

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

**FRIDAY, THE ELEVENTH DAY OF AUGUST
TWO THOUSAND AND TWENTY THREE**

: PRESENT:

**THE HON'BLE SRI JUSTICE K.LAKSHMAN
AND
THE HON'BLE SMT JUSTICE K. SUJANA**

**IA No. 1 OF 2023
IN
CRLA NO: 222 OF 2023**

Between:

Kasam Devender Reddy, S/o. Malla Reddy

...Petitioner/Accused
(Appellant in CRLA 222 OF 2023
on the file of High Court)

AND

State of Telangana, rep. by its Pubic Prosecutor, High Court of Telangana, Hyderabad

...Respondent
(Respondents in-do-)

Petition under Section 389(1) of Cr.P.C., praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to suspend the execution of the sentence of imprisonment imposed on the Petitioner in S.C.No.62/2019, dated 03.03.2023 on the file of the Court of the Principal Sessions Judge, Karimnagar and direct to release the Petitioner on bail, pending disposal of CRLA No. 222 of 2023, on the file of the High Court.

The petition coming on for hearing, upon perusing the Petition and the affidavit filed in support thereof and upon hearing the arguments of Sri T. Niranjan Reddy, learned Senior Counsel representing Sri N Mukund Reddy Advocate for the Appellant and of Sri T.V. Ramana Rao, Additional Public Prosecutor for the Respondent, the Court made the following

ORDER:

HON'BLE SRI JUSTICE K. LAKSHMAN

AND

HON'BLE SMT. JUSTICE K. SUJANA

I. A. No.1 OF 2023 IN CRIMINAL APPEAL No.222 OF 2023

ORDER: (Per Hon'ble Sri Justice K. Lakshman)

Heard Mr. T. Niranjan Reddy, learned Senior Counsel representing Mr. N. Mukund Reddy, learned counsel for the petitioner - appellant - accused No.1 and Mr. T.V. Ramana Rao, learned Additional Public Prosecutor appearing on behalf of the respondent.

2. This application is filed by accused No.1 seeking suspension of execution of sentence of imprisonment for life imposed on him vide impugned judgment dated 03.03.2023 in S.C. No.62 of 2019 and to release him on bail pending appeal.

3. The petitioner herein is accused No.1 in S.C. No.62 of 2019. Vide impugned judgment dated 03.03.2023, learned Principal Sessions Judge, Karimnagar, convicted the petitioner for the offence under Section - 302 of IPC and sentenced him to undergo life imprisonment. He is in jail from 03.03.2023.

4. Mr. T. Niranjan Reddy, learned senior counsel appearing for the petitioner sought bail to the petitioner on the following grounds:

(i) There is no direct evidence against the petitioner;

- (ii) Prosecution failed to prove last seen theory and none of the prosecution witnesses spoke about the same;
- (iii) There is no material against the petitioner to prove guilt;
- (iv) Trial Court recorded conviction basing on the circumstantial evidence;
- (v) Chain of events is not linking and it is not complete;
- (vi) Prosecution failed to prove with regard to pendency of DVC against the petitioner;
- (vii) Prosecution also failed to prove the motive attributed to the petitioner;
- (viii) PWs.6 to 8 and 12, who were supposed to speak about the *panchayats* held between the deceased and the petitioner turned hostile;
- (ix) Without SIM Card, call-data cannot be proved;
- (x) No Test Identification Parade was conducted to identify the petitioner;
- (xi) CCTV Footage was not confronted when PW.9 deposed his evidence;

- (xii) Recovery of knife would not come within the ambit of Section - 27 of the Indian Evidence Act, 1872 as there is no discovery of fact made by the prosecution;
- (xiii) Blood-stains were not collected and the same were not proved;
- (xiv) With regard to recovery, there is no legal evidence;
- (xv) Without considering the said aspects, the trial Court recorded conviction against the petitioner herein. He is having fair chances of succeeding in the present appeal.

With the aforesaid submissions, he seeks bail to the petitioner.

5. On the other hand, learned Additional Public Prosecutor would submit that the trial Court on consideration of the entire evidence including medical evidence recorded conviction against the petitioner. There are specific overt acts against him. He is the prime accused and the offence committed by him is serious and grave in nature. The impugned judgment is a reasoned one. With the said submissions, he sought to dismiss the present application.

