

HON'BLE SRI JUSTICE K.SURENDER

CRIMINAL PETITION Nos.2594 & 2746 of 2022

COMMON ORDER:

Since the petitioners are Accused No.7 and Accused No.5 respectively, in S.C.No.291 of 2021 on the file of Principal Sessions Judge at Karimnagar in connection with Crime No.21 of 2021 on P.S.Ramagiri, Peddapalli District, they are heard and disposed of by way of this Common Order.

2. Briefly stated, the facts of the case are that the Accused Nos.1 and 2 have committed murder of deceased D1 and D2 with the help and support of A3, A4, A5 and others. The reason behind the murder of D1 and D2 is that Peddamma Temple was being constructed in Gunjapadugu village under the leadership of A1. The deceased (D1) Gattu Vaman Rao complained about temple construction undertaken by A1 and filed complaints, resulting in notices to A1. It is further alleged that D1 and D2 being Advocates were creating problems, due to which, A1 planned to eliminate D1 and D2, who were filing petitions before this Court on several issues including the Temple being constructed by A1. The accused, i.e., A2 to A6, who are having close acquaintance with A1 also shared similar feelings and

decided to eliminate D1 and D2. A1 was desperately waiting to kill D1 and D2 as the construction undertaken by A1 was facing problems. According to charge sheet, A1 and A2, three months prior to actual occurrence had made a futile attempt to kill the deceased. On the actual day of occurrence i.e, on 17.02.2021, A1 along with A3 and A5 attended a cake cutting programme at Manthani and thereafter, at Manthani Chowrasta noticed a car similar to the car of D1 proceeding towards the Court. To confirm about the arrival of D1, A1 along with A3 and A5 went to M.R.O Office and noticed the car of D1. Then A1 asked A5 to come to the Court and confirm the presence of D1 in the Court and also inform about D1's moments to him. On the same day at 9.30 a.m, A4 and A7 were attending a pooja at A4's newly purchased drilling machine. Then, A1 called A4 on his mobile phone and informed about D1 and D2. The Petitioner/A5 confirmed about the arrival of D1 and D2 to Manthani Court and informed A1, who in turn informed to A4. Thereafter, A4 called A2 from the cell phone of the petitioner/A7 and instructed A2 to come near Manthani bus depot with sickles which were with him. A4 along with petitioner/A7 left in the car and meanwhile, A4 called A2

thrice from the cell phone of the petitioner/A7 giving instructions. A2 came on his motor bike and kept two sickles under the front seat of A4's car, the petitioner/A7 pushed the sickles underneath the seat. A4 handed over his car to A2 and instructed A2 to meet A1 at MRO office. Thereafter, A4 left with A2's motor bike along with the petitioner/A7. A1 and A2, were waiting for D1 and D2 to come out of the Court. Meanwhile, D1 and D2 left in their car towards Peddapally followed by A1 and A2 and they intercepted the vehicle of D1 and D2 at Kalvacherla and there, the car of D1 and D2 was stopped. Then, A1 and A2 attacked D1 and D2 with sickles causing severe bleeding injuries, leading to death of D1 and D2.

3. Sri Adinarayana Rao, learned Senior Counsel appearing for Sri M.Ram Mohan Reddy, learned counsel for the petitioners/A7 & A5 would submit that the bail petition of A5 was dismissed thrice by this Court by an elaborate order dated 17.12.2021 in CrI.P.No.9242 of 2021. Further, CrI.P.No.1093 of 2022 was dismissed as withdrawn on 24.02.2022. There is a delay in the trial and the petitioner/A5 is languishing in jail from 18.03.2021,

as such, prayer for bail has to be reconsidered due to delay in conduct of trial and bail be granted.

