

HON'BLE Dr. JUSTICE CHILLAKUR SUMALATHA

CRIMINAL PETITION No.2460 of 2023

ORDER:

Heard Sri S.Pradeep Kumar, learned counsel for the petitioner, as well as the learned Additional Public Prosecutor who is representing the respondent-State.

2. Seeking the Court to enlarge the petitioner who is arrayed as accused in P.R.C.No.19 of 2023 that is pending on the file of the Court of XIII Additional Metropolitan Magistrate, Cyberabad at Rajendranagar, on bail, the present Criminal Petition is filed under Section 439 Cr.P.C.

3. The facts of the case in brief, as could be perceived through the contents of the charge sheet, are that the defacto complainant and three others started on two motorcycles on 18.12.2022 to see the Cable bridge, Madhapur. While they were proceeding and when they crossed A.I.G. Hospitals, on noticing flow of drainage water on road, they had slow down their vehicles and the petitioner who was proceeding in a Mercedes Benz E-Class vehicle drove the said vehicle at a high speed and proceeded on the drainage water. The water fell on the defacto complainant and others, who were

travelling on the motor cycles. On that, they moved ahead and shouted at the petitioner. The petitioner replied “Who are you to say? I will kill you by hitting with my car”. With anger, the petitioner with an intention to kill the riders of those motor cycles and the pillion riders, drove his car and hit one of the motor cycles, due to which, the persons present over the motor cycles fell down. Again, the petitioner moved his car towards the defacto complainant and hit the motor cycle of the defacto complainant and thereafter, fled away from the spot. Due to the said hit, the pillion rider of the motor cycle i.e., Smt. Maria Mir sustained severe head injuries and succumbed to those injuries.

4. Stating that the case does not fall within the ambit of Sections 302 and 307 IPC, learned counsel for the petitioner contends that the prosecuting agency has improvised the case and filed charge sheet. Learned counsel submits that the case, even if the allegations in the complaint are taken to be true, would fall within the ambit of Part-II of Section 304 IPC, but not under Section 302 IPC. Learned counsel argued with regard to the distinction between the offence of “murder” and “culpable homicide not amounting to murder”. Learned

counsel further states that the scene of offence differs from the statements of the witnesses, who were examined by the Investigating Officer, and the rough sketch. Learned counsel also submits that the petitioner was arrested on 20.12.2022 and was remanded to judicial custody and he is in judicial custody since 91 days and as the charge sheet is also laid, he may be enlarged on bail.

5. On the other hand, the submission of the learned Additional Public Prosecutor is that the petitioner deliberately hit both the motorcycles, caused injuries to three persons and one person succumbed to the injuries. Learned Additional Public Prosecutor also states that the entire incident is recorded in CC T.Vs and the electronic evidence is collected.

6. Whether the case falls within the ambit of “culpable homicide amounting to murder” or “culpable homicide not amounting to murder” cannot be discussed and decided at this stage without there being any substantial material in the form of evidence on record. Even if the projection made by the learned counsel for the petitioner is taken into consideration, there exists an element of rashness on part of

the petitioner. Undoubtedly, as per the material available on record, the acts of the petitioner resulted in the death of one person. But, taking into consideration the fact of completion of investigation and that the petitioner is in judicial custody since more than three months, this Court considers it desirable to honour the request of the petitioner, however conditionally.

7. Resultantly, this Criminal Petition is allowed with the following conditions:-

(i) The petitioner/accused shall be enlarged on bail on his executing a personal bond for Rs.1,00,000/- (Rupees One Lakh only) with two sureties for the like sum each to the satisfaction of the Court concerned. The sureties are directed to submit their two latest passport size photographs at the time of furnishing solvency. One such photograph is ordered to be pasted in the Surety Register against the name of the surety. The other photograph shall be kept in the case record concerned.

(ii) The petitioner/accused is directed to surrender his driving license before the Court concerned at the time of furnishing solvency for obtaining bail. The driving license of the

petitioner shall remain in the custody of the Court concerned for a period of one year or till the conclusion of trial proceedings whichever is earlier.

(iii) In case, the petitioner/accused holds a passport, he is directed to surrender the same, if it is not seized by now. The passport of the petitioner, if any, shall be kept in the custody of the Court concerned till the conclusion of the criminal proceedings.

(iv) The petitioner/accused should not involve in any unlawful activity.

(v) The petitioner/accused should not cause the evidence of the offence disappear.

(vi) The petitioner/accused should not tamper with the evidence in any manner.

(vii) The petitioner/accused should not by way of inducement, threat or promise, dissuade any person who is acquainted with the facts of the case, from disclosing such facts to the Court or to the Police Officer.

(viii) The petitioner/accused should ensure his presence whenever required by the Court or Police.

(ix) The petitioner/accused shall not leave India without previous permission of the court concerned.

(x) The petitioner/accused shall file an affidavit before the court concerned disclosing the following particulars:-

- (1) Contact number
- (2) Mail address
- (3) Residential particulars.

In case, there is any change in the aforementioned details, the petitioner shall intimate the court concerned by giving a fresh affidavit duly mentioning the change.

Any deviation of the above conditions would entitle the respondent to take appropriate steps for cancellation of the bail granted.

Dr. JUSTICE CHILLAKUR SUMALATHA

21.3.2023
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