

THE HON'BLE SRI JUSTICE E.V. VENUGOPAL

CRIMINAL PETITION No.8874 OF 2023

ORDER:

1 This petition is filed under Sections 437 and 439 Cr.P.C. seeking to enlarge the petitioner / A.7 on bail in S.C.No.5 of 2021 on the file of the Court of the IX Additional District & Sessions Judge (FTC), Ranga Reddy district at L.B.Nagar, concerned with Cr.No.592 of 2020 on the file of Gachibowli P.S., Cyberabad, registered for the offences punishable under Sections 120(B), 302, 364, 379, 448, 449, 341, 352, 323 & 506 r/w 34 of IPC.

2 The case of the prosecution is that the second respondent Avanthi and the deceased married and subsequently they got their marriage registered at SRO, Quthbullapur and a marriage certificate was also issued to that effect. Both of them started living in a rented house at TNGO's colony.

3 While so, the father of Avanthi who was arrayed as A.2, feeling insulted, decided to eliminate the deceased and bring back their daughter to their house and accordingly A.2 in the case hatched a plan with A.1 who is his brother-in-law and promised to give amounts for that purpose.

4 While so, on 24.09.2020 accused No.2 and 3 called their relatives i.e., Accused No.8 to 10, 12 to 17 and discussed with them and asked

them to abduct the deceased from his rented house and to hand over him to the accused No.1, 5, 6 and the petitioner herein, so that they take him to secluded place and kill him and bring Avanthi back to their family. In execution of the plan hatched by A.2, A.1, A.8 to 10 and A.12 to 17 have abducted the deceased from his house and took him to a secluded place in strangled him with a rope. Hence accused No.1 to 18 have committed the offence punishable under Sections 120-B (1), 302, 364, 379, 448, 449, 341, 342, 352, 323 and 506 read with Section 34 of IPC.

5 Heard Sri D.Vijaya Kumar, learned counsel for the petitioner and Sri Vizarath Ali, learned Assistant Public Prosecutor for the State / respondent No.1 and Sri Raghunath, learned Senior Counsel appearing on behalf of the de facto complainant / respondent No.2 and perused record.

6 The learned counsel for the petitioner submitted that the name of the petitioner / A.7 is not figured in the complaint and the FIR, and he has been implicated in the present case only basing on the confession statement of A.1 and A.2 and that apart from the confession statement made by the petitioner given before police. He further submitted that in the entire charge sheet, the only allegation against the petitioner was that A.1, on the instructions of A.2, met A.4 to A.7 (petitioner herein) and discussed about failure of previous attempts and offered to pay Rs.7.00 lakhs and asked to murder the deceased and except that there is no rule

of the petitioner / A.7 in the alleged offence. The role of the petitioner was not at all stated in the commission of offence. The learned counsel for the petitioner further submitted that the allegations levelled against the petitioner in the charge sheet clearly establish that the petitioner neither involved in abduction or conspiracy much less murder. He further submitted that the petitioner is languishing in jail for the last three years. The entire investigation has already been completed and charge sheet has been filed. Therefore, there is no question of tampering with the witnesses inasmuch as the material witnesses have already been examined before the trial Court. He further submitted that some of the accused have already been enlarged on bail and hence there is no justification in keeping the petitioner in jail for further period. Hence prayed to enlarge the petitioner on bail.

7 On the other hand, the respondent No.2/de-facto complainant filed counter affidavit opposing the bail petition filed by the petitioner/A.7. She submitted that on 24.09.2020 the petitioner /A.7 was in active connivance and hatching a plan to kidnap and kill her and her husband. The petitioner along with other accused followed the i20 car in which the second respondent and her husband were forcibly taken, followed in another car. When the cars reached Gopanapalli X roads, the petitioner and other abducted her husband by forcefully kidnapping him

in their car bearing No.TS 08 ET /3031 and later murdered her husband by strangulation. She further stated that after commission of the offence, A.2 in the case contacted the petitioner. The second respondent relied on the decision of the Hon'ble Supreme Court in **Shakti Vahini Vs. Union of India**¹ wherein the Hon'ble Supreme Court at para No.55.3.5 held that *"The criminal cases pertaining to honour killing or violence to the couple (s) shall be tried before the designated Court/fast tract 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 District Judge concerned shall assign those cases, as far as possible, to one jurisdictional court so as to ensure expeditious disposal thereof".*

8 The learned Assistant Public Prosecutor opposed the bail application contending that if the petitioner is released on bail, there is possibility of the petitioner influencing the prosecution witnesses.

