

HON'BLE SRI JUSTICE K. LAKSHMAN

CRIMINAL PETITION No.14931 OF 2024

ORDER:

The present Criminal Petition is filed under Section – 482 of The Bharatiya Nagarik Suraksha Sanhita (for Short “BNSS”) to release the petitioners on anticipatory bail in the event of their arrest in connection with FIR No.153 of 2024 of P.S. Bomraspet Police Station, Vikarabad District.

2. Heard Mr. R. Prashanth, learned Counsel for the petitioners and Mr. Palle Nagreshwar Rao, learned Public Prosecutor appearing on behalf of respondent - State.

3. This application is filed under Section 482 of BNSS seeking anticipatory bail. Petitioners herein are A-5, A-6, A-9, A-10, A-39 and A-47 in Crime No.153 of 2024 pending on the file of P.S. Bomraspet. The offences alleged against the petitioners herein are under Sections 191 (2), 191 (3), 109, 121 (1), 126 (2), 324 (4) read with 190 of the Bharatiya Nyaya Sanhita (for Short “BNS”) and under Section 3 of the Prevention of Damage to Public Property (for Short “PDPP Act”).

4. As per the complaint, dated 11.11.2024 the allegations leveled against the petitioners herein are as follows:

On 11.11.2024 at about 11:00 AM, de facto complainant along with District Collector/LW-21 went to outskirts of Lagacherla village

for the purpose of conducting public opinion program in view of proposed establishment of pharma company. Bandobusth arrangements have been made as per the schedule. The aforesaid officers reached at the aforesaid place for public opinion but no one was there to participate in the public opinion. A-2 requested the District Collector to conduct meeting in the village itself otherwise none of them will come to the said place of hearing. Believing the said version of A-2, District Collector/LW-21 and others proceeded to the Lagacherla village in vehicle bearing No.TS-07-EV-2929 belonging to District Collector and other officers, also followed District Collector in their vehicles. The complainant along with Janaiah, D.S.P also proceeded to the village and found that as per the pre-plan, the villagers of Lagacherla, Rotibanda thanda, Pulicherlakunta thanda formed into an unlawful assembly with stones and sticks at around 12:20 PM, when the aforesaid officers reached the village, the persons including the petitioners/A-5, A-6, A-9, A-10, A-47 and others formed into an unlawful assembly, stopped the vehicle of District Collector with slogans at Anjaneya Swamy Temple of the said village. When the District Collector and Special Officer Sri Venkat Reddy (LW-22) came out of their vehicles, the aforesaid accused attacked on the Special Officer. But sensing the same, that they would definitely attack with stones, sticks and red chilly power, de facto complainant and other officers shifted the District Collector immediately in his vehicle. In the meantime, the accused persons damaged the other vehicle belongs to the District Collector. When

LW-22 tried to subsidize the issue, he was attacked by them with stones, sticks at Primary School due to which he received injuries on his left hand, back side, neck and right leg. The complainant rescued him from the clutches of the aforesaid persons otherwise they would have definitely killed him and in the said attack he has received injuries to his back, right side temple region and right knee. They have also attacked the complainant with sticks and stones. In the said incident Government vehicle bearing No.TS-36-N-3636 belongs to LW-22 was also found damaged.

5. On the said complaint lodged by LW-1, Police Bomraspet registered the aforesaid crime against the petitioners and others, for the aforesaid offences. During the course of investigation, the investigating officer arrested 34 persons out of 71 accused and recorded the statements of 25 witnesses.

6. Petitioners filed the present application seeking anticipatory bail on the following grounds:

- (i) There are no specific allegations against the petitioner Nos.1,2,3,4 and 6/A-5, A-6, A-9, A-10, A-47, the allegations leveled against them are not specific.
- (ii) The name of 5th petitioner i.e., A-39 is not there in the complaint dated 11.11.2024. During the course of investigation his name was included.
- (iii) Petitioners attended for the public hearing to express their grievance relating to proposed land acquisition proceedings, they were gathered there. There was no

intention to attack the District Collector and other officials and there was no intention to kill him. There is no common object to do a particular criminal act.

