
(2014) 06 AP CK 0067
In the Andhra Pradesh High Court
Case No : Crl. P. No. 5830 of 2014

G. Ramanath Reddy

APPELLANT

Vs

The State

RESPONDENT

Date of Decision : 05-06-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 226, 227, 228, 357, 437

Evidence Act, 1872 — Section 10

Penal Code, 1860 (IPC) — Section 120B, 307, 34, 353, 379

Citation : (2015) 1 ALD(Cri) 256

Hon'ble Judges : B. Siva Sankara Rao, J

Bench : Single Bench

Advocate : V. Lakshmi Harish, Advocate for the Appellant

Final Decision : Allowed

Judgement

Dr. B. Siva Sankara Rao, J.—This Criminal Petition is filed under Sections 437 and 439 Cr.P.C. by the petitioner/accused No. 2, who is in judicial custody since dt.10-04-2014, in Crime No. 3 of 2014, on the file of the Station House Officer, Chandragiri Police Station, Chittoor District, registered for the offences punishable under Sections 353, 307, 379 and 427 r/w. 34 I.P.C and Sections 20 and 29 of the Transit Rules, 1969.

2. Heard the Learned Counsel for the Petitioner/accused No. 2, the Learned Public Prosecutor for the Respondent-State and perused the material placed on record.

3. The petitioner herein is the second accused among more than five accused in the aforesaid Crime as evident from the remand report. The FIR and the remand report, it appears, did not mention the penal provisions under the A.P. Forest Laws or the Indian Forest Laws regarding the smuggling of red sandalwood involving the quantity of about 266 kgs.

4. The contention of the petitioner is that it is a false implication; that even from

the case of the prosecution at the alleged time of the so-called attempt to run over the forest official, except the driver no others were there in the vehicle; that other accused including the petitioner have jumped from the said vehicle, before the so-called attempt of the driver of the vehicle in high speed to run over the official and that therefore, Section 307 has no application to him. It is brought to the notice of the Court that the investigation is completed, chargesheet is filed and the case appears in committal stage.

5. It is premature to give any finding as to whether these accused jumped the vehicle before the attempt by driver of vehicle to run over to murder the forest official and whether the same was the outcome of any privy and conspiracy between the driver/accused and other accused for the said attempt therefrom to bring within the purview of Section 10 of the Evidence Act and Section 120B IPC, that too it appears the charge sheet not referred these sections, but for showing common intention u/s 34 IPC, as such any observation would be prejudicial to either side at the stage of consideration of the bail application since not the stage of hearing before charges u/s 226 r/w 227 and 228 Cr.P.C. But the fact remains that this Court by Order, dated 13-03-2014, in CrI.P. No. 2579 of 2014, granted anticipatory bail to the petitioner herein. A perusal of the said order goes to show that the anticipatory bail was granted by relying mainly on the fact that the petitioner was not arrayed as one of the accused in the FIR. Undisputedly, in the case record, the name of the accused is figured. Thus, the earlier grant of anticipatory bail has no avail to the petitioner, from his very say that within the time granted for surrender, he could not surrender as he was involved in another crime of similar nature and was in judicial custody and later, admittedly, extension of time was not sought for, due to which the anticipatory bail order was lapsed. From the fundamental principle that once a bail is granted, it continues till the end of trial, unless it is cancelled, the very direction in the bail being conditional and from noncompliance thereof it is deemed cancelled for all legal purposes besides with no bar for entertaining the present bail application. The facts supra no doubt discloses that this petitioner is involved in other cases from his above say.

In view of the above and for the offence u/s 307 IPC, the petitioner is not direct participant as discussed supra, the other offences are assault on the public servant during discharge of the official duty, theft of the red sandalwood and mischief with common intention. There it appears no inclusion of the penal provisions applicable in this case, particularly, u/s 20(1)(d) and Section 29 of the A.P. Forest Act and Section 3 of the Prevention of damage to the Public Property Act and Sections 55 and 58 of the Biodiversity Act, subject to its application to appreciate the contention of the learned Additional Public Prosecutor. Before parting with the matter, it is needful to observe contextually though not for the case, in the larger interest of the society and save the national wealth and to protect the environment and to serve as a threat to those impeding the wealth by choosing to commit theft and in smuggling the valuable red sandal wood and getting illegal wealth in Crores; like in NDPS Amended Act, 2001; it is just to

draw attention by the Government to make necessary amendments in Sections 20 & 29 of the A.P. Forest Act, which as on date with lenient punishment only to provide deterrent punishments; by defining small, large and above small and below large quantities of the red sandal with stringent punishment, depending upon such grades, equally in the transit rules, to serve protecting the wealth. As this observation shall go to the knowledge of State Government, it is just to direct the Registry to mark copy of this order.

