

**HON'BLE SRI JUSTICE SUBBA REDDY SATTI**

**CRIMINAL PETITION NOS. 3981, 3982, 3983 and 3984 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, 139 and 140 of 2022 of Amalapuram Town Police Station, East Godavari District.

2. The petitioner is arrayed as A37, A45, A16 and A45 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.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.

151, 336, 435, 188, 506 read with 149 of IPC, Sections 3 and 4 of PDPP Act and 32 of Police Act, 1861.

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; Koppiseti Venkata Ganesh, VRO: Naga Venkata Ratna Giri Babu, Driver of RTC Bus, 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 crimes 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 , 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 office and on the way to Collectorate office 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 office, the mob pelted stones on Police personnel due to which some of the Police sustained injuries and **the mob** damaged the glasses of Collectorate Office and Ambedkar Bhavan.

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

13. The mob further moved towards the house of MLA and pelted stones on the house due to which glasses were damaged. 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. The respondent-State filed counter stating that petitioner being the leader gathered his followers prior to the commission of

steps in the rally. It is stated that the petitioner monitored the entire mob through whatsapp messages in conducting the rally and *prima facie* case was established against the petitioner through statements of the injured, confession of arrested accused and through footages recorded during the incident. Hence, the petitioner is not entitled to pre-arrest bail.

16. Heard Sri N. Ravi Prasad, learned counsel for the petitioner and learned Sri Dhushyanth Reddy, learned Addl. Public Prosecutor for the respondent-state.

17. Learned counsel for the petitioner submits that the petitioner is innocent and he never participated in the offence. He submits that victims themselves and the media openly gave statement that the ruling party followers aggravated the agitation and caused nuisance to tarnish the image of other political party and particular community.

18. Learned counsel submits that in none of the FIRs the role of petitioner was stated except mentioning his name. He submits that except using the word 'mob' no specific overt acts are attributed against any of the accused including petitioner herein. He submits that petitioner did not participate in the rally and when there are no specific overt acts attributed against a person, bail cannot be denied. He further submits that even if it is assumed that petitioner has participated in the alleged offence,

that petitioner is participating in active politics, as such he was falsely implicated in the above crimes.

19. Learned counsel for the petitioner further submits that word 'unlawful assembly' is not applicable to the mob. As per Section 141 of IPC a group consisting of five or more persons with a common object of committing an offence will be designated as unlawful assembly. He submits that in the present case FIRs do not disclose any such common object or intention on the part of the mob and when there is no such common intention, all the persons who were present at the time of alleged incident cannot be arrayed as accused. Therefore, Sections 146 and 147 of IPC are not applicable to the present case.

20. The learned counsel further urged that ingredients of Sec 307 IPC would not attract against the petitioner. The allegation of the prosecution that being aware that the drivers were inside the bus, the mob set fire to the buses, and it amounts to attempt to murder, would not apply to the facts of the case unless prosecution specifically attributes role of petitioner. In this regard learned counsel submits that the drivers were not inside the bus and the buses were open at the time of setting fire and the same is evident from the videos. He submits that it was not the intention of mob to kill drivers, some miscreants joined the mob and destroyed public property. Therefore, at the most offences under PDPP Act are attracted. He submits that to attract Section 307 of

personnel no other individual sustained injuries, as such ingredients of Section 307 IPC are not attracted. He submits that except Section 307 of IPC all other offences are bailable and only to deprive the accused from getting bail said Section is intentionally added.

21. Learned counsel further submits that so far 120 accused were arrested and no weapons were seized from their possession. He submits that so far Police have not filed petition seeking custodial interrogation of the arrested accused.

22. Learned counsel for the petitioner, in reply, submits that Section 39 of Cr.P.C. deals with the duty of the public to give information relating to commission of certain offences to the nearest Magistrate or Police Officer. He submits that one should have knowledge about commission of an offence by a person and mere standing would not amount to having of such knowledge and thus, Section 39 of Cr.P.C. is not applicable. He further submits that Police were discharging their duties at the time of the alleged commission of offence and hence, even if it is assumed that petitioner was present at that time, he need not intimate the same to the Police.

23. Learned counsel for the petitioner summed up his arguments by contending that the petitioner is implicated in the crime only due to political vengeance and other accused who stand

24. Per contra learned Additional Public Prosecutor would submit that the evidence collected so far specially shows that petitioner, who is one of the leaders played major role in provoking the mob in committing the aggressive offences and he is the person who monitored the mob through whatsapp messages. He submits that *prima facie* case is made out against the petitioner through statements of injured, confession of arrested accused and through video footages recorded during the incident.

