

HON'BLE SRI JUSTICE SUBBA REDDY SATTI

CRIMINAL PETITION NOS. 4123, 4124, 4125 and 4171 of 2022

COMMON ORDER:-

These Criminal Petitions are filed under Section 438 of the Code of Criminal Procedure, 1973 (for short "Cr.P.C.") to enlarge the petitioner on bail in the event of his arrest in connection with crime Nos.141, 138, 140 and 139 of 2022 of Amalapuram Town Police Station, East Godavari District.

2. The petitioner is arrayed as A29, A33, A33 and A29 respectively in the above crimes.

3. **Crime No.141 of 2022** is registered for the offences punishable under Sections 307, 143, 144, 147, 148, 452, 436, 435, 188, 120(B), 353, 201 and 109 read with 149 of the Indian Penal Code, 1860 (for short 'IPC') and Section 32 of Police Act.

4. **Crime No.138 of 2022** is registered for the offences punishable under Sections 307, 120(b) 324, 143, 144, 147, 148, 151, 152, 332, 336, 427, 188, 353, 506 read with 149 IPC and Sections 3 and 4 of PDPP Act and 32 of Police Act.

5. **Crime No.140 of 2022** is registered for the offences punishable under Sections 307, 120(B), 341, 143, 144, 147, 148, 151, 336, 435, 188, 506 read with 149 of IPC, Sections 3 and 4 of PDPP Act and 32 of Police Act, 1861.

6. **Crime No.139 of 2022** is registered for the offences punishable under Sections 307, 143, 144, 147, 148, 151, 152, 332, 336, 427, 188, 353, 324, 435, 120(B), 109, 201 read with 149 of IPC, Sections 3 and 4 of PDPP Act and 32 of Police Act.

7. The above crimes were registered basing on the reports lodged by Ponnada Venkata Narayana Kumar cousin of Ponnada Venkata Satish, MLA of Mummidhivaram; Subrahmanyam Vasamsetti, Home Guard-268; Naga Venkata Ratna Giri Babu, Driver of RTC Bus; Koppiseti Venkata Ganesh, VRO, respectively, with regard to the incident that took place on 24.05.2022 pursuant to the notification issued by the Government by changing the name of Konaseema District as Dr.B.R.Ambedkar Konaseema District.

8. The facts of above crime are inter-linked. Therefore, they are considered and decided by this common order.

The facts of the case in brief are:

9. On 24.05.2022 at about 4:00 P.M., on a call given by JAC of Konaseema Sadhana Committee, huge number of people gathered together for submitting objections pursuant to issuance of Gazette notification with regard to change of name of Konaseema District by violating the proceedings issued under Section 144 of Cr.P.C. and Section 30 of the Police Act. The mob started rally at Kalasam Centre, Amalapuram Town and proceeded to Clock Tower Centre and in the meanwhile various groups of public came from four corners to the clock tower centre and formed into a huge mob.

10. Thereafter the mob moved to Collectorate and on the way to Collectorate when the Police were discharging their duties, the mob pelted stones on the Police and burnt BVC collage bus which was used as transport vehicle for the Police.

11. Further when Police tried to control the mob at Collectorate, the mob pelted stones on Police personnel due to which some of the Police sustained injuries, damaged the glasses of Collectorate Office and Ambedkar Bhavan.

12. Thereafter, the mob proceeded to Red Bridge (Erra Vanthana), intercepted two RTC buses, damaged them and set fire to the buses.

13. The mob further moved towards the house of MLA and pelted stoned on the house due to which glasses were damage. When cousin of MLA tried to pacify the matter and while he was taking video of the situation, the mob poured petrol on him, but he managed to escape. Then the mob entered into the house of MLA, set fire to the motorcycles and entire furniture in the house including house.

14. The petitioner is arrayed as one of the accused in the above crimes basing on the complaints lodged by respective persons referred to supra.

15. Heard Sri Ch. S.V.Suraj, learned counsel for the petitioner and Sri Soora Venkata Sainath, learned Special Assistant Public Prosecutor for the respondent-state.

16. Learned counsel for the petitioner submits that the petitioner is innocent and he is no way connected with the alleged offence. He submits that basing on the confession of other accused, petitioner is arrayed as accused. He submits that petitioner is working Office Subordinate in Commercial Tax Department, Ambajipeta, East Godavari District. Petitioner attended the office on that day and he is discharging duties on that day. Hence, petitioner participating in the rally does not arise. He submits that though petitioner was in office on that day, Police without proper enquiry arrayed petitioner as one of the accused. He also filed copy of attendance register to show that petitioner was in office on the alleged date of incident. He submits that Police are trying to apprehend the petitioner and the petitioner being government employee will abide any conditions imposed by this Court. Hence, he prays to grant pre-arrest bail to the petitioner.

17. Learned Special Assistant Public Prosecutor submits that basing on the confession of co-accused, petitioner was arrayed as accused. He submits that investigation is pending, as such petitioner is not entitled for bail at this stage.

18. I have given my anxious consideration to the submission made on either side and perused the record.

19. The Hon'ble Apex Court in **Siddharam Satlingappa Mhetre Vs. State of Maharashtra and Ors**¹ laid the following principles which are to be considered while granting bail.

¹ AIR 2011 SC 312 = MANU/SC/1021/2010

- i. The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;
- ii. 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;
- iii. The possibility of the applicant to flee from justice;
- iv. The possibility of the accused's likelihood to repeat similar or the other offences.
- v. Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her.
- vi. Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people.
- vii. 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;
- viii. 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;
- ix. The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;
- x. 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."

