
(2014) 04 AP CK 0096
In the Andhra Pradesh High Court
Case No : Crl. P. No. 4138 of 2014

Byreddy Rajasekhara Reddy

APPELLANT

Vs

State of Andhra Pradesh

RESPONDENT

Date of Decision : 15-04-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 438
Penal Code, 1860 (IPC) — Section 109, 120B, 148, 149, 302

Citation : (2014) 2 ALD(Cri) 991 : (2015) 2 ALT(Cri) 207

Hon'ble Judges : R. Kantha Rao, J

Bench : Single Bench

Advocate : T. Niranjan Reddy for V. Lakshmi Harish, Advocate for the Appellant

Judgement

R. Kantha Rao, J.—This criminal petition is filed under Section 438 of Cr.P.C., seeking anticipatory bail for the petitioner/A7 in Cr. No. 119/2014 on the file of Kurnool III Town Police Station, Kurnool, registered for the offences punishable under Sections 120B, 148, 302, 109 read with Section 149 of IPC. I have heard Sri T. Niranjan Reddy, learned Senior Counsel appearing for the petitioner/A7, Sri O. Kailasnath Reddy, learned Counsel appearing for the 2nd respondent/fife facto complainant and the learned Public Prosecutor, representing the State.

2. The brief facts necessary for considering the anticipatory bail, as per prosecution are as follows:

(a) The deceased Bestha Sai Eswarudu is a resident of Muchumarri Village. He was an agriculturist, having Acs. 15.00 of land. The petitioner/A7 is also resident of the same village. The petitioner's father Byreddy Seshasayana Reddy/A8 was the Ex-Minister. Earlier, the deceased was an associate of the petitioner and his father. Being unable to withstand the monopoly and violence of the petitioner and his father, the deceased came out of their association and started breaking out his livelihood by doing agricultural works. As the deceased was not following the dictates of the petitioner and his father, it is alleged that the deceased was attacked by the followers of the petitioner and his father and the house of the

deceased was also demolished. In respect of the said incident, a case was registered, but in the said case the petitioner was not shown as the accused.

(b) It is alleged that the deceased apprehending danger to his life, left Muchumarri Village along with his family members and started residing in Kurnool Town since 10 years prior to his death. As the deceased was still apprehending danger to his life, he used to change his residence now and then in Kurnool Town. On the date of the incident, the deceased was residing in Revenue Colony, Kurnool. The deceased was sailing with the political opponents of the petitioner and his father. In the general elections for State Assembly and Parliament held in 2004 and 2009, the candidates supported by the deceased won the election against the candidates supported by the petitioner. It is specifically mentioned in the First Information Report that the deceased was telling his son, i.e., the informant in the present case that the petitioner/A7, his father/A8 and Byreddy Sidhardha Reddy/A5 bore grudge against him and they might kill him at any time. It is further stated that the deceased also informed his son i.e., the de facto complainant that Byreddy Sidhardha Reddy/A5 conveyed information through Katika Chicken Basha to him to the effect that in the forthcoming elections if anybody opposes them, they would be killed.

(c) While so, on 15.3.2014 at about 5.45 p.m., the deceased went outside to meet his friends near Sakunthala Kalyana Mandapam. Two minutes after he left the house, his son, i.e., the de facto complainant and his brother-in-law Ramesh started to go to the More Market by walk and when they reached near to the house of Dr. Saleem they heard the cries of the deceased and they rushed there and witnessed Katika Chicken Basha/A1, Boya Maddileti/A2, Boya Naga Raju/A3, Puduri Ramakrishna/A4 assaulting the deceased with knives and sickles. The overt acts of the accused were specifically mentioned in the First Information Report. It is also mentioned in the First Information Report that three persons whose names are not mentioned in the First Information Report were present at the place of occurrence at the time of attack by holding knives guarding the venue of the scene of offence. It is stated that when the son of the deceased i.e., the informant and his brother-in-law Ramesh tried to save the deceased, the said three unnamed persons tried to assault them and therefore, they did not go near to the deceased. On receiving severe injuries, the deceased died on the spot.

(d) It is specifically mentioned in the First Information Report by the son of the deceased i.e., the informant that the petitioner/A7 and his father-A8 and Byreddy Sidhardha Reddy/A5 have conspired together and got the deceased murdered through A1 to A4 and others.

3. Basing on the aforesaid report lodged by the son of the deceased, the III Town Police, Kurnool registered a case in Cr. No. 119/2014 against the petitioner and others for the offences punishable under Sections 120B, 148, 302, 109 read with Section 149 of IPC and commenced investigation. The remand report dated 27.3.2014 revealed the participation of 13 accused in the commission of the offence.

