

***HON'BLE SRI JUSTICE CHEEKATI MANAVENDRANATH ROY**

+ Criminal Petition No.2543 of 2022

% Dated 22-04-2022

Peta Chandra Sekhar

..... Petitioner

Vs.

\$ 1. The State of A.P., rep. by its Public Prosecutor, High Court of A.P,
Amaravati & Anr.

.....Respondents

! Counsel for the petitioner : Sri B.Adinarayana Rao,
learned Senior Counsel for
Sri Srinivasa Rao Bodduluri,
learned counsel.

^ Counsel for the respondents: Learned Addl.Public Prosecutor

<GIST:

> HEAD NOTE:

? Cases referred:

¹ (1884) 14 Q.B. D.153

² (1989) 3 All ER 701

IN THE HIGH COURT OF THE STATE OF ANDHRA PRADESH**Criminal Petition No.2543 of 2022**

Peta Chandra Sekhar

..... Petitioner

Vs.

1. The State of A.P., rep. by its Public Prosecutor, High Court of A.P,
Amaravati & Anr.

.....Respondents

COMMON ORDER PRONOUNCED ON: 22-04-2022

HON'BLE SRI JUSTICE CHEEKATI MANAVENDRANATH ROY

1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? --
2. Whether the copies of judgment may be marked
to Law Reporters/Journals -Yes-
3. Whether Their Ladyship/Lordship wish to see
the fair copy of the Judgment? -Yes-

JUSTICE CHEEKATI MANAVENDRANATH ROY

THE HON'BLE SRI JUSTICE CHEEKATI MANAVENDRANATH ROY**Criminal Petition No.2543 of 2022****ORDER:**

This Criminal Petition under Section 438 of the Code of Criminal Procedure, 1973, is filed to enlarge the petitioner on bail in the event of his arrest.

2) The petitioner is A-3 in Crime No.22 of 2022 of Proddatur Rural Police Station.

3) A case under Sections 120-B, 109, 212 and 302 r/w.34 of IPC was registered against him and A1 and A2 in the above crime.

4) (a) Briefly stated, it is the case of the prosecution that the deceased is the wife of the deceased brother of A1. A2 is the wife of A1. A3, who is the petitioner herein, is their advocate. After the death of the husband of the deceased, she being a widow is living alone by cultivating Ac.8.00 of land belonging to her deceased husband. A1, taking advantage of her helplessness, who is a widow, entertained an evil idea of grabbing the said land from the deceased as she has no children. He has been insisting the deceased to leave the village. The deceased resisted him. The deceased and her mother raised dispute before the elders in this regard. Whiles, the deceased got the said land registered in the name of her mother, who is the *de facto* complainant in this case. From then onwards, A1 bore-grudge against the deceased and he has been threatening to kill her.

(b) Whiles, on 10.01.2022 the deceased came to know that A1 is harvesting the groundnut crop in her land. Immediately, she reached the said land at about 2.30 P.M. and found one B.Ramana Reddy cutting the crop with a machine. When she asked him to stop the machine, he replied that he would stop the machine only if A1 directs him to stop the said machine. At that time, A2 caught-hold the hair of the deceased and dragged her on the ground, abusing her in a filthy language. Immediately, A1 beat her with an iron pipe on her head and she sustained bleeding injuries in the hands of A1. The deceased died on account of the said injuries sustained by her in the hands of A1.

(c) On a report lodged by the mother of the deceased, initially, a case in the above crime was registered against A1 and A2 only under Sections 302 r/w.34 of IPC. A1 voluntarily surrendered before the Court on 21.01.2022 and he was remanded to judicial custody. Thereafter, on a petition filed by the prosecution seeking police custody of A1 for interrogation in Crl.M.P.No.84 of 2022, as per order dated 27.01.2022, police custody of A1 was given as sought for. Accordingly, A1 was interrogated by the police on 28.01.2022. It is stated that at that time, A1 disclosed that when he approached the petitioner herein, who is A3, who is an advocate by profession, and discussed with him regarding the said land dispute that the petitioner, who is A3, stated that he got only two options either to enter into a compromise with the deceased in respect of the said land dispute or to kill her and that he has assured him that

he would take care of the case. He also stated while answering the questions put to him at the time of interrogation that A3 informed him that he has to either enter into a compromise with the deceased or to kill her assuring him that he would take care of the case.