4. As far as the petitioner/A7 is concerned, learned Senior counsel would submit that this is the first bail petition filed before this Court and the allegations against petitioner/A7 are that (1) he was in the company of A4; (2) A4 used mobile phone of petitioner/A7 to make calls to A2; (3) that he too arrived with sickles and placed them under the front seat of A4's car and he pushed them underneath the seat; (4) the mobile phone which was used to make calls to A2 was thrown into the water to cause disappearance of evidence; (5) some money was paid by A4 into the account of A7. He submits that, on the basis of the above evidence, petitioner/A7 himself cannot be held to be a co-conspirator in the murder of D1 and D2. Going by the allegations made and since the petitioner/A7 never interacted with A1 and A2 nor has done any acts to facilitate or abet the commission of offence by A1 and A2, prays this Court's indulgence in releasing the petitioner/A7 on bail, on such terms and conditions, as this Court deems fit.

5. On the other hand, Sri G.L.Narsimha Rao, learned counsel appearing for the *de facto* complainant argued that this is a heinous crime, a pre-planned murder to eliminate two Advocates, for which reason, bail has to be refused. Further, so far as the petitioner/A5 is concerned, there is no change in the circumstances after dismissal of bail by this Court. The role attributed to petitioner/A7 clinchingly point towards his involvement in the crime and if the petitioners/A5 and A7 are released on bail, they are likely to tamper with the witnesses, resulting in creating problems for the smooth conduct of the trial in the lower Court. In support of his contention, he relied on the judgment reported in the case of **Centrum Financial Services Limited v. State of NCT of Delhi and another**¹ and drew the attention of this Court to paras 10.1 and 10.2, which reads as follows:

“10.1. In the case of **Neeru Yadav vs. State of UP & Anr., (2016) 15 SCC 422**), it is held by this Court in para 11 as under:

“11. It is a well-settled principle of law that while dealing with an application for grant of bail, it is the duty of the Court to take into consideration certain factors and they

¹ 2022 Live Law (SC) 103

basically are: (i) the nature of accusation and the severity of punishment in cases of conviction and the nature of supporting evidence, (ii) reasonable apprehension of tampering with the witnesses for apprehension of threat to the complainant, and (iii) prima facie satisfaction of the Court in support of the charge. **(See Chaman Lal v. State of U.P., (2004) 7 SCC 525)**”.

10.2 In **Anil Kumar vs. State (NCT of Delhi), (2018) 12 SCC 129**, it is observed and held by this Court that while granting bail, the relevant considerations are, (i) nature of seriousness of the offence; (ii) character of the evidence and circumstances which are peculiar to the accused; and (iii) likelihood of the accused fleeing from justice; (iv) the impact that his release may make on the prosecution witnesses, its impact on the society, and (iv) likelihood of his tampering.”

6. Sri C.Pratap Reddy, learned Public Prosecutor appearing for the respondent/State, supplementing the arguments of Sri G.L.Narasimha Rao, learned counsel for the *de facto* complainant stated that the petitioners cannot be released on bail and in similar circumstances, the Hon’ble Supreme Court in the case of **Vidyalakshmi @ Vidya v. State of Kerala**² held that the appellants therein are guilty of the offense on the basis of telephonic conversations amongst accused and he drew the attention of this Court to para 9.6, which reads as follows:

“9.6. It is further submitted by the learned counsel that in the present case the prosecution has been successful

² (2019) 4 Supreme Court Cases 623

in completing the chain of events leading to the conclusion that (1) accused hatched the conspiracy; (2) the relationship between A-1 and A-3; (3) that A-1 and A-2 followed A-3 and the deceased and they were present at all the places where A-3 and the deceased went/stayed; (4) that all throughout A-3 and A-1 were in contact and were having conversation over mobile phones; and (5) that the recovery of MO6 – tour programme of A-3 and the deceased, which was in the handwriting of A-3 and which was recovered from A-1. It is submitted by the learned counsel appearing on behalf of the State that all the above circumstances lead to irresistible conclusion of guilt against accused persons. It is submitted that the links in the chain of circumstances has been completely established by the prosecution. It is submitted that therefore neither the learned Sessions Court nor the High Court have committed an error in convicting the accused for the offences punishable under [Section 302](#) with the aid of Sections, 34, 114, 120B and 379 of the [IPC](#). Therefore, it is prayed to dismiss the present appeals.”

