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**(2015) 02 AP CK 0052**

**In the Andhra Pradesh High Court**

**Case No : Criminal P. No. 342 of 2015**

Thoti Raja Gopal and Others

APPELLANT

Vs

State of Andhra Pradesh

RESPONDENT

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**Date of Decision : 04-02-2015**

**Acts Referred:**

Constitution of India, 1950 — Article 21

Criminal Procedure Code, 1973 (CrPC) — Section 437, 439

Penal Code, 1860 (IPC) — Section 120-B, 147, 148, 149, 302

**Citation : (2015) 2 ALD(Cri) 137**

**Hon'ble Judges : C. Praveen Kumar, J**

**Bench : Single Bench**

**Advocate : Baru Dhanunjaya, for the Appellant**

**Final Decision : Allowed**

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**Judgement**

C. Praveen Kumar, J—The petitioners, who are accused Nos. 177, 280 and 281 in Crime No. 179 of 2013 of Renigunta Urban Police Station, Chittoor District filed the present application under Sections 437 and 439 Cr.P.C., seeking enlargement on bail in the above crime, registered for the offences punishable under Sections 147, 148, 341, 302, 307, 332, 333, 120-B, 396, 397 read with 149 IPC and Sections 20(1)(c)(ii), (iii), (iv), (v), (vi), (x) of the Andhra Pradesh Forest Act, 1967. The averments in the charge-sheet filed against the petitioners and 421 others would show that all the accused conspired together to cut and carry red sanders wood from Mamandur Reserve Forest of Renigunta Mandal. In pursuance of the said conspiracy, on the intervening night of 14/15.12.2013 all the accused trespassed into the Reserve Forest of Mamandur. The accused are alleged to have assembled at Masalarevu Bandalu on the night and decided to commit red sanders smuggling at any cost and decided even to do away with the lives of forest officials who obstruct their way. On 15.12.2013 at about 3.00 a.m., on receipt of credible information regarding illegal transportation of red sander logs from Pedda Chenu Bandalu, Mamandur Reserve Forest, Renigunta Mandal, the deceased No. 1 secured his staff i.e., LWs. 4, 12 to 17 and proceeded towards

the said place in a Government sumo vehicle bearing Regn. No. AP-03-AB-5192. On reaching the said place, he noticed about 20 persons carrying red sander logs. Deceased No. 1 is alleged to have chased and caught hold of two persons i.e., A1 and A33, detained them in the Sumo vehicle and kept them under the custody of LWs. 4, 12 to 17. During the enquiry the two arrested persons are alleged to have disclosed about the details of other accused i.e., A2, A74, A104, A257, A289, A351, A370, A397 to A401. While the Forest officials were collecting the red sander logs which were thrown away by the offenders, the red sander wood cutters/Mastris including the above mentioned accused formed themselves into unlawful assembly and attacked the deceased No. 1, LWs. 4, 12 to 17 with an intention to do away their lives. On seeing them, the deceased No. 1 and LWs. 4, 12 to 17 concealed their presence in the bushes of the forest area to protect their lives. They noticed accused damaging the sumo van and also getting released A1 and A33 from the custody of the police. LW13 informed the same over phone to LW1, who on receipt of the said information collected his staff deceased No. 2, LWs. 2, 6, 7, 18 to 20 and proceeded towards the above place in a Commander Jeep bearing No. AP-03-AP-1204 and joined with deceased No. 1 and others at about 9.15 a.m. While they were searching for forest officials LWs. 4 and 17 in execution of their official duty, the accused A1 to A104, A134 to A185, A191 to A224, A237, A240 to A393, A397 to A401, A424, A430 including the juveniles in conflict with law 1 and 2 and some other accused/Mastris numbering more than 300 formed themselves into an unlawful assembly, armed with stones, axes and sticks and in furtherance of their common object with intent to attack the forest officials and to do away with their lives. Anticipating danger to their lives, all the forest officials ran helter and shelter from the spot leaving the vehicles. It is said that the accused are alleged to have chased and attacked the deceased 1 and 2 in different places in the same area with axes, stones and sticks causing bleeding injuries leading to their death at the spot. Thereafter they are alleged to have escaped after committing theft of two gold rings, two cellphones from deceased No. 1, one cell phone belonging to deceased No. 2, gold chain, gold ring, cash of Rs. 5,000/- and one cell phone belonging to injured LW7. They are also alleged to have damaged the vehicle. The injured were shifted to the Aswani Hospital, Tirumala for treatment and from there to SVRR Government General Hospital, Tirupati. On receipt of the said information, LW21 along with LWs. 3, 22 and Task Force Police Constables LWs. 23 to 27 rushed to the above spot. Basing on these allegations, the case is registered initially. On 18.12.2013 the petitioners herein are alleged to have surrendered before LWs. 3 and 9 and confessed about the commission of offence. LW64 recorded the confession of A134 to A184 at his office in the presence of the mediators LWs. 42 and 43. After completion of investigation a charge-sheet came to be filed against all the accused which was numbered as PRC No. 7 of 2014.