9 Now the point for determination is whether the petitioner/accused No.7 is entitled for grant of bail?

POINT:

10 As seen from the prosecution case, as a part of criminal conspiracy and committing abduction and murder of the deceased, the A.2 contacted

¹ (2018) 7 SCC 192

A.1, A.5 to A.7 several times. Thus, the call data of the petitioner on the relevant date also discloses his involvement in the commission of the offence. After the commission of the offence, the petitioner along with A.4, A.5 and A.11 were apprehended at the house of A.4 after commission of the offence.

11 As seen from the charge sheet itself, at para No.79 it is stated that A.5, A.6 and A.9 caught hold of the deceased and dragged him into the car of A.1 and took him towards ORR, and in the meantime, A.10 contacted to A.2 by phone and informed him that the other accused including the petitioner herein (A.7) present at Lingampalli and then the petitioner and A.1, A.5 and A.6 took the deceased towards ORR and there the petitioner who was sitting in the front seat of the car has got down before Vatitnagulapally village and went towards his house. After the commission of the offence, A.4, A.5, A.7 and A.11 were apprehended at the house of petitioner/A.4.

12 So, except the allegation that the petitioner abducted the deceased, no overt acts have been attributed to the petitioner for the commission of the murder by the other accused. As a matter of fact, the petitioner was not present at the time of abducting the deceased and also at the time of murder of the deceased by the other accused. But the

confessional statements of the other accused would disclose about involvement of the petitioner in the crime.

13 The trial has already been commenced and so far the prosecution has reportedly examined 30 witnesses and still some other witnesses have to be examined before the Court.

14 As seen from the record, the petitioner is in jail for the last three years. In the light of the above facts and circumstances of the case, keeping the petitioner in jail for further period is not required. Moreover, when some of the accused were already granted bail by this Court and that the petitioner has been in jail nearly for the last three years and keeping further the petitioner in jail even after releasing many of the accused on bail is nothing but violation of Articles 14 and 21 of the Constitution of India.

15 Moreover, in **Shakti Vahini case (1 supra)** the Hon'ble Supreme Court gave a specific direction to the Courts below for expeditious disposal of the cases of this nature. But for various reasons the trial in the instant case has not been completed till today and still there are so many witnesses to be examined on behalf of the prosecution. The reason for this, stated by the learned senior counsel for the second respondent, is that the other accused are not cooperating for speedy disposal of the case. But, here in the instant case, the petitioner who is

A.7 in the case is in remand. So, the delay for speedy disposal cannot be attributed to the petitioner / A.7. Therefore, till such time, the petitioner cannot be put to sufferance.

16 For the foregoing discussion, the petition is allowed. The petitioner shall be released on bail on his executing a personal bond for a sum of Rs.2,00,000/- (Rupees Two lakhs only) with two sureties of a like sum each to the satisfaction of the learned IX Additional District and Sessions Judge, (FTC), Ranga Reddy District at L.B.Nagar, and on the following conditions:

17 The petitioner / accused No.7 shall not attempt to influence any of the witnesses, whose prosecution is still not examined. He shall also not tamper any of the prosecution evidence in any way. If any such attempts are made, the prosecution is given liberty to seek revocation of the bail, which is granted.

18 The petitioner/accused No.7 shall not try to give any threatening or any kind of coercion to the victim / wife of the deceased.

19 Miscellaneous petitions if any pending in this criminal petition shall stand closed.

Date:06.10.2023
Kvsn

E.V.VENUGOPAL, J.