

HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

CRIMINAL PETITION No. 662 of 2022

O R D E R:

This Criminal Petition under Sections 437 and 439 Cr.P.C. is filed by the petitioner – Accused No. 11 in S.C.No. 5 of 2021 on the file of the IX Additional District Judge-cum – Fast Track Court, Rangareddy District (Crime No. 592 of 2020 of P.S. Gachibowli) registered for the offences punishable under Sections 120-B(i), 302, 364, 379, 448, 449, 341, 342, 352, 323 and 506 IPC., seeking bail.

2. The case of the prosecution is that: on 24.09.2020, at about 18.35 hours, Smt. Chintha Avanthi Reddy lodged a complaint that she married one Hemanth Kumar (hereinafter referred to as 'the deceased') in 2020 against the will of her parents and were living separately in TNGO's colony, Phase-II, Gachibowli. While so, on 24.09.2020, at 14.30 hours, Accused Nos. 9, 15, 10, 8, 13, 16, 14, 1, 12, 17 and some others came in three cars, criminally trespassed into their house, beat them and took them in i20 car of Accused No.10 and forcibly made them sit in front seat and Accused No.8 sitting beside her and deceased and all of them informed that they were taking them to her father's house at Lingampally. However, when the car reached Gopanpally X Road, above accused diverted the car towards ORR. Suspecting danger to their lives, both complainant and deceased got down from the car. At that time, Accused No.1 and others got down from the car and forcibly took the deceased in another car and went towards ORR.

Meanwhile, in-laws of complainant came to Gopanpally X Roads to rescue her. But the above accused abused and threatened them also with dire consequences. The complainant stated that at the instigation of her father, all the accused persons, who are close relatives, hatched a plan to do away the life of the deceased, abducted him and beat him.

3. Sri C.V. Srinath, learned counsel for the petitioner submits that neither in the complaint nor in the course of investigation, the name of the petitioner was mentioned. According to him, after Accused No.1 was arrested, basing on his confession, the petitioner was arrayed as Accused No.11 and he was arrested and remanded to judicial custody on 05.10.2020. He submits that even in the first confession statement of Accused No.1, the name of the petitioner is nowhere mentioned, but in the second confession statement in the police custody, his name was mentioned. Learned counsel submits that earlier, the petitioner moved the bail application (Criminal Petition No. 9150 of 2021) before this Court and the same was dismissed by the order dated 15.12.2021. It is submitted that this Court dismissed the said Application observing that *'the petitioner contacted Accused No.1 for about 394 times which supports the case of the prosecution. Further, trial has already commenced and as per the schedule, trial has to be completed within six months and at this stage, the Court is not inclined to consider the case of the petitioner for grant of bail'*. He submits that absolutely, in both charge sheet and supplemental charge-sheet, there are no allegations against the petitioner which connects him to the crime. The prosecution in the charge sheet has stated about the call data details and even Google Satellite

Pictorial graphs wherein the presence of the petitioner at any of the three places on that date was not mentioned. Learned counsel submits that the petitioner and Accused No.1 are known to each other from the last 20 years and the petitioner is in construction business. It is submitted that for supply of material and other things during the pandemic time, he was in regular touch with Accused No.1. It is over a span of more than three months ie. between 10.06.2020 and 24.09.2020. Except stating that the petitioner is in touch with Accused No.1 about 394 times, there is no other material to connect him with the crime. The learned counsel submits that even as per the case of the prosecution, the petitioner has not contacted any other accused except Accused No.1 and also it is not stated whether the petitioner was contacted by any of the accused or the petitioner has contacted the other accused on the date of the incident.