4. Sri T. Niranjan Reddy, learned Senior Counsel appearing for the petitioner/A7 submits that the petitioner was falsely implicated in the instant case due to political rivalry; except two election offences which are not of serious in nature, no cases are pending against the petitioner; the petitioner was not involved in any criminal case in the past. The learned Senior Counsel would further submit that the petitioner established a political party by name "Rayalaseema Parirakshana Samithi" in 2013 which was recognized by the Election Commission of India; the petitioner intends to field his candidates for 52 Assembly Constituencies and 8 Parliamentary Constituencies in Rayalaseema Region, the last date for nomination for the ensuing elections is 17.4.2014; he has to issue B-Forms to the candidates in the capacity of the President of the said party and he himself has to file nomination for the Assembly Constituency and therefore his request for anticipatory bail can be considered.

5. On the other hand, the learned Public Prosecutor and the learned Counsel appearing for the 2nd respondent/fife facto complainant would submit that though the petitioner was not present at the place of occurrence, the offence was committed on account of criminal conspiracy entered into by the petitioner/A7 with the other accused; the offence being of serious in nature and the investigation is at the crucial stage, the petitioner is not entitled for anticipatory bail.

6. The learned Senior Counsel appearing for the petitioner, in support of his contentions, relied on a judgment of the Supreme Court in Siddharam Satlingappa Mhetre Vs. State of Maharashtra and Others, , wherein the Supreme Court issued certain guidelines for granting anticipatory bail, which are reproduced hereunder;

"The following factors and parameters can be taken into consideration while dealing with the anticipatory bail.

- * The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;
- * The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;
- * The possibility of the applicant to flee from justice;
- * The possibility of the accused"s likelihood to repeat similar or the other offences.
- * Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her.
- * Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people.
- * The Courts must evaluate the entire available material against the accused

very carefully. The Court must also clearly comprehend the exact role of the accused in the case. The cases in which accused is implicated with the help of Sections 34 and 149 of the Indian Penal Code, the Court should consider with even greater care and caution because over implication in the cases is a matter of common knowledge and concern;

* While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;

* The Court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;

* Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.

7. In the said judgment, the Hon"ble Supreme Court has also laid down as follows:

"94. The complaint filed against the accused needs to be thoroughly examined including the aspect whether the complainant has filed false or frivolous complaint on earlier occasion. The Court should also examine the fact whether there is any family dispute between the accused and the complainant and the complainant must be clearly told that if the complaint is found to be false or frivolous, then strict action will be taken against him in accordance with law. If the connivance between the complainant and the Investigating Officer is established then action be taken against the Investigating Officer in accordance with law.

95. The gravity of charge and exact role of the accused must be properly comprehended. Before arrest, the arresting officer must record the valid reasons which have led to the arrest of the accused in the case diary. In exceptional cases the reasons could be recorded immediately after the arrest, so that while dealing with the bail application, the remarks and observations of the arresting officer can also be properly evaluated by the Court.

96. It is imperative for the Courts to carefully and with meticulous precision evaluate the facts of the case. The discretion must be exercised on the basis of the available material and the facts of the particular case. In cases where the Court is of the considered view that the accused has joined investigation and he is fully cooperating with the investigating agency and is not likely to abscond, in that event, custodial interrogation should be avoided.

97. A great ignominy, humiliation and disgrace is attached to the arrest. Arrest leads to many serious consequences not only for the accused but for the entire family and at times for the entire community. Most people do not make any

distinction between arrest at a pre-conviction stage or post-conviction stage."

8. On the other hand the learned Public Prosecutor relied on a judgment in *Jai Prakash Singh Vs. State of Bihar and Another etc.*, wherein the Supreme Court held as under:

"Anticipatory bail can be granted only in exceptional cases where Court is prima facie of view that applicant was falsely enrolled in crime and he is not likely to misuse his liberty. The Court may not exercise its discretion in derogation of established principles of law, rather it has to be in strict adherence to them. Discretion under Section 438 Cr.P.C., should be guided by law, duly governed by rule and cannot be arbitrary, fanciful or vague, Court must not yield to spasmodic sentiment of unregulated benevolence.

The FIR in criminal case is a vital and valuable piece of evidence though may not be substantive piece of evidence. The object of insisting upon prompt lodging of the FIR in respect of the commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of actual culprits and the part played by them as well as the names of eye-witnesses present at the scene of occurrence. If there is a delay in lodging the FIR, it loses the advantage of spontaneity, danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of large number of consultations/deliberations. Undoubtedly, the promptness in lodging the FIR is an assurance regarding truth of the informant's version. A promptly lodged FIR reflects the first hand account of what has actually happened, and who was responsible for the offence in question.

