

Gordhan Vikram Kumar vs The State Of Andhra Pradesh on 24 December, 2024

THE HON'BLE JUSTICE Dr. V.R.K.KRUPA SAGAR

CRIMINAL PETITION No.8991 of 2024

ORDER:

This Criminal Petition, under Sections 480 and 483 of BNSS, is filed by the petitioner/A.3 seeking regular bail in Crime No.308 of 2024 of Peddapuram Police Station, Kakinada District, registered for the offences punishable under Sections 308(5), 61(2), 336(3), 340(2) and 318(4) of BNS and Section 66-D of Information Technology Act, 2000-2008.

2. Heard arguments of Sri P.Vivek, the learned counsel for petitioner and the learned Assistant Public Prosecutor for respondent-State.

3. F.I.R. in this case was registered on 25.09.2024. The victim is a man aged 82 years. It was his son, who lodged the written information upon which the crime was registered. As per F.I.R. between 18.08.2024 and 09.09.2024 the victim by way of RTGS and IMPS transactions 14 in number transferred Rs.1,16,24,382/-. He lost that money. According to prosecution, online fraudsters indulged in conversations with this old man through whatsapp and other modes and threatened him that he was digitally arrested and they claimed themselves as persons belonging to various Government Departments and Law Enforcement Agencies and thereby created such panic in him and that resulted in his response by way of transfer of such huge amounts of money.

4. During investigation, the present petitioner/A.3 was arrested on 11.10.2024 and was remanded to judicial custody.

5. The submission of the learned Assistant Public Prosecutor would show that from this accused they recovered debit cards, credit cards and other particulars pertaining to 11 bank accounts maintained by him. Prosecution urges that there is one Mr. Santosh who along with certain other persons was organizing these illegal activities. It is in that process, his acquaintance with the present petitioner occurred. The specific case alleged against the present petitioner is that he had to open multiple bank accounts at various places and Mr. Santosh and his group would remit the ill-gotten money into these accounts and would inform the petitioner to withdraw those amounts and pay them. The present petitioner/A.3 used to act accordingly and for such help he was given monetary consideration. Further allegations also show that the petitioner is not innocent and he has got good knowledge of the whole scheme of the crime.

6. Learned counsel for the petitioner submits that the petitioner is innocent, and the only material collected so far is indicative of the fact that he was only helping others and he himself did not indulge in obtaining any money by fraudulent means from anyone. The further submission of the learned counsel is that excepting Section 308 Sub-Section (5) of BNS rest of the penal provisions

alleged against him are punishable with imprisonment for seven years or less than seven years. Since he has been in judicial custody for the last more than 60 days, he is entitled for bail. The further submission of the learned counsel is that the facts alleged in the entire crime do not attract Section 308(5) of BNS and therefore, the relief claimed may be granted.

7. Prosecution did not dispute that excepting Section 308(5) of BNS the rest of the penal provisions are provided with maximum punishment of seven years imprisonment. In such circumstances, remand beyond 60 days gains importance and therefore, it has to be seen whether the allegations in the case do attract Section 308(5) of BNS or not.

8. Section 308 Sub-Section (1) of BNS defines 'extortion'. Punishment prescribed is provided under Sub-Section (2) where the maximum term of imprisonment is seven years. Under Sub-Section (3) of Section 308 of BNS where the extortionist puts the victim to fear of injury, the punishment prescribed is a term of imprisonment upto two years. As per Sub-Section (4) of Section 308 of BNS if the extortionist in order to committing extortion puts the victim to fear of death or of grievous hurt the punishment provided extends upto seven years imprisonment. Sub-Section (5) of Section 308 of BNS provides that whoever commits extortion by putting any person in fear of death or of grievous hurt the punishment prescribed is upto ten years of imprisonment.

9. The allegation of the prosecution so far as the present petitioner is that he was helping Mr. Santosh and others. As against the other accused, they were conversing with the victims through electronic mode and committed the act of extortion. The allegations on record have not contained any factual assertion that the de facto complainant or others was put to fear of death or grievous hurt by this petitioner. In such circumstances, it is difficult to think at this stage about the applicability of Sub-Section (5) of Section 308 of BNS. Since all the other offences are punishable with seven years or less than seven years imprisonment and since the petitioner has been in judicial custody for more than 60 days, this Court is of the considered view that the petitioner has made out a case for his bail.

10. In the result, this Criminal Petition is allowed in the following terms:

1. The petitioner/A.3 shall be enlarged on bail on executing a personal bond for a sum of Rs.30,000/- (Rupees Thirty Thousand only) with two sureties for a like sum each to the satisfaction of the learned Judicial First Class Magistrate, Peddapuram and the petitioner is directed to furnish the sureties from the State of Andhra Pradesh.
2. The petitioner shall mark his attendance before the investigating officer on 1st and 15th of every month between 10.00 AM and 1.00 PM for a period of three months or till filing of the charge sheet whichever is earlier.
3. The petitioner shall make himself available for investigation as and when required and he shall not, directly or indirectly, make any inducement, threat or promise to any persons acquainted with the facts of the case to dissuade them from disclosing such facts to the Court or to any police officer.

4. The petitioner shall not indulge in similar acts of crime.

5. The petitioner must regularly participate in the pre-trial and trial process without fail before the competent Court.

_____ Dr. V.R.K.KRUPA SAGAR, J Date: 24.12.2024 Ivd THE
HON'BLE JUSTICE Dr. V.R.K.KRUPA SAGAR CRIMINAL PETITION No.8991 of 2024 Date:
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