(d) On the basis of the said information secured during the course of interrogation of A1, as it is disclosed that there was a conspiracy between A1 to A3 in committing the said offence of murder and as it is revealed that the petitioner who is A3 abetted A1 to kill the deceased, the Investigating Officer has filed a memo in the Court of the learned II Additional Judicial Magistrate of First Class, Proddatur, to add the petitioner as A3 in the above crime and to add Sections 120-B, 109 and 212 of IPC along with Sections 302 r/w.34 of IPC. Therefore, accordingly, the petitioner is shown as A3 in the above crime. Thus, the prime allegation against the petitioner is that he along with A1 and A2 conspired together to do away with the life of the deceased in this case and that he has abetted A1 to commit murder of the deceased in this case. It is also the case of the prosecution that the petitioner has also indulged in harbouring the offender, who is A1, knowing that he is an offender in the said murder case with an intention to screen him from legal punishment. It is stated that the petitioner has initially sent away A1 to Kadapa and from there to Polathali temple and subsequently, got him surrendered before the Court through another lawyer. So, it is stated that he has also committed an offence punishable under Section 212 of IPC.

5) Heard Sri B.Adinarayana Rao, learned Senior Counsel appearing for the petitioner and learned Additional Public Prosecutor for the respondent State.

6) Learned Senior Counsel for the petitioner Sri B. Adinarayana Rao would submit that there is a civil dispute between the mother of A1 and the deceased in respect of the said land in question and a Suit in O.S.No.462 of 2020 was filed by mother of A1 against the deceased before the Court of the Principal Junior Civil Judge, Proddatur and the petitioner herein, who is A3, is the advocate for the mother of A1, who is the plaintiff in the said Suit and as such, the petitioner herein was falsely implicated in this case by the *de facto* complainant, who is the mother of the deceased, as she bore-grudge against him for filing the said Suit against the deceased on behalf of the mother of A1. He would further contend that the said statement of A1 extracted during course of his interrogation by the police, which relates to the conversation between an advocate and a client, is a privileged communication and as such, the said statement has no evidentiary value and it cannot be considered as an incriminating circumstance or evidence against A3, who is an advocate by profession. He would further submit that except the said information extracted from A1 during the course of his interrogation, there is no other material on record to prove the complicity of the petitioner in hatching up any conspiracy along with A1 and A2 to commit murder of the deceased and as such the accusation made against the petitioner is not well founded.

He further contends that the petitioner is falsely implicated in this case due to political rivalry as he belongs to Telugu Desam Party. Therefore, he would pray for grant of anticipatory bail to the petitioner.

7) Learned Additional Public Prosecutor for the respondent State vehemently opposed the Criminal Petition. He would submit that during the course of interrogation of A1 after he was taken into police custody as per the orders passed by the learned Magistrate that it is clearly disclosed by him that he has consulted the petitioner herein, who is A3, before committing murder of the deceased in connection with the said land dispute and it is clear from his statement that the petitioner herein informed him that he got only two options i.e. either to enter into a compromise with the deceased or to kill her. So, he would submit that it is a clear case where the petitioner herein has abetted A1 to commit murder of the deceased. He would further contend that it has also come to light from the statement of A1 during the course of interrogation that the petitioner herein also assured A1 that he would take care of the case, if he commits murder of the deceased. So, he would contend that these facts clearly *prima facie* show that there has been a conspiracy even prior to the commission of murder between the accused in this case to kill the deceased and that these facts also *prima facie* show that the petitioner herein has abetted A1 to commit the murder of the deceased. So, he contends that the accusation made against the petitioner regarding commission of the

offences punishable under Sections 120-B, 109 and 212 of IPC is *prima facie* well founded and he would finally submit that as it is a case of murder committed after hatching up a conspiracy by the accused and as it is also a case of abetment made by the petitioner to commit murder of the deceased and as investigation in this case got a long way to go that the petitioner is not entitled for any anticipatory bail in the facts and circumstances of the case. So, he prayed for dismissal of the petition.

8) Perused the record.