- (iv) The contents of complaint dated 11.11.2024 and the statements of 25 witnesses recorded by the investigating officer lacks the ingredients of offences alleged against the petitioners herein.
- (v) The identification of the petitioners itself is in dispute. Except the offence under Section 109 of BNS, the punishment for other offences is below 7 years and therefore petitioners are entitled for protection under Section 35 (3) of BNSS. Only to harass the petitioner, the police included the offence under Section 109 of BNS.
- (vi) The contents of complaint and statements of 25 witnesses recorded by the investigating officer lack ingredients of offence under Section 109 of BNS.

7. There was no intention to the petitioners to kill the District Collector LW-21. Police included 71 accused, villagers of the aforesaid 3 villages, all are agriculturists. Police have arrested 34 accused and tortured them. They were subjected to 3rd degree methods. Due to the said harassment of police, no male person is sleeping in the aforesaid three villages. Thus, there is threat of arrest to the petitioners herein and they are also apprehending that police would torture them and subject them to 3rd degree methods.

Petitioners are agriculturists and they are eeking their livelihood basing on agriculture. 6th petitioner is a woman, she is house wife and she is aged about 58 years. They will abide by any condition imposed by this Court.

8. Whereas, learned Public Prosecutor on instructions would submit that petitioners and other accused formed into an unlawful assembly with a common intention of killing the officials who came for public hearing including LW-22. A-1 rendered all types of assistance to the accused including financial, moral support etc. They came with stones, sticks and chilly powder with an intention to kill officials including LW-21. It was unlawful assembly and there was intention to kill the aforesaid officials. With the said intention only at the instance of A-1, A-2 informed the District Collector and other officials to come to the village itself. Thus, there are serious allegations against all the accused herein. With the said contentions learned Public Prosecutor opposed the present application.

9. As discussed supra, the name of 6th petitioner/A-39 is not there in the complaint dated 11.11.2024. Though the names of petitioner Nos.1 to 4 and 6 are there in the said complaint, the allegations leveled against them are general in nature. There are no specific allegations against them in the said complaint.

10. This Court also perused the statements of LW-1 to LW-7, LW-17, 21, 22, 23 and also confession statements of A-13, A-21, A-16, A-11, A-16, A-22, A-17. Learned Public Prosecutor has filed

photographs to show that the participation of the petitioners in the said incident.

11. Perusal of the same would also reveal that the allegations leveled against the petitioners are general in nature. There are no specific allegations against the petitioners herein. The allegations against them are general in nature. LW-4, LW-5, LW-6, LW-7, LW-17 are residents of Lagacherla village and in one voice they have also stated that petitioners, 40 others and others tried to attack on the officials with stones and sticks without even opening a dialogue with the officials, they went away from the said place. District Collector, LW-21 Additional Collector, incharge Collector, M.R.O. R.D.O, D.S.P.Vikarabad were attacked with stones and sticks and their vehicles were also damaged. Then apprehending that police are coming, A-2 requested them to go away. Therefore, they went away. Evening they have enquired with A-2, who informed them that if pharma company is established at the said place, 'Chitti Naidu' will succeed in which event he will not stop. Therefore, under any circumstances they should not support to establish pharma city at the said place. A-1 also informed him that he will spend the amount also. Apart from A-1, KTR support is also there. They have informed A-2 to send away all the officials who come for land acquisition and if necessary kill them. Therefore, A-2 attacked the officers with stones and sticks. A-1 gave him assurance that he will take care of legal consequences.

12. Thus, the aforesaid witnesses would reveal that the allegations leveled against the petitioners are general in nature. There are no specific allegations. There are no specific overt acts against the petitioners and the role played by each of them in commission of offence. In fact the aforesaid witnesses in their statements under Section 188 of BNSS stated that the petitioners and other accused tried to attack the officials. Thus, there are no specific allegations against the petitioners herein. Prima-facie, the allegations are against A-2.