6. The trial Court in paragraph No.27 of the impugned judgment referred the circumstances relied upon by the prosecution. The trial Court also recorded pendency of DVC No.9 of 2017 against the

petitioner - accused No.1 which was filed by the deceased against him and his father and sisters. The said case was posted to 04.05.2018 and the Presiding Officer was on leave, it was adjourned to 22.06.2018. He informed the deceased that henceforth they shall live together. On 05.05.2018, he called the deceased, took her to Hanamkonda, they stayed in Supreme Lodge, Hanamkonda. To prove that both the petitioner and the deceased were there in the Lodge, prosecution examined the Manager of the Lodge as PW.9. PW.3 also saw accused No.1 and the deceased going on Scooty on 05.05.2018 at about 2.30 p.m. on the Canal road. Referring to the said circumstances and also considering the evidence of prosecution witnesses, the trial Court recorded conviction against the petitioner herein. The trial Court also considered blood-stains on the clothes of the petitioner and the forensic report and gave a specific finding that the circumstances form a chain of events and, therefore, the prosecution proved the guilt of the petitioner - accused No.1 beyond reasonable doubt.

7. However, Mr. T. Niranjan Reddy, learned senior counsel, referring to the principle laid down by the Hon'ble Supreme Court in

Sharad Birdhichand Sarda v. State of Maharashtra¹; Prem Singh v. State (NCT of Delhi)²; and Ravi Sharma v. State (Government of NCT of Delhi)³, would submit that the trial Court has to consider five (05) golden principles to come to a conclusion that the circumstances relied upon by the prosecution prove the guilt of the accused. The trial Court cannot consider false defences.

8. As discussed above, the trial Court considered the entire evidence and came to the conclusion that the petitioner - accused No.1 developed illegal intimacy with the deceased; they fell in love; and she became pregnant and gave birth to a male child. Both of them were last seen in the Lodge as spoken by PW.9. The trial Court also considered medical evidence. On consideration of entire aspects, the trial Court gave a specific finding that the prosecution proved guilt of the accused beyond reasonable doubt.

9. It is relevant to note that in **Omprakash Sahni v. Jai Shankar Chaudhary⁴**, the Apex Court laid down certain guidelines for deciding bail application. Paragraph No.33 is relevant and the same is extracted as under:

¹. (1984) 4 SCC 116

². (2023) 3 SCC 372

³. (2022) 8 SCC 536

⁴. (2023) 6 SCC 123

“33. Bearing in mind the aforesaid principles of law, the endeavour on the part of the Court, therefore, should be to see as to whether the case presented by the prosecution and accepted by the Trial Court can be said to be a case in which, ultimately the convict stands for fair chances of acquittal. If the answer to the above said question is to be in the affirmative, as a necessary corollary, we shall have to say that, if ultimately the convict appears to be entitled to have an acquittal at the hands of this Court, he should not be kept behind the bars for a pretty long time till the conclusion of the appeal, which usually take very long for decision and disposal. However, while undertaking the exercise to ascertain whether the convict has fair chances of acquittal, what is to be looked into is something palpable. To put it in other words, something which is very apparent or gross on the face of the record, on the basis of which, the Court can arrive at a prima facie satisfaction that the conviction may not be sustainable. The Appellate Court should not re-appreciate the evidence at the stage of Section 389 of the Cr.P.C. and try to pick up few lacunas or loopholes here or there in the case of the prosecution. Such would not be a correct approach.”

10. Therefore, several contentions and grounds raised by learned senior counsel can be considered at the time of hearing of the appeal

finally on receipt of record from the trial Court. The offence committed by the petitioner is grave and serious in nature. He is prime accused. *Prima facie*, there are specific overt acts against the petitioner. The trial Court considered the said aspects and recorded conviction against him.

In the light of the aforesaid discussion, we are not inclined to grant bail to the petitioner. The present bail application is liable to be dismissed and accordingly the same is dismissed.

SD/- N. CHANDRASEKHAR RAO
ASSISTANT REGISTRAR

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SECTION OFFICER

To,

1. The Principal Sessions Judge, Karimnagar
2. The II Additional Magistrate of First Class, Huzurabad
3. The Superintendent, Central Jail, Karimnagar
4. One CC to Sri N Mukund Reddy Advocate [OPUC]
5. Two CC to Public Prosecutor, High Court at Hyderabad(OUT)
6. Two spare copies

HIGH COURT

KLJ
&
SKSJ

DATED:11/08/2023

ORDER

IA. NO. 1 OF 2023
IN
CRLA.No.222 of 2023

APPLICATION IS DISMISSED