9) After the deceased, who sustained bleeding injuries in the hands of A1, died, the mother of the deceased lodged a report with the police. On the basis of the said report, initially, a case under Sections 302 r/w.34 of IPC was registered only against A1 and A2. As noticed supra while narrating the facts of the case, A1 absconded after the murder took place and thereafter voluntarily surrendered before the Court on 21.01.2022 and he was remanded to judicial custody. Thereafter, Investigating Officer has filed a petition seeking police custody of A1 in Crl.M.P.No.84 of 2022. The said petition was allowed and police custody of A1 was given as per the order dated 27.01.2022 passed by the Court. After he was taken into police custody as per the orders of the Court, he was interrogated by the police. At that time, he disclosed that he has approached the petitioner herein to discuss with him regarding the said land dispute and that the petitioner informed A1 that he got only two options

either to enter into a compromise with the deceased in respect of the said land dispute or to kill her. It is stated that the petitioner has also assured A1 that he would take care of the said case if he commits murder of the deceased in this case. Therefore, from the said material facts elicited during the course of interrogation of A1, it is *prima facie* evident that there has been a conspiracy hatched up between the accused, particularly, between A1 and A3 before committing the said murder. The very fact that the petitioner has informed A1 that he got only two options either to enter into a compromise with the deceased in respect of the said land dispute or to kill her, clearly establishes that there was conspiracy to commit murder of the deceased. The said fact coupled with the fact that the petitioner has assured A1 that he would take care of the case if she is murdered also *prima facie* establishes that the petitioner has abetted A1 to commit murder of the deceased which is punishable under Section 109 of IPC. Therefore, it cannot be said that the accusation made against the petitioner is *prima facie* not well founded. In fact, the material on record shows that the said accusation made against the petitioner is *prima facie* well founded. The material on record also discloses that the petitioner has harboured A1, who is the principal offender, who committed murder of the deceased, to screen him from legal punishment as it is stated that the petitioner has initially sent him to Kadapa and from there to a temple and thereafter, got him surrendered before the Court. The said facts also *prima facie* constitute an offence punishable under Section 212 of IPC.

10) Therefore, when the investigation so far done and the material secured during the course of investigation, *prima facie*, shows that there has been a conspiracy entered by the petitioner with the principal offender, who is A1, to commit murder of the deceased and when the facts of the case also *prima facie* show that the petitioner has abetted A1 to commit murder of the deceased and when the facts of the case also further show that the petitioner has harboured the principal offender to screen him from legal punishment, this Court is of the considered view that this is not a fit case for grant of anticipatory bail to the petitioner.

11) Learned Senior Counsel appearing for the petitioner would contend that the said conversation as disclosed by A1 during the course of his interrogation, between him as a client and A3, as an advocate, is a professional communication and it cannot be considered as an incriminating evidence against the petitioner, who is A3, and if the said statement extracted from A1 during the course of his interrogation is excluded from consideration, as the same is hit by Section 129 of the Indian Evidence Act, that there is nothing on record to prove the complicity of the petitioner in commission of the said offence. The said contention has no merit and it cannot be countenanced.

12) The relevant provision to be considered in this regard is Section 129 of the Indian Evidence Act. It reads thus:

S.129. Confidential communications with legal advisers.—No one shall be compelled to disclose to the Court any confidential

communication which has taken place between him and his legal professional adviser, unless he offers himself as a witness, in which case he may be compelled to disclose any such communications as may appear to the Court necessary to be known in order to explain any evidence which he has given, but no others.

A plain reading of the aforesaid Section makes it manifest that a person cannot be compelled to disclose any confidential communication which has taken place between him and his legal professional adviser **to the Court**. Therefore, it is evident that the said bar has no application at the time of investigating the case by the Police. Therefore, the legal validity of the said statement of A1 is to be examined only when evidence in this regard is sought to be adduced by the prosecution during the course of the trial of the case. Further, the said privilege cannot be invoked when a conspiracy is hatched up for committing an offence. In 20th Edition of Law of Evidence authored by Woodroffe & Amir Ali at page 4972, while dealing with Section 129 of the Evidence Act, it is observed as follows:

“The privilege conferred by Section 126 is not intended for committing any offence. In order to determine whether a communication between a solicitor and his client is not privileged because its purpose was the furtherance of the crime, the court is entitled to look at the document in question without requiring the party who objects to the claim for privilege to prove by evidence *de hors* the document that it came into existence for the purpose of furthering crime.”