13. Section 191 of BNS deals with rioting and the same is extracted below:

1) 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.

(2) 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.

(3) Whoever is guilty of rioting, being armed with a deadly weapon or with anything which, used as a weapon of offence, is likely to cause death, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

14. Section 132 of BNS deals with assaults or uses criminal force to deter any person from discharge of his official duty and the punishment prescribed is imprisonment of either description for a term which may extend to two years, or with fine, or with both.

15. Section 121 of BNS deals with voluntarily causing hurt or grievous hurt to deter public servant from discharging his duty and the

punishment for the same is shall not be less than one year but which may extend to 10 years and also liable to fine.

16. Section 126 of BNS deals with wrongful restraint and punishment for the same is one month or with fine which may extend to Rs.5000/- or with both.

17. Section 324 of BNS deals with Mischief and the punishment for the same is imprisonment for six months or with fine or with both.

18. Section 190 of BNS says that every member of unlawful assembly guilty of offence committed in prosecution of common object.

19. Section 3 of PDPP Act deals with Mischief causing damage to public property. The same is relevant and extracted below:

[\(1\)](#) Whoever commits mischief by doing any act in respect of any public property, other than public property of the nature referred to in sub-section (2), shall be punished with imprisonment for a term which may extend to five years and with fine.

[\(2\)](#) Whoever commits mischief by doing any act in respect of any public property being

[\(a\)](#) any building, installation or other property used in connection with the production, distribution or supply of water, light, power or energy;

[\(b\)](#) any oil installations;

[\(c\)](#) any sewage works;

[\(d\)](#) any mine or factory;

[\(e\)](#) any means of public transportation or of telecommunications, or any building, installation or other property used in connection therewith, shall be punished with rigorous imprisonment for a term which shall not be

less than six months, but which may extend to five years and with fine

Provided that the Court may, for reasons to be recorded in its judgment, award a sentence of imprisonment for a term of less than six months.

20. Section 109 of BNS deals with Attempt to Murder. The same is relevant and it is extracted below:

1. 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 imprisonment for life, or to such punishment as is hereinbefore mentioned.
2. When any person offending under sub-section (1) is under sentence of imprisonment for life, he may, if hurt is caused, be punished with death or with imprisonment for life, which shall mean the remainder of that person's natural life.

The punishment for the said offence is 10 years of imprisonment and fine.

21. Thus, the punishment for the aforesaid offences except the offence under Section 109 of BNS is below 7 years. Therefore, petitioners are entitled for benefit under Section 35 (3) of BNSS.

22. To constitute an offence under Section 109 of BNS, there should be intention to kill or knowledge that such act would cause death of the person.

23. In **SIDDHARAM SATLINGAPPA MHETRE V. STATE OF MAHARASHTRA AND OTHERS**¹ Hon'ble Apex Court laid down certain parameters that can be demonstrative while dealing with anticipatory bail and it is relevant and same is extracted below:

“121. No inflexible guidelines or straitjacket formula can be provided for grant or refusal of anticipatory bail. We are clearly of the view that no attempt should be made to provide rigid and inflexible guidelines in this respect because all circumstances and situations of future cannot be clearly visualized for the grant or refusal of anticipatory bail. In consonance with the legislative intention the grant or refusal of anticipatory bail should necessarily depend on facts and circumstances of each case. As aptly observed in the Constitution Bench decision in Sibbia's case (supra) that the High Court or the Court of Sessions to exercise their jurisdiction under [section 438](#) Cr.P.C. by a wise and careful use of their discretion which by their long training and experience they are ideally suited to do. In any event, this is the legislative mandate which we are bound to respect and honour.

122. The following factors and parameters can be taken into consideration while dealing with the anticipatory 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.

¹ 2011 (1) SCC 694

- 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. Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the 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.”

24. Hon’ble Apex Court further held that arrest should be the last option and it should be restricted to those exceptional cases where arresting the accused is imperative in the facts and circumstances of that case. The Court must carefully examine the entire available record and particularly the allegations which have been