
(2001) 03 AP CK 0001
In the Andhra Pradesh High Court
Case No : Criminal P. No. 858 of 2001

Duntuluri Venkata Rama Raju

APPELLANT

Vs

State of A.P.

RESPONDENT

Date of Decision : 07-03-2001

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 439
Penal Code, 1860 (IPC) — Section 34, 342, 448, 506
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3

Citation : (2001) 1 ALT(Cri) 288 : (2001) 1 APLJ 417 : (2001) CriLJ 2185

Hon'ble Judges : Vaman Rao, J

Bench : Single Bench

Advocate : P.A.K. Kishore, for the Appellant; Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

Vaman Rao, J.—The petitioner is accused of an offence under Sections 342, 448 and 506 read with Section 34, IPC and Section 3(v) and (x) of the S.C. and S.T. (Prevention of Atrocities) Act. The petitioner, who is A-1 was arrested along with A-2 to A-8 in connection with Cr. No. 78 of 2001 of IV Town, Law and Order, Police Station on 24-2-2001. They were produced before the Magistrate at his residence on the same day at 10.15 p.m. At the time of the production of the petitioner before the Magistrate, the petitioner (A-1) complained of pain in chest. The learned Magistrate ordered the police to admit the petitioner in K.G. Hospital, Visakhapatnam. The Magistrate further directed that all the accused may be produced in the Court on the next working day. On 26-2-2001 A-2 to A-8 were produced before the Magistrate and they were remanded to judicial custody on the same day till 12-3-2001. But the petitioner could not be produced before the Magistrate as he was admitted as in-patient in the hospital under the earlier directions of the Magistrate.

2. When an application for bail was moved before the learned 1st Addl.

Metropolitan Sessions Judge, the learned Judge directed to release A-2 to A-8 on bail in regard to the petitioner herein the learned Sessions Judge held that as he was not remanded to judicial custody by the Magistrate and as he was not in fact in the judicial custody, no orders can be passed for releasing him on bail. The learned Counsel for the petitioner submits that in view of the judgment of the Supreme Court in Niranjana Singh and Another Vs. Prabhakar Rajaram Kharote and Others, for invoking the provisions u/s 439, Cr. P.C. it is not necessary that the accused should have been lodged in judicial custody. It is pointed out that as has been ruled by the Supreme Court, mere physical surrender of the accused before the Magistrate and submitting himself to his directions would amount to his being in the "custody" and the provisions u/s 439, Cr. P.C. can be invoked for granting bail.

3. In this case, as pointed out by the learned Counsel for the petitioner, the petitioner herein was admitted in the hospital by the police under the specific directions of the learned Magistrate. At any rate, in this case, in fact the police had arrested the petitioner and produced him before the Magistrate. The mere fact that the learned Magistrate had omitted to pass specific direction for committing him to judicial custody itself does not mean that he was not in the custody. Taking any view of the matter, the grounds on which the learned 1st Add. Metropolitan Sessions Judge refused to pass orders in respect of bail of the petitioner cannot be justified. Considering these circumstances and also considering the fact that other accused in the case have already been released on bail, this petition is allowed.

4. The petitioner is directed to be released on bail on his executing a personal bond in a sum of Rs. 10,000/- with two sureties, each for a like sum to the satisfaction of IIIrd Metropolitan Magistrate, Visakhapatnam.