25. Learned Additional Public Prosecutor while contending with regard to the applicability of Section 307 of IPC, submitted that though it might not be the intention of the mob to kill MLA, it was within the knowledge of mob about his presence in the house. In spite of that knowledge some of the persons in mob poured kerosene and set fire to the furniture in the house. Further at the time of setting fire to the buses the mob was aware that drivers were inside the buses and this would amount to attempt to murder, as such ingredients of Section 307 of IPC are attracted.

26. He further submits that apart from the confession statements of co-accused, there are photographs evincing participation of the petitioner in commission of the offences. Further while submitting his arguments as to whether confession of co-accused can be considered, he placed reliance on order, dated 06.05.2022 passed in CrI.P.No.3373 of 2022 wherein this Court observed that confession statements can be considered for

27. He further submits that the offences are grave in nature and the punishment for the offence under Section 4 of the PDPP Act is ten years.

28. He further submits that investigation is in progress and petitioner's presence is required for custodial interrogation to secure call data of other accused, to identify other persons who participated in the offence, to collect whatsapp data of the mobile numbers of the accused and to secure presence of the absconding accused. He submits that after the incident, the petitioner directed whatsapp group members to delete the instructions sent by him, which amounts to destruction of evidence. Further in the event of petitioner enlarging on bail, there is possibility that he would tamper with the evidence and influence the witnesses. He further submits that there is likelihood of rising of differences between schedule community and OC community. Hence, he prays to dismiss the bail petition. He placed reliance on **Ramesh Bhavan Rathod vs. Vishanbhai Hirabhai Makwana (Koli) and another**<sup>1</sup> with regard granting of bail on parity with co-accused and he also placed reliance on **Bimal Gurung v. Union of India and Others**<sup>2</sup> wherein the Hon'ble Supreme Court dealt with regard to peaceful protest, violent protests, bundhs affecting or threatening rights of others.

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



30. The Hon<sup>ble</sup> Apex Court in **Siddharam Satlingappa Mhetre Vs. State of Maharashtra and Ors<sup>3</sup>** laid the following principles which are to be considered while granting bail.

- 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. Fugitive in prosecution should always be considered and it is only

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.”

31. 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.

32. 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, no specific overt acts were attributed against the petitioner or any other accused.

33. 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,

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.

34. 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.

35. The other contention raised by learned Public Prosecutor is

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.]

36. 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.

37. 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.

38. It is pertinent to mention here that name of the petitioner was mentioned in all the complaints. Witnesses also specifically stated about the presence of petitioner. Though there are no specific overt acts against petitioner, this court must keep in mind some of guide liens in the judgement of Apex Court **Siddharam Satlingappa Mhetre Vs. State of Maharashtra and Ors.** (referred

in cases of large magnitude affecting a very large number of people.

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;

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.

39. Petitioner in the above criminal petitions, according to learned counsel for the petitioner, is leader and actively participated in politics and in view of the same he was falsely implicated. According to the prosecution, petitioner, being leader, after the incident directed the persons/followers participated in the agitation to delete the whats app messages. Thus, keeping the guidelines issued by the Apex Court, since the petitioner's involvement in the above cases has been stated in the complaint as well as by list of witnesses, petitioner is not entitled to pre-arrest bail. the custodial interrogation of petitioner is necessary.

40. The learned Additional Public Prosecutor specifically urged

to the prosecution, he is instrumental in sending messages through whats app and other social media platform resulted in occurrence of violence. In the event of petitioner granted pre-arrest bail, petitioner will not co-operate with the investigating agency and in fact petitioner's presence for custodial interrogation is necessary. Prosecution needs petitioner's presence for free and fair investigation.

41. In view of the facts and circumstances of the case, since the name of the petitioner reflected in the complaint as well as the statements of list of witnesses recorded under Sec 161 Cr.P.C., this Court is of the view petitioner is not entitled to pre-arrest bail.

42. Accordingly, the criminal petitioners are dismissed.

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.

Consequently, miscellaneous applications pending, if any, shall stand closed.

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**CRIMINAL PETITION NOs. 3981, 3982, 3983 and 3984 OF 2022**

Date : 04.07.2022