9. The learned Public Prosecutor further relied on a decision in *Pokar Ram Vs. State of Rajasthan and Others*, wherein the Supreme Court held as follows:

"Before we conclude this judgment, it must be made distinctly clear that some very compelling circumstances must be made out for granting bail to a person accused of committing murder and that too when the investigation is in progress. In fact, the Investigating Officer did not even attempt to arrest the appellant though the initial accusation was under Section 307 IPC punishable with imprisonment for life. And as soon as the victim of the assault succumbed to his injuries and an offence under Section 302 was registered, promptly an application for anticipatory bail was made and granted. If such an order is allowed to stand, faith of public in administration of justice is likely to be considerably shaken. Therefore, we have no option but to cancel the order granting anticipatory bail.

10. The facts of the present case have to be examined in the light of the principles laid down by the Hon'ble Supreme Court in the afore-referred judgments.

11. A decision for granting or refusing anticipatory bail has to be taken with reference to the facts of each case. No strict formula can be prescribed for

granting anticipatory bail. Grant or refusal of anticipatory bail should necessarily depend on facts and circumstances of each case. In the instant case, the name of the petitioner/A7 was mentioned in the First Information Report though according to the First Information Report the petitioner was not present at the scene of offence as per the narration made by the son of the deceased in the First Information Report, the deceased was killed on account of criminal conspiracy among the accused. The petitioner is said to be the main conspirator and thus he is the prime accused in this case. According to the narration of the son of the deceased, it is only at the instance of the petitioner and his father, the deceased was killed by the hired assassins. The conspiracy was said to be entered into 25 days prior to the occurrence. The incident took place at 5.45 p.m., and the First Information Report was lodged at 7 p.m., by the son of the deceased. Therefore, the First Information Report in this case was promptly lodged. The First Information Report contained the detailed circumstances which lead to the murder of the deceased and part played by each of the accused. The informant who is the son of the deceased and his brother-in-law Ramesh are direct witnesses to the occurrence. Therefore, there is no possibility of introducing a distorted or concocted version by the informant.

12. In the First Information Report it is specifically mentioned that the deceased was telling his son i.e., the informant that the petitioner/A7 and his father/A8 were contemplating to do away with his life through their men. For the offence of criminal conspiracy, normally, no direct evidence will be available. The role played by the conspirators has to be gathered from the facts and circumstances leading to the commission of offence. The offence alleged in the instant case is a very serious one and also a premeditated one. Apart from mentioning the name of the petitioner/A7 in the First Information Report, the informant gave details in the First Information Report regarding the deceased leaving his native village and shifting his residence to Kurnool Town and also the enmity between the deceased and the petitioner/A7 and his father/A8.

13. It is submitted by the learned Senior Counsel appearing for the petitioner that the petitioner is a President of a political party established by him and he has to issue B-Forms to his candidates for 52 Assembly Constituencies and 8 Parliamentary Constituencies and the petitioner himself has to file nomination for Assembly Constituency from which he is proposing to contest. In this context, I would like to state that the right to liberty of the petitioner has to be balanced with the gravity of the crime and the role allegedly played by the petitioner. This is not a case where an opinion can be arrived at that the petitioner was falsely implicated in the instant case. There are strong circumstances showing the involvement of the petitioner. The petitioner addressed a letter to the Inspector of Police, III Town Police Station, Kurnool that he would cooperate with the investigating agency, but so far, the petitioner did not appear before the Investigating Officer. Since the petitioner has not been arrested so far, the petitioner or any office bearer can issue B-Forms to the candidates of their party. Even if the petitioner is taken into custody, the arresting police officer will enable

him to file nomination papers without any amount of delay. Even if the petitioner is in judicial custody, he is not prevented from contesting in the ensuing general elections. The petitioner is a highly influential person and the record of investigation discloses that he is a faction leader. If he is granted anticipatory bail, there is every likelihood of his interfering with the process of investigation.

14. This is a case of murder committed in broad daylight in a ghastly manner. Though direct participation of the petitioner is not alleged in the First Information Report, he is the main conspirator and prime accused in this case. The investigation is at the initial stage. Considering all the aspects of the matter, I am of the view that this is not a fit case wherein the petitioner is entitled for anticipatory bail.

The criminal petition is accordingly dismissed.