20. The record reveals that pursuant to notification issued by the Government about change of name of Konaseema District as

Dr.B.R. Ambedkar Konaseema District a call was given by JAC Konaseema District Sadhana Samithi for submission of representations. In pursuance of the same thousands of people gathered at Clock Tower Centre and proceeded to Collectorate Office. When Police tried to prevent them from entering the premises said mob pelted stones on the Police and caused injuries to them. Further the mob also damaged Collectorate Office as well as Ambedkar Building and also lit fire to buses.

21. As can be seen from the entire record prosecution identified accused basing on CC TV footage, social media videos and photos. Further except mentioning the names of accused in FIR, no specific overt acts were attributed against the petitioner or any other accused.

22. As pointed out by learned counsel for the petitioner to attract Sections 146 and 147 of IPC, there should unlawful assembly. For better appreciation it is appropriate to extract Sections 141, 146 and 147 of IPC.

141. Unlawful assembly.--An assembly of five or more persons is designated an "unlawful assembly", if the common object of the persons composing that assembly is--

(First) -- To overawe by criminal force, or show of criminal force, 1[the Central or any State Government or Parliament or the Legislature of any State], or any public servant in the exercise of the lawful power of such public servant; or

(Second) -- To resist the execution of any law, or of any legal process; or

(Third) -- To commit any mischief or criminal trespass, or other offence; or

(Fourth) -- By means of criminal force, or show of criminal force, to any person, to take or obtain possession of any property, or to deprive any person of the enjoyment of a right of way, or of the use of water or other incorporeal right of which he is in possession or enjoyment, or to enforce any right or supposed right; or

(Fifth) -- By means of criminal force, or show of criminal force, to compel any person to do what he is not legally bound to do, or to omit to do what he is legally entitled to do.

Explanation.--An assembly which was not unlawful when it assembled, may subsequently become an unlawful assembly.

146. Rioting.--Whenever force or violence is used by an unlawful assembly, or by any member thereof, in prosecution of the common object of such assembly, every member of such assembly is guilty of the offence of rioting.

147. Punishment for rioting.--Whoever is guilty of rioting, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

23. Thus, there must be unlawful assembly as defined under Section 141 of IPC for attracting offences under Sections 146 and 147 of IPC. In the present case nothing is forthcoming from the record to show that all the people in the mob had a common intention of committing an offence.

24. The other contention raised by learned Public Prosecutor is regarding applicability of Section 307 of IPC. Section 307 of IPC reads thus:

307. Attempt to murder.—Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and

shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to 1[imprisonment for life], or to such punishment as is hereinbefore mentioned. Attempts by life convicts.—

2[When any person offending under this section is under sentence of 1[imprisonment for life], he may, if hurt is caused, be punished with death.]

25. In the present case, admittedly the mob consists of more than 1000 people. None of the complaints indicate about common intention or common object of committing an offence punishable under Section 307 of IPC. Specific overt acts were not attributed against the petitioner.

26. It is also evident from the record that the mob gathered for submitting their representations at Collectorate office, but not with an intention of committing any offence and admittedly the mob was not armed with weapons.

27. A perusal of the complaints lodged by respective complainants, shows that name of the petitioner is not reflected. Even as per the prosecution case, basing on confession made by other accused regarding the role of petitioner, petitioner was arrayed as accused in the above crimes.

28. In **Bullu Das Vs. State of Bihar**², while dealing with the confessional statements made by the accused persons before a police officer, the Supreme Court held as under:

"7. The confessional statement, Ex. 5, stated to have been made by the appellant was before the police officer in charge of

² (1998) 8 SCC 130

the Godda Town Police Station where the offence was registered in respect of the murder of Kusum Devi. The FIR was registered at the police station on 8-8-1995 at about 12.30 p.m. On 9-8-1995, it was after the appellant was arrested and brought before Rakesh Kumar that he recorded the confessional statement of the appellant. Surprisingly, no objection was taken by the defence for admitting it in evidence. The trial court also did not consider whether such a confessional statement is admissible in evidence or not. The High Court has also not considered this aspect. The confessional statement was clearly inadmissible as it was made by an accused before a police officer after the investigation had started."

29. A perusal of the xerox copy of attendance register filed along with bail applications, reveals that petitioner attended his office at Ambajipet and discharging duties on 24.05.2002. Further it appears that basing on confession of other accused, petitioner was arrayed as accused in the above crimes.

30. Considering the above facts and as no specific overt acts are made against the petitioner and petitioner, as per attendance register is in the office on the day of occurrence, this Court deems it appropriate to grant pre-arrest bail to the petitioner.

31. Accordingly, these criminal petitions are allowed. The petitioner who is arrayed as A29, A33, A33 and A29 in crime Nos. 141, 138, 140 and 139 of 2022 of Amalapuram Town Police Station, East Godavari District shall be released on bail in the event of his arrest in connection with said crimes on condition of executing self bond for Rs.20,000/- (Rupees Twenty Thousand only) with two sureties for a like sum each, in each crime to the satisfaction of the Station House Officer, Amalapuram Town Police

Station, East Godavari District. The petitioner shall appear before the Station House Officer, Amalapuram Town Police Station, East Godavari District once in a week i.e. on every Saturday between 9:00 am to 6:00 pm for a period of eight weeks or till the date of filing of charge sheet, whichever is earlier. He shall cooperate with the investigation.

Petitioner shall cooperate with the police in investigation of the above crimes.

Petitioner shall not leave the limits of police station without intimating to the police till filing of charge sheet.

Petitioner shall neither influence the witnesses nor tamper the evidence.

It is made clear that this order does not, in any manner, limit or restrict the rights of the Police or the investigating agency from further investigation as per law and the findings in this order be construed as expression of opinion only for the limited purpose of considering bail in the above crime and shall not have any bearing in any other proceedings.

JUSTICE SUBBA REDDY SATTI

Date : 04.07.2022
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