Having regard to the facts that, even the accused appears is involved in good number of cases and escaped from the Police trap; as the anticipatory bail order earlier granted in his favour, which could not be availed by him; that order totally cannot be ignored by this Court in balancing the personal liberty of the accused vis-?-vis the propensity of the crime, discussed supra that levelled against him vide decision in Siddharam Satlingappa Mhetre Vs. State of Maharashtra and Others, , but for Section 307 IPC others not with severe punishments provided, it is just to allow the application granting bail subject to the following conditions:

[1] Petitioner/accused No. 2 shall execute a self-bond for Rs. 25,000/- each [Rupees twenty five thousand only] with two sureties for the like sum each to the satisfaction of the learned Magistrate Concerned. The bonds to be obtained are not only to appear before the Court pending investigation or further investigation and after filing of final report in the form of charge sheet or the like for enquiry or trial before said Court, but also by virtue of any proceedings of committal to the Court of Sessions or any transfer of proceedings for want of jurisdiction or otherwise before any other Court and even after trial before such Court to appear before provisional or appellate Court or other superior Court - vide decision - Pre-Legal Aid Committee, Jamshedpur vs State of Delhi 1982[2]APLJ 43(SC); so that at stage of enquiry/trial or committal if any or other proceedings obtaining of fresh bond from accused and even affidavits of sureties of bonds and solvency earlier produced are ratifying as in existence and enforceable, without even insisting their further presence, serves the purpose. Such recourse quickens the proceedings at such committal or other stages without loss of time and it also to some extent complies with the requirement of Section 437A Cr.P.C.

[2] Petitioner/accused No. 2 shall report every day between 5.00 to 6.00 PM before the investigating authority until further orders to be passed by the Court of Sessions relaxing this condition alone, for assurance of his availability and non-interference in any manner with the witnesses. It is made clear that if there is any further crime registered against the petitioner in this regard, that may be taken as one of the grounds for cancellation of this bail.

[3] Petitioner shall not enter the village where the victim and witnesses reside, until further orders by the learned Magistrate concerned on whom power is conferred by virtue of this order to modify the condition.

[4] Petitioner shall attend before the Court of law regularly in enquiry and trial without fail, if not his bail shall be cancelled forthwith, without any further order

so that, the Magistrate can also issue NBW by canceling the bail from the power u/s 439[2] CrPC. delegated to the learned Magistrate/trial judge by this order during pendency of proceedings before the Magistrate/trial judge.

[5] Petitioner shall not leave the State pending enquiry/trial without prior permission of the Court of concerned Magistrate/trial Judge.

[6] Petitioner shall furnish his full address with property and Bank Account particulars and submit his passport if any, after enlargement on bail on the next hearing date before the Magistrate Court concerned (for collecting by police as part of their duty to investigate-also the means of accused and to furnish the same in the final report of investigation to enable the trial court in the event of considering the need of awarding compensation u/s 357 CrPC. So to award from such material and evidence, apart from securing presence and obtaining of bond with sureties u/s 437A CrPC. etc.), failing which it is open to the learned Magistrate concerned by virtue of the power conferred by this order to cancel the bail.

[7] The bail now granted is since a regular one till end of trial (without prejudice to the right to cancel meanwhile in case of need and/or for non-compliance of conditions supra) any absence of petitioner as accused for hearing/enquiry or trial, issuance of non-bailable warrant-NBW (unless cancelled before execution) and even its execution and production of accused as per the NBW; that does not tantamount to cancellation of bail including from the wording of Sec. 439(2) Cr.P.C. and as such in such event no fresh bail application can be entertained. As it tantamounts to only cancellation of bail bonds earlier executed, (leave about the power of the court to issue surety notices by forfeiting bonds and for imposing penalty on the bonds forfeited); the proper course is to direct the accused to work out the remedy to pay penalty on the previous forfeited bonds as per Section 441 to 446 Cr.PC. and to submit fresh solvency with self bond for enlarging him by release from custody on payment of penalty of the earlier bonds forfeited without need of enforcing against earlier sureties again.

The Criminal Petition is allowed accordingly.

Pursuant to the observations in this order supra, Registry is directed to communicate copy of this order to Chief Secretaries as well as DGPs of both States for consideration of any need to amend the penal provisions of the A.P. Forest Act relating to red sandal wood.