2. The learned Counsel for the petitioners mainly submits that even accepting the entire allegations in the charge-sheet to be true, no offence is made out

against the petitioners. According to him, no role is attributed to the petitioners with regard to the attack on the deceased. He further relied upon the last para in the charge-sheet to show that no role is attributed to the petitioners with regard to attack on the deceased. According to him, the charge-sheet is clearly demarcated the persons who have killed the deceased 1 and 2 and also those who caused injuries to LW7 and the accused who damaged the Government vehicles. In the absence of any role being attributed to the petitioners, he submits that the petitioners deserve for grant of bail.

3. The learned Public Prosecutor opposed the application contending that this is a grave and severe incident where two forest officials were killed and one police official was seriously injured. Having regard to the nature of the offence committed, he submits that the petitioners do not deserve for grant of bail.

4. Though the First Information Report is registered against 300 unknown persons belonging to Tamilnadu, Karnataka and Chittoor District, but the investigation made by the police which culminated into filing the charge-sheet against 400 persons. As stated earlier, on 15.12.2013 on receipt of credible information about illegal felling and transportation of red sandal trees, the D1 along with LWs. 4, 12 to 17 proceeded to the place of offence. D1 was able to apprehend two of the twenty persons, who were making arrangement for transporting red sander, and detained them in a jeep. Subsequently, 12 more accused formed themselves into an unlawful assembly and attacked D1, LWs. 4, 12 to 17 with an intention to do away them. On seeing them, D1, LWs. 4, 12 to 17 with an intention to escape from the spot to protect their lives, hide themselves in the bushes of the forest. At that point of time, some of the accused damaged the Sumo and got the Accused 1 and 33 released from the lawful custody. On receipt of information LW1 along with D2, LWs. 2, 6, 7, 18 to 20 were proceeded to the scene of offence and joined D1, LWs. 12 to 16 who were already present there. At about 9.15 a.m., all the accused including the petitioners formed themselves into unlawful assembly, armed with sticks and axes and are alleged to have attacked forest officials and killed D1, D2 and injured LW7. The averments in the charge-sheet do not attribute any role to the petitioners with regard to attack on D1, D2 and LW7.

5. As held by the apex Court in *Prahlad Singh Bhati Vs. N.C.T. Delhi and Another*, AIR 2001 SC 1444 : (2001) CriLJ 1730 : (2001) 2 Crimes 87 : (2001) 1 DMC 669 : (2001) 4 JT 116 : (2001) 2 SCALE 572 : (2001) 4 SCC 280 : (2001) 2 SCR 684 : (2001) AIRSCW 1263 : (2001) 2 Supreme 550 , the jurisdiction to grant bail has to be exercised on the basis of well-settled principles having regard to the circumstances of each case and not in an arbitrary manner. While granting the bail, the Court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character, behaviour, means and standing of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the

witnesses being tampered with, the larger interests of the public or State and other similar considerations. It has also to be kept in mind that for the purposes of granting the bail the Legislature has used the words "reasonable grounds for believing" instead of "the evidence" which means the Court dealing with the grant of bail can only satisfy it as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge.

6. Similarly in Sanjay Chandra Vs. CBI, AIR 2012 SC 830 : (2012) CriLJ 702 : (2011) 4 RCR(Criminal) 898 : (2011) 13 SCALE 107 : (2012) 1 SCC 40 : (2011) 6 UJ 4077 , the apex Court held as under:

"The object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it can be required to ensure that an accused person will stand his trial when called upon. The Courts owe more than verbal respect to the principal that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty. Detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands, that some unconvicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, "necessity" is the operative test. In India, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances. Apart from the question of prevention being the object of refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any Court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an unconvicted person for the purpose of giving him a taste of imprisonment as a lesson.

The grant or refusal to grant bail lies within the discretion of the Court. The grant or denial is regulated, to a large extent, by the facts and circumstances of each particular case. But at the same time, right to bail is not to be denied merely because of the sentiments of the community against the accused. The primary purposes of bail in a criminal case are to relieve the accused of imprisonment, to relieve the State of the burden of keeping him, pending the trial, and at the same time, to keep the accused constructively in the custody of the Court, whether before or after conviction, to assure that he will submit to the jurisdiction of the Court and be in attendance thereon whenever his presence is required.

When the under trial prisoners are detained in jail custody to an indefinite period. Article 21 of the Constitution is violated. Every person, detained or arrested, is

entitled to speedy trial, the question is whether the same is possible in the present case. There is no good reason to detain the accused in custody, that too, after the completion of the investigation and filing of the charge-sheet."

7. As observed earlier, the averments in the charge-sheet clearly disclose that the petitioners did not participate in the attack either on the injured or on the deceased. In fact, the last paragraph of the charge-sheet is silent as to the nature of offence committed by the petitioners. Except the confession of accused, there is no other material to establish their presence at the scene of offence. Since the entire investigation is over and the petitioners are in jail from December, 2013 their request for bail can be considered on certain terms and conditions. Accordingly, the criminal petition is allowed and the petitioners shall be released on bail on their executing a personal bond for Rs. 10,000/- (Rupees ten thousand only) each with two local sureties each for a like sum each to the satisfaction of the V Additional Judicial Magistrate of First Class, Tirupati, Chittoor District, and on a further condition that they shall appear before the Station House Officer, Renigunta Police Station, once in a week i.e., on every Saturday between 10.00 a.m. and 5.00 p.m., till the commencement of trial. Further, the petitioners shall furnish their proof of address at the time of executing the bonds.