

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

**FRIDAY, THE TWENTY SECOND DAY OF MARCH
TWO THOUSAND AND TWENTY FOUR**

:PRESENT:

**THE HONOURABLE SRI JUSTICE K.LAKSHMAN
AND
THE HONOURABLE SMT JUSTICE P.SREE SUDHA**

**IA No. 2 OF 2023
IN
CRLA NO: 1073 OF 2023**

Between:

Elukuchi @ Enkus @ Appala Ravi @ Ramesh (A-2), S/o. Rajam,

...Petitioner

AND

**The State of Telangana, Rep. by its Public Prosecutor, High Court of Telangana at
Hyderabad**

...Respondent

Counsel for the Petitioner : Mrs. C.Vasundhara Reddy

Counsel for the Respondent : Mrs. Shalini Saxena, Asst Public Prosecutor

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 sentence in S.C.No.518 of 2021 Dated 28/08/2023 on the file of the Principal Sessions Judge Jagtial and release the petitioner on bail in Criminal Appeal pending before this Court.

The Court made the following

HON'BLE SRI JUSTICE K. LAKSHMAN

AND

HON'BLE SMT. JUSTICE P. SREE SUDHA

I. A. No.2 OF 2023 IN CRIMINAL APPEAL No.1073 OF 2023

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

Heard Mrs. C. Vasundhara Reddy, learned counsel for petitioner - accused No.2 and Mrs. Shalini Saxena, learned Assistant Public Prosecutor appearing on behalf of respondent.

2. I.A. No.2 of 2023 is filed by the petitioner - appellant - accused No.2 to suspend the operation of sentence of imprisonment imposed by learned Principal Sessions Judge, Jagtial in S.C. No.518 of 2021 vide judgment dated 28.08.2023 and to release him on bail.

3. The petitioner herein is arraigned as accused No.2 in S.C. No.518 of 2021. Vide impugned judgment dated 28.08.2023, learned Sessions Judge convicted the petitioner herein for the offence under Section - 302 of IPC and sentenced him to undergo life imprisonment.

4. Mrs. C. Vasundhara Reddy, learned counsel appearing for the petitioner sought suspension of impugned judgment and grant of bail to the petitioner - accused No.2 on the following grounds:

i. There are no eye-witnesses to the incident;

- ii. The petitioner was falsely implicated in the subject crime;
- iii. There were no incriminating circumstances against the petitioner to connect him with the aforesaid crime;
- iv. There are inconsistencies in the evidence of PWs.1 to 8, but the trial Court relying on the said evidence, recorded conviction, which is illegal;
- v. The prosecution failed to prove the last seen theory;
- vi. Without considering all the said aspects, the trial Court recorded conviction against the petitioner;
- xii. The petitioner has been in jail from 28.08.2023;

5. Learned Assistant Public Prosecutor opposed the bail petition on the following grounds:

- i. There is motive on the part of the petitioner in commission of the aforesaid offence;
- ii. To prove the last seen theory, there is clear evidence from PW.1, the wife of the deceased;
- iii. As per medical evidence of PW.12 and Ex.P7-post-mortem examination report, the doctor, who conducted autopsy over the dead body of the deceased, there were four ante-mortem injuries over the body of the deceased. According to PW.12, the cause of

death was due to hemorrhagic shock on account of multiple fractures caused by trauma;

- iv. The prosecution could prove the motive on the part of the accused in commission of offence;
- v. There is other evidence available on record to prove the case of prosecution;
- vi. The evidence adduced by the prosecution was sufficient to record conviction of the petitioner - accused;
- vii. On consideration of entire evidence, both oral and documentary, the learned Sessions Judge recorded conviction against the petitioner, and there is no error in it; and
- viii. The offence committed by the petitioner herein is serious and grave in nature and, therefore, the petitioner is not entitled for bail.

6. Perusal of record would disclose that the motive behind the death of the deceased is that the deceased took loan amount from accused and despite the deceased having money, he did not repay the same and, therefore, accused Nos.1 and 2 decided to eliminate the deceased. In pursuance of their pre-plan, on 30.12.2019 at about 5.00 P.M., accused Nos.1 and 2 went to the house of deceased, took him along with them to consume toddy/alcohol. While they were proceeding

on the way, accused No.3 met them and accordingly, all of them went to Gouda Community Hall located at the outskirts of Narsimhulapalli Village by carrying alcohol. All of them consumed alcohol. Thereafter, accused No.1 beat the deceased with glass bottle on the head, while accused Nos.2 and 3 beat the deceased with stones on head and ear and thereby the deceased received severe injuries and died on the spot.

7. PW.1, the wife of the deceased spoke with regard to accused Nos.1 and 2 coming to her house and took the deceased to have alcohol. PW.2 and PW.4, brothers of the deceased deposed that they found the body of the deceased over turned in pool of blood and the injuries thereon. As per PW.12, the doctor, who conducted autopsy over the deceased body and Ex.P17 - post-mortem examination report, four ante-mortem injuries were found on the body of the deceased. According to him, the cause of death was due to hemorrhagic shock due to multiple fractures which was caused by trauma.

8. On consideration of the said evidence, both oral and documentary, the trial Court recorded conviction against the petitioner herein. *Prima facie*, there are specific overt acts against the petitioner and the offence committed by him is serious and grave in nature.

Several grounds and contentions raised by learned counsel for the petitioner can be considered at the time of hearing the appeal itself.

Analysis of evidence of witnesses while considering bail application is impermissible as held by the Hon'ble Supreme Court in **Omprakash Sahni v. Jai Shankar Chaudhary**¹.

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 the same is accordingly dismissed.

**SD/- N.RAJAGOPAL
ASSISTANT REGISTRAR**

//TRUE COPY//

SECTION OFFICER

To,

1. The Principal Sessions Judge, Jagtial.
2. The II Additional Judicial Magistrate of First Class Jagtial.
3. The Superintendent, Central Prison, Cherlapally, Medchal Malkajgiri District.
4. Two CCs to PUBLIC PROSECUTOR, High Court for the State of Telangana, Hyderabad.[OUT]
5. One CC to Mrs. C Vasundhara Reddy, Advocate [OPUC]
6. One spare copy

HIGH COURT

**KL,J
&
PSS,J**

DATED:22/03/2024

ORDER

**I.A.No.2 OF 2023
IN
CRLA.No.1073 of 2023**



DISMISSING THE IA