4. It is submitted that even in the evidence before the trial Court, the de facto complainant, who is none other than the wife of the deceased and also an eye witness to the incident, has not mentioned anything about the role played by the petitioner. She identified all other accused and in respect of this accused, no test identification parade was conducted. The learned counsel submits that the petitioner was arrested and remanded to judicial custody on 05.10.2020 and from the last 465 days, he has been languishing in jail. He submits that as these particular facts were not brought to the notice of the Court on the earlier occasion, this Court only taking into consideration the call details between the petitioner and Accused No.1, *prima facie* has come to the conclusion that this call data will support the case of the

prosecution and dismissed the bail Application. He submits that the petitioner has every right to move consecutive applications. He also submits that though initially, schedule was fixed but the trial has commenced on 29.11.2021 and P.Ws.1 to 3 were examined in chief and the cross-examination of P.W.1 is in progress. He submits that now the trial is getting delayed and even the learned Judge has also addressed a letter to this Court seeking further time for completion of trial. The learned counsel submits that when no *prima facie* case is made out against the petitioner and there is no other evidence to connect him to the crime, except call data, incarcerating the petitioner for years together is nothing but violating his right to life enshrined under Article 21 of the Constitution of India.

5. It is submitted by the learned counsel that in several cases, the Hon'ble Apex Court has deprecated the practice of keeping the accused behind the bars for an indefinite period without there being any reasonable ground. He submits that as the entire investigation is completed, charge-sheet is also filed and the petitioner is ready to cooperate with the investigation. It is also not the case of the prosecution that the petitioner will influence the witnesses as already P.Ws.1 to 3, who are prime witnesses, are examined in chief, his case may be considered for grant of bail. Learned counsel submits that as already this Court granted bail in favour of Accused No.3, who is the mother of the de facto complainant, the petitioner stands in a better footing than Accused No.3, as he has nothing to do with the family and no motive can also be attributed to him, hence, he may also be enlarged on bail.

6. The learned Assistant Public Prosecutor filed the counter-affidavit. It is stated therein that Accused No.11 was hired by Accused No.1 for committing the murder of deceased Hemanth; Accused No.1 gave her Rs.10,000/- and earlier he visited the house of the deceased at TNGOs. Colony and also participated in the discussion and he is one of the conspirators. It is stated that Accused No.11 was arrested and his mobile phone and cash of Rs.2,000/- which was given by Accused No.1 as 'supari' to assist them in committing murder of the deceased, were seized. The call data analysis clearly establishes that Accused No.11 communicated with other accused for commission of this offence. As a part of criminal conspiracy and committing abduction and murder of the deceased, Accused No.11 contacted from his cell phone (9640377579) to Accused No.1 for 394 times during the relevant period.

7. It is also stated that the case is in very advanced stage and the Hon'ble Court has given schedule from 29.11.2021 and since then, the trial is conducted on day-to-day basis and it was posted to 01.02.2022 for the purpose of cross-examination of P.W.1. It is stated that at this point of time, if bail is granted to the petitioner, he will certainly influence the witnesses more particularly the victims / L.Ws.1 to 3. It is further stated that the accused have committed a heinous offence and it is a case of honour killing committed by the accused persons in pursuance of the criminal conspiracy, the incident was condemned by all sections of people across society. The Hon'ble Supreme Court in Writ Petition (Civil) No. 231 of 2010 in *Shakti Vahini v. Union of India* has categorically stated in para No. 54(f)(e) that '*the criminal*

cases pertaining to honour killing or violence to the couple(s) shall be tried before the designated Court / Fast Track Court earmarked for that purpose. The trial must proceed on day-to-day basis to be concluded preferably within six months from the date of taking cognizance of the offence. We may hasten to add that this direction shall apply even to pending cases. The concerned District Judge shall assign those cases, as far as possible, to one jurisdictional court so as to ensure expeditious disposal thereof”.

8. Sri V. Raghunath, learned Senior Counsel filed implead petition on behalf of the de facto complainant. He also filed the counter - affidavit and depositions. He relied upon the judgment of the Hon’ble Apex Court in ***Kiriti Pal v. State of West Bengal***¹, wherein it is held thus:

“ In a case based on circumstantial evidence, the Court must adopt a very conscious approach and should record conviction only if all the links in the chain are complete pointing to the guilt of the accused. All the links forming complete chain must be firmly established by the prosecution. Each link taken separately may just suggest suspicion but such suspicion itself may not take the place of proof and not sufficient to convict the accused. All the circumstances must be firmly established and must be consistent only with the hypothesis of the guilt. But that is not to say that the prosecution must meet each and every hypothesis put forward by the accused however farfetched it may be. As discussed earlier, the telephonic calls and the recovery may raise suspicion against the accused but mere suspicion itself cannot take the place of proof. In our view, evidence adduced by the prosecution against appellants 2 and 3 (Siddique Mia and Mustaque Mia) do not form a complete chain connecting the accused with the crime and the conviction of the appellants under Section 302 IPC read with Section 120B IPC cannot be sustained and deserves to be set aside. Likewise, conviction of fourth appellant –Durga Sutradhar under Section 120B cannot be sustained and is liable to be set aside.”