7. The role of petitioner/A5 was discussed in Criminal Petition No.9242 of 2021 and by an elaborate order dated 17.12.2021, this Court dismissed the bail petition of petitioner/A5 finding his involvement in the crime as assisting A1 in commission of the offence and having entered into a criminal conspiracy. There are no changed circumstances to reconsider the prayer for bail petition of petitioner/A5. The contention of the learned Senior Counsel that four months have elapsed and that itself would be enough to reconsider the bail application of petitioner/A5, cannot be a sufficient ground. There is no change in the situation and

circumstances from the stage at which the earlier bail petition was dismissed and that the case in the trial Court is coming up for framing of charges. In view of above, I see any reason to consider the prayer for bail of petitioner/A5 and accordingly, prayer for bail of petitioner/A5 is refused and accordingly, Criminal Petition No.2746 of 2022 is dismissed.

8. As far as the petitioner/A7 is concerned, the charge sheet describes petitioner/A7 as a coolie and working in the construction site of A4. As seen from the averments in the charge sheet and the arguments advanced by Sri G.L.Narsimha Rao, learned counsel for the *de facto* complainant and also the learned Public Prosecutor, no role is attributed to the petitioner/A7 in planning to kill D1 and D2 either prior to the present incident or any time before 17.02.2021, i.e., date of actual incident. The allegation against the petitioner/A7 is that he was accompanying A4 and after A2 called A4 on his cell phone informing the whereabouts of D1 and D2, A4 used the mobile phone of petitioner/A7 to make calls to A2 to be kept informed about D1 and D2. Further it is alleged that the calls were made to know about the actual execution of the plan to eliminate D1 and D2.

9. As seen from the case of the prosecution, the petitioner/A7 allowed A4 to use his cell phone and thereafter, threw the cell phone in the river, which is not sufficient to draw an inference of criminal conspiracy in the facts of the present case. It is not the case of the prosecution that the petitioner/A7 knew about any plans to eliminate D1 and D2. Since the planning to eliminate D1 and D2 is not attributed to the petitioner/A7, it cannot be said that the petitioner/A7 had any intention of doing away with D1 and D2. As seen from the case of the prosecution, when D1 and D2 were seen in the court, the plan to eliminate them was then finalized and executed, as discussed in the above paragraphs. Mere presence of the petitioner/A7 without having knowledge about the plan to eliminate D1 and D2 and only for the reason of the petitioner/A7 giving his phone to A4 to communicate with A2 and others may not be sufficient to infer criminal conspiracy. Mere knowledge about a crime to be committed, without actively assisting in the commission of the said crime, it cannot be said that such person is a co-conspirator. Even according to the prosecution case, the amounts transferred by A4 to petitioner/A7 were not actually linked to any role to be performed by the

petitioner/A7 in the plan executed to kill D1 and D2. The overt acts attributed to the petitioner/A7 cannot be made basis for prolonged incarceration of the petitioner/A7, who is in jail since 10.03.2021.

10. For the aforementioned reasons, the petitioner/A7 is directed to be released on bail on his furnishing personal bond for Rs.20,000/-(Rupees twenty thousand only) with two sureties for the like sum to the satisfaction of the Principal Sessions Judge at Karimnagar and he shall appear before the trial Court on every date of hearing. Needless to say, any attempt whatsoever to delay the trial or influence the witnesses in any manner, the prosecution would be entitled to seek cancellation of bail of the petitioner/A7. It is made clear that the observations made regarding the role of the petitioner/A7 are not conclusive and the trial Court is at liberty to draw its own conclusions on the basis of the evidence adduced, during the trial.

In the result, Criminal Petition No.2746 of 2022 (bail petition of petitioner/A5) is dismissed and the Criminal Petition No.2594 of 2022 (bail petition of petitioner/A7) is allowed and the

petitioner/A7 shall be released, subject to fulfillment of the conditions imposed supra.

As a sequel thereto, miscellaneous applications, if any, pending, shall stand closed.

K.SURENDER, J

07.04.2022

kvs

HON'BLE SRI JUSTICE K.SURENDER

CRIMINAL PETITION Nos.2594 & 2746 of 2022

Date: 07.04.2022

kvs

Crips_2594_2746_2022