

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

AND

THE HON'BLE DR. JUSTICE K. MANMADHA RAO

I.A. No. 1 of 2021

In

Criminal Appeal No. 1087 of 2017

ORDER: *(Per Hon'ble Sri Justice C.Praveen Kumar)*

1) Heard Ms. Naseeb Afshan, learned Counsel appearing for the Petitioner and Sri. S. Dushyanth Reddy, learned Additional Public Prosecutor.

2) The present Interlocutory Application came to be filed seeking release of Petitioner on bail on the ground that the Petitioner herein has completed five years of imprisonment in jail from the date of conviction and, as such, he is entitled to be released on bail in terms of ***Batchu Ranga Rao and Ors. V. State of A.P***¹.

3) As seen from the record, the Petitioner who is Accused No.2 was tried along with other accused for an offence punishable under Section 394 read with 34 I.P.C. Vide its Judgment, dated 09.02.2016, the learned Sessions Judge convicted all the accused for the said offence and sentenced each one of them to imprisonment for life and to pay fine of Rs.10,000/- in default to suffer simple imprisonment for three months.

¹ Crl.A.M.P. No. 1687 of 2016 in Crl. A. No. 607 of 2011

4) The facts of the case show that, on 20.01.2011, PW1 went to Guntur and from there to Tadepalligudem, on office work and stayed there till 31.01.2011. On the intervening night of 31.01.2011/01.02.2011 he came to Guntur by Visakha Train and was proceeding to Vegetable Market, Guntur, by walk. While he was waiting for a vehicle to go to Vinukonda, A1 to A3 came there in a Scorpio vehicle bearing No. AP7 AA 8370 and made PW1 to believe that they are going to Vinukonda and made him board the vehicle. After the vehicle reached near Vinukonda, A1 who was sitting in the front seat, came to the middle seat and sat by the side of PW1 and, thereafter, the two accused sitting by the side of PW1, threatened him by putting a knife on his neck and forcibly took away Rs.15,000/- and ATM card from the purse kept in the back side pant pocket of PW1. They also made PW1 to disclose the code of the ATM and withdrew an amount of Rs.20,000/-. Later on, they took him to Pedamanthanala Village; closed the eyes of PW1; caused injuries; pushed him out of the vehicle and then left the place. This, in substance, is the case of the prosecution.

5) In support of its case, the prosecution examined PW1 to PW10 and got marked Ex.P1 to Ex.P14. After considering the evidence available on record, the trial Court convicted the accused, as stated supra.

6) Before dealing with the case on hand, it would be appropriate to extract paragraph No. 9 and 10 of the judgment in **Batchu Ranga Rao**, which are as under:

"9. On considering their valuable suggestions and after a thorough evaluation of the relevant factors, we are inclined to indicate broad criteria on which the applications for grant of bail pending the Criminal Appeals filed against the conviction for the offences, including the one under Section-302 IPC, and sentencing of the appellants to life among other allied sentences, are to be considered. Accordingly, we evolve the following criteria:

"(1) A person who is convicted for life and whose appeal is pending before this Court is entitled to apply for bail after he has undergone a minimum of five years imprisonment following his conviction;

(2) Grant of bail in favour of persons falling in (1) supra shall be subject to his good conduct in the jail, as reported by the respective Jail Superintendents;

(3) In the following categories of cases, the convicts will not be entitled to be released on bail, despite their satisfying the criteria in (1) and (2) supra:

The offences relating to rape coupled with murder of minor children dacoity, murder for gain, kidnapping for ransom, killing of the public servants, the offences falling under the National Security Act and the offences pertaining to narcotic drugs.

(4) While granting bail, the two following conditions apart from usual conditions have to be imposed, viz., (1) the appellants on bail must be present before the Court at the time of hearing of the Criminal Appeals; and

(2) they must report in the respective Police Stations once in a month during the bail period."

10. This broad criteria cannot be understood as invariable principles and the Bench hearing the bail applications may exercise its discretion either for granting or rejecting the bail

based on the facts of each case. Needless to observe that grant of bail based on these principles shall, however, be subject to the provisions of Section- 389 of the Code of Criminal Procedure. Learned Public Prosecutor for the State of Andhra Pradesh submitted that all the applicants herein are entitled to be released on bail by applying the aforementioned criteria. Accordingly, the applicants are released on bail subject to the conditions stipulated hereinbefore, in addition to each of them executing a bond for a sum of ' 10,000/- (Rupees Ten thousand only) with two sureties each for the like sum to the satisfaction of the XI Additional District Judge, (Fast Track Court), Guntur at Tenali."

7) A perusal of the material on record shows that the Petitioner/Accused No. 2 was involved in about 39 cases registered for various offences in different Police Stations. However, Ms. Naseeb Afshan, learned Counsel appearing for the Petitioner, would submit that the Petitioner has been acquitted in 36 cases and in one case where he was sentenced to death, the Hon'ble High Court acquitted him.

8) It is no doubt true that, in cases which do not fall within the exceptions carved out in **Batchu Ranga Rao**, the accused may be entitled for bail on certain terms and conditions after completion of 5 years of imprisonment from the date of conviction, but, the same is not a right, since in paragraph No. 10 of the said judgment, the Court has categorically held that, the Bench hearing the bail applications is at discretion either to grant or reject the bail based on the facts of each case.

9) Taking into consideration the facts in issue, namely, the Petitioner being involved in offences of similar nature [though acquitted in some cases]; having regard to the gravity of offence and as the appeal is ripe for hearing, we feel that it is not a fit case to release the Petitioner on bail by applying the ratio laid down in Batchu Ranga Rao's case.

10) Accordingly, the I.A. is ***dismissed***. No costs. Since, the paper book is ready the Registry shall list the Criminal Appeal for hearing after two weeks.

JUSTICE C. PRAVEEN KUMAR

DR. JUSTICE K. MANMADHA RAO

Date: 21.01.2022.
S.M...

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