13) The judgment rendered on the said proposition of law in the case of **Reg. v. Cox and Railton**¹ was also considered in the

¹ (1884) 14 Q.B. D.153

case of **Reg. v. Governor of Pentonville, Ex p. Osman (D.C.)**²

wherein it is held as follows:

“...Osman is not entitled to claim privilege for any communication between him and his solicitors, if the purpose of the communication was the furtherance of crime.”

14) Therefore, from the aforesaid legal position, it is clear that any communication between the client and his solicitor, if the purpose of the communication was the furtherance of crime is not a privileged communication. Therefore, it is clear that the privilege conferred under Section 129 of the Indian Evidence act is not intended for committing any offence. So, disclosure of such communication is not prohibited under Section 129 of the Indian Evidence Act.

15) Therefore, as the material facts elicited from A1 during the course of his interrogation clearly show that the conversation/discussion/communication between him and A3 is for the purpose of furthering crime, it cannot be construed as a privileged communication attracting the bar under Section 129 of the Indian Evidence Act. So, the said material elicited from A1, which *prima facie* discloses the complicity of the petitioner, who is A3, in commission of the above offences, cannot be excluded from consideration. As the police got a clue from the said statement of A1 regarding the role played by the petitioner in commission of the above offences, there is every justification in adding the petitioner as A3 in the above crime and also in adding Sections 120-B, 109 and 212 of IPC against the

² (1989) 3 All ER 701

petitioner herein and to investigate the case in the said direction.

16) The contention of the learned Senior Counsel appearing for the petitioner that as the petitioner has filed a Suit against the deceased on behalf of her mother-in-law in respect of the said land that he was falsely implicated in the above crime also has no merit. It is pertinent to note here that the complicity of the petitioner in commission of the said offence was disclosed by A1, who is the principal offender in this crime. Therefore, on the basis of the said material facts elicited from A1, the petitioner is now shown as A3 in this crime. So, it cannot be said that he was falsely implicated as he has filed a civil Suit against the deceased on behalf of her mother-in-law. So, the said contention cannot be countenanced.

17) The contention of the learned Senior Counsel appearing for the petitioner that the petitioner was falsely implicated on account of political rivalry also cannot be countenanced. He would submit that the petitioner belongs to Telugu Desam Party and as such, he was falsely implicated in this case due to political rivalry. As can be seen from the facts of the case, political affairs have nothing to do with the case. The dispute purely pertains to a land between the family members of the deceased and A1. The deceased and A1 are not belonging to any political party. They are also not the politicians. Therefore, even if the petitioner belongs to Telugu Desam Party, as the dispute is purely a family dispute relating to a land, it cannot be said

under any stretch of reasoning that the petitioner was falsely implicated due to political rivalry. The said contention has no merit at all.

18) Further, the material on record discloses that the petitioner has earlier filed a petition for grant of anticipatory bail before this Court in Crl.Petition No.1263 of 2022. The said petition was withdrawn with liberty to file a petition for grant of anticipatory bail before the Sessions Court. Accordingly, the said Criminal Petition was dismissed as withdrawn on 10.03.2022 granting liberty as prayed for. Thereafter, the petitioner has filed anticipatory bail application before the Sessions Court and the same came was dismissed. So, again the present Criminal Petition was filed. At this stage, it is to be noticed that the then learned counsel for the petitioner in the said Criminal Petition No.1263 of 2022 made elaborate arguments on behalf of the petitioner in the said Criminal Petition. After hearing both the learned counsel for the petitioner and the learned Additional Public Prosecutor for the respondent State on merits, when this Court has expressed its opinion that there is *prima facie* case against the petitioner and that he is not entitled to anticipatory bail, then the then counsel for the petitioner has withdrawn the said Criminal Petition with liberty to approach the Sessions Court for grant of anticipatory bail and as the same was dismissed, again the present Criminal Petition for grant of anticipatory bail was filed.

19) The learned II Additional District and Sessions Judge, Proddatur also held in his order that in view of the *prima facie* material available against the petitioner herein in commission of the said offence, that it is not just and proper to grant anticipatory bail to the petitioner.

20) Therefore, the Criminal Petition is dismissed.

JUSTICE CHEEKATI MANAVENDRANATH ROY

Date: 22-04-2022.

Note:
L.R. copy to be marked.
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