

HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

CRIMINAL PETITION No.9395 of 2021

O R D E R:

This Criminal Petition under Sections 437 and 439 Cr.P.C. is filed by petitioner – Accused No.2 in Crime No.794 of 2021 on the file of Chandanagar Police Station registered for the offences punishable under Sections 195A and 506 IPC., seeking bail.

2. The case of prosecution is that on 16.10.2021, at 10.00 hours, a complaint was received from Ms. Srika Choudary @ Pulivarthi Madhuri stating that she is a witness in her uncle Chigurupati Jairam's murder case, wherein Rakesh Reddy and some others were accused persons. In connection with the said case, she received summons from Jubilee Hills Police Station to attend Court on 27.09.2021 to give evidence. On that day, it is alleged, accused involved in the murder case, threatened her in front of court hall that they would kill her on 09.06.2022. Further, on 13.10.2021, evening, four hand written papers were sent to her phone (9000671234) through Whatsapp from mobile (9440637676) naming her as bitch.

3. Learned counsel for petitioner Sri R.G. Shiva Kumar submits that petitioner was remanded to judicial custody on 21.10.2021. It is submitted that though punishment for the alleged offences is up to seven years, police failed to follow the procedure as contemplated under Section 41-A Cr.P.C. and they have given a go-bye to the guidelines issued by the Hon'ble Supreme Court in **Arnesh Kumar v. State of Bihar**¹. He submits that when police failed to follow the procedure, even in the remand

¹ (2014) 8 SCC 273

report also, no reasons were assigned by them. He submits that no check-list is provided along with the remand report and the Magistrate, without taking all these factors into consideration, remanded the accused. He further submits that it is a clear violation of the guidelines issued by the Hon'ble Apex Court and the Investigating Officer is liable for contempt proceedings and this Hon'ble Court may initiate *suo motu* contempt proceedings against him and even the Magistrate is liable for departmental action.

4. On the other hand, learned Assistant Public Prosecutor has drawn attention of this Court to Section 195-A IPC and submits that as per the 2nd limb, if innocent person is convicted and sentenced in consequence of such false evidence, with death or imprisonment for more than seven years, the person who threatens shall be punished with the same punishment and sentence in the same manner and to the same extent such innocent person is punished and sentenced. Learned Assistant Public Prosecutor submits that in view of the same, police have not issued the notice and also the check-list as contemplated under Section 41-A Cr.P.C. He submits that this Court refused to grant bail to Accused No.1, hence, petitioner, who is Accused No.2 in this crime, is also not entitled for bail.

5. Wherever there are more than one accused in a crime, and if one accused has committed a particular offence, even for other accused also, police are applying the same sections of law and on that ground, they are not issuing notice under Section 41-A Cr.P.C. to the other accused, who were alleged to have committed offences with punishment below seven years. Police cannot uniformly apply all the sections of law to all the accused and

basing on the allegations levelled against a particular accused, they have to follow the procedure.

6. In this case, punishment for the offence under Section 195-A IPC is up to seven years and further, main allegations are against Accused No.1. The allegation against this accused is that he has assisted Accused No.1. Hence, this Court deems it appropriate to grant bail to petitioner.

7. The Criminal Petition is therefore, allowed. The petitioner – Accused No.2 shall be enlarged on bail in connection with Crime No. 794 of 2021, P.S. Chandanagar on his executing a personal bond for a sum of Rs.20,000/- (Rupees twenty thousand only) with two sureties for a like sum each to the satisfaction of X Additional Metropolitan Magistrate-cum-II AJCJ, Cyberabad at Kukatpally.

LALITHA KANNEGANTI, J

17th December 2021

PVD

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Allowed

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PVD