose that in Crime No.83 of 2020 of Kondurg Police Station, the petitioner has committed theft of two tolas of gold worth Rs.30,000/-, 20 tolas of silver worth Rs.20,000/- and net cash of Rs.20,000/- by breaking open the house lock. In Crime No.233 of 2020 of Moinabad Police Station, the petitioner has committed theft of gold ornaments and net cash of Rs.1.88 lakhs, and the total worth of the stolen property was Rs.4.00 lakhs by breaking open the house lock. Like-wise, the petitioner herein has committed theft by breaking open the house lock in all the above said crimes right from 09.03.2020 to 18.07.2020 at different places viz., within a span of about four (04) months. In view of the same, the petitioner herein is a habitual offender and he started committing the offences in the manner stated in the above tabular form.

5. The learned counsel for the petitioner would submit that the police have registered the above crimes against the petitioner herein by taking into the confessional statements forcibly and without proper investigation. He would further submit that in the above crimes, it is mentioned that the offence committed by 'unknown persons'. Even then, without proper investigation and only basing on forcible confessional statement, the police have implicated the petitioner in the above crimes.

6. The learned counsel for the petitioner would also submit that the petitioner herein is in jail from 25.08.2020, and on mere suspicion, the police cannot apprehend the petitioner herein and foist a case against him. He has placed reliance on the judgment in **Viswanathan v. The State of Andhra Pradesh**¹, and would contend that the petitioner herein is entitled for statutory bail under Section 167 (2) (a) (ii). In fact, in the said judgment, the common question fell for consideration was the accused arrested in several crimes during investigation by police according to law in one crime and produced therein within 24 hours and taken into judicial custody, is in jail as pre-trial prisoner, subject to sections 167, 437 to 439 of Cr.P.C. having been not asked by him or by the police concerned to issue P.T. warrant for taking into judicial custody in all other crimes is entitled to claim set off of the period under Section 422 of Cr.P.C. in other crimes and when? And further whether he is in deemed custody for the purposes of Sections 437 to 439 of Cr.P.C. In the said case, incidentally the scope of Section 167 of Cr.P.C. was also discussed. The learned counsel for the petitioner has placed reliance on the following finding in the said judgment.

“Coming to the expression of the Constitution of Bench of the Apex Court in Rakesh Kumar Paul vs. State of Assam²⁶ on the scope of Section 167 Cr.P.C. it is in relation to the entitlement of the default bail, the majority expression says duty of the Magistrate or Court concerned to grant the default bail in recognition of the personal liberty, where also discussed the right of fair and speedy investigation and entitlement to default bail and right to legal aid

¹. Judgment in Crl.P. No.10318 of 2018 & batch decided on 21.12.2018

as part of the rights enshrined under Article 21 of the Constitution of India to the accused involved in a crime. Thereby, the Sessions Judges or the Magistrates concerned in both the States and by virtue of this order and because of the settled 26 (2017) 15 SCC 67 36 position of law from the above particularly from the expressions in Tupakula Appa Rao supra, Niranjan Singh supra reiterated in Sundeep Kumar Bafna supra, entertain the regular bail applications from the accused in deemed custody even not produced on P.T. warrant and not surrendered voluntarily, as the case may be.”

7. In fact, as discussed supra, the petitioner has involved in the above said 15 cases. The investigation is pending. The investigating officer has to collect documents and also has to record the statements of the victims. Property has to be recovered. As rightly contended by the learned public prosecutor, to recover the crime property, the custodial interrogation of the petitioner is also required. Therefore, the said principle is not applicable to the facts of the present case.

8. The learned counsel for the petitioner would further submit that though the police have arrested the petitioner herein on 25.08.2020, they have not completed investigation and, therefore, the petitioner is entitled for statutory bail under Section 167 of Cr.P.C.

9. On the other hand, the learned Public Prosecutor by referring to the documents filed in the above crimes including the statements of the victims, seizure reports etc., would submit that the petitioner herein has involved in 15 crimes and, thus, he is a habitual offender. The police have registered the cases against the petitioner herein and

recovered stolen property from him. The details of commission of offences including the date, time, place of offence, details of stolen property and recovery etc. are also mentioned in the remand report. Investigation is still pending. Yet, the police have to recover stolen property from the petitioner and accused. By referring to the said crimes, the learned Public Prosecutor would submit that the petitioner is a habitual offender and there is every possibility of his jumping out the bail, and in which event, it is not possible for the Investigating Officers to complete investigation and file charge sheet. Considering the gravity of the offences and also the nature of commission of offence and the *modes operandi* adopted by the petitioner in commission of offence, the learned Public Prosecutor sought to dismiss the bail applications.

10. As discussed supra, the details of commission of offences by the petitioner in the aforesaid crimes are specifically mentioned in the remand report. The date, time, place of offence and the details of stolen property, and recovery etc. are also specifically mentioned in the remand report.

11. As discussed supra, the petitioner has started committing the very same offence i.e., house break open and theft right from 09.03.2020 to 18.07.2020 at different places. Within a span of about four (04) months, he has involved in 15 crimes. Thus, he is a habitual offender.

12. As contended by the learned Public Prosecutor, investigation is still pending. The stolen property yet to be recovered from the petitioner and other accused in many of the cases. Custodial interrogation of the petitioner is also required for the purpose of recovery of property and for filing charge sheet. Other accused are also involved in some of the cases.

13. In **Mahipal v. Rajesh Kumar @ Polia**², a Two-Judge Bench of the Hon'ble Supreme Court [Dr. D.Y. Chandrachud J., speaking for the Court], discussed with regard to the power of granting bail under Section 439 of Cr.P.C. and held that the power to grant bail under Section 439 of Cr.P.C. is of a wide amplitude. Though the grant of bail involves the exercise of discretionary power of the Court, it has to be exercised in a judicious manner and not as a matter of course. In the said case, the guiding factors for exercise of power to grant bail as held in **Ram Govind Upadhyay v. Sudarshan Singh**³, were referred, which are as follows:

“3. Grant of bail though being a discretionary order - but, however, calls for exercise of such a discretion in a judicious manner and not as a matter of course. Order for bail bereft of any cogent reason cannot be sustained. Needless to record, however, that the grant of bail is dependent upon the contextual facts of the matter being dealt with by the court and facts, however, do always vary from case to case...The nature of the offence is one of the basic considerations for the grant of bail - more heinous is

². (2020) 2 SCC 118

³. (2002) 3 SCC 598

the crime, the greater is the chance of rejection of the bail, though, however, dependent on the factual matrix of the matter.

4. Apart from the above, certain other which may be attributed to be relevant considerations may also be noticed at this juncture, though however, the same are only illustrative and not exhaustive, neither there can be any. The considerations being:

(a) While granting bail the court has to keep in mind not only the nature of the accusations, but the severity of the punishment, if the accusation entails a conviction and the nature of evidence in support of the accusations.

(b) Reasonable apprehensions of the witnesses being tampered with or the apprehension of there being a threat for the complainant should also weigh with the court in the matter of grant of bail.

(c) While it is not expected to have the entire evidence establishing the guilt of the Accused beyond reasonable doubt but there ought always to be a prima facie satisfaction of the court in support of the charge.

(d) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be (2002) 3 SCC 598 considered in the matter of grant of bail, and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the Accused is entitled to an order of bail.”

14. It was further held in the very same judgment that the determination of whether a case is fit for the grant of bail involves the balancing of numerous factors, among which the nature of the offence, the severity of the punishment and a prima facie view of the involvement of the Accused are important. No straight jacket formula exists for courts to assess an application for the grant or rejection of bail. At the stage of assessing whether a case is fit for the grant of bail, the court is not required to enter into a detailed analysis of the

evidence on record to establish beyond reasonable doubt the commission of the crime by the Accused. That is a matter for trial. However, the Court is required to examine whether there is a prima facie or reasonable ground to believe that the Accused had committed the offence and on a balance of the considerations involved, the continued custody of the Accused sub-serves the purpose of the criminal justice system.

15. The Apex Court referred to the factors to be borne in mind while considering an application for bail in *Prasanta Kumar Sarkar v Ashis Chatterjee*⁴, and the said factors are as follows:

- “(i) whether there is any prima facie or reasonable ground to believe that the Accused had committed the offence;
- (ii) nature and gravity of the accusation;
- (iii) severity of the punishment in the event of conviction;
- (iv) danger of the Accused absconding or fleeing, if released on bail;
- (v) character, behaviour, means, position and standing of the Accused;
- (vi) likelihood of the offence being repeated;
- (vii) reasonable apprehension of the witnesses being influenced; and
- (viii) danger, of course, of justice being thwarted by grant of bail.

.....

12. It is manifest that if the High Court does not advert to these relevant considerations and mechanically grants bail, the said order would suffer from the vice of non-application of mind, rendering it to be illegal...”

⁴. (2010) 14 SCC 496

16. The Apex Court has also referred to the principles laid down by it in *Kalyan Chandra Sarkar v. Rajesh Ranjan*⁵, wherein it was held that the Court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail, a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the Accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind.

17. By referring to the above said judgments, the Apex Court held that it is a fundamental premise of open justice, to which our judicial system is committed, that factors which have weighed in the mind of the judge in the rejection or the grant of bail are recorded in the order passed. Open justice is premised on the notion that justice should not only be done, but should manifestly and undoubtedly be seen to be done. The duty of the Judges to give reasoned decisions lies at the heart of this commitment. Questions of the grant of bail concern both liberty of individuals undergoing criminal prosecution as well as the interest of criminal justice system in ensuring that those who commit crimes are not afforded the opportunity to obstruct justice. Judges are duty bound to explain the basis on which they have arrived at a conclusion.

⁵. (2004) 7 SCC 528

18. Considering the nature of crimes and also the fact that the petitioner has involved in 15 crimes in all of similar nature i.e., house break open and theft within a span of about four (04) months at different places, this Court is not inclined to grant regular bail to the petitioner.

19. Accordingly, all the above Criminal Petitions are dismissed.

As a sequel, miscellaneous petitions, if any, pending in the Criminal Petitions shall stand closed.

02nd December, 2020
Mgr

K. LAKSHMAN, J