¹ (2015) 11 Supreme Court Cases 178

9. In the counter-affidavit of Respondent No.2, it is stated that Accused No.11 has played a major role in the plot and executed the murder of husband of the de facto complainant. It is also stated that the petitioner is accused in Crime No. 625 of 2020 registered for the offence under Section 120B read with Section 302 IPC. on the file of Gacbhbowli Police Station. Learned counsel submits that the petitioner was arrested in the house of Accused No.4 which also shows that the petitioner has direct nexus with the alleged crime and at this stage, trial has already commenced, hence, she is not entitled for bail. It is submitted that this Court has earlier dismissed the bail application filed by the petitioner and without any changed circumstances and as the trial is in progress, the second bail application cannot be entertained. He submits that the call data also establishes the petitioner's connection with the alleged crime and as such, this Petition is liable to be dismissed. It is further stated that it is the apprehension of the de facto complainant that if this petitioner is enlarged on bail, he may threaten and influence the witnesses, hence, at this stage, the petitioner is not entitled for bail.

10. Heard learned counsel on either side and perused the material available on record.

11. This Court, by order dated 15.12.2021 dismissed the bail application filed by the petitioner on the ground that '*as per the charge-sheet, it appears that petitioner contacted Accused No.1 for about 394 times, which supports the case of prosecution. Further, trial has already commenced and as per the Schedule, it will complete within six months*'. Now it has been canvassed that several issues were not considered and the learned counsel has

brought before this Court several aspects which requires consideration. When already the earlier bail applications were dismissed, while deciding the subsequent bail application, the Court has to take into consideration the earlier order passed by this Court and what are the compelling reasons for granting bail and shall record the same. It cannot be concluded that the accused is not entitled to move successive bail applications. In this case, in the entire charge sheet, the name of the petitioner is mentioned at one place about his arrest in the house of Accused No.4 and that in the second place, it is stated that along with the other accused, this petitioner is also responsible and she also committed the crime. As per the call data also, except Accused No.1, he has not called any other accused. Google Satellite pictorial graphs reveal that at none of the three places, either at the house of the de facto complainant or at Gopanapalle or at the scene of offence where the deceased was murdered, the presence of the petitioner was found. Further, the petitioner is arrested and remanded to judicial custody on 05.10.2020.

12. Though while granting bail, the Court need not elaborate reasons as there is every likelihood that it may affect the case of the accused during the course of trial, but however, *prima facie* satisfaction with regard to facts have to be recorded. In this case, the petitioner is not the family member. Except stating that he is in touch with Accused No.1 over phone for 364 times, what is the exact role played by him in the alleged crime is not mentioned anywhere in the entire charge sheet or the supplemental charge sheet. Further, the Court while considering the bail petition also has to take into consideration the delay in concluding the trial. It

appears that though the trial was supposed to conclude in six months, the learned Judge has requested this Court for further time as he could not complete the same. It also appears that it is not likely to conclude as per schedule. Looking at the allegations in the charge-sheet and the supplemental charge-sheet, except stating that petitioner is in touch with Accused No.1, there are no other special overt acts against him. Further, the presence of the petitioner at the alleged three spots was not mentioned and the eye witness also has not stated anything about the presence of petitioner. Hence, this Court feels that it is a fit case to grant bail to the petitioner, however, on certain conditions.

13. The Criminal Petition is allowed. The petitioner – Accused No.11 in S.C.No. 5 of 2021 on the file of the IX Additional District & Sessions Judge, Ranga Reddy District (Crime No. 592 of 2020 of Gachibowli Police Station) shall be enlarged on bail 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 the IX Additional District Judge, Ranga Reddy District at L.B. Nagar. The petitioner shall cooperate with the trial. He shall appear before the Court and shall not influence or threaten the witnesses.

LALITHA KANNEGANTI, J

9th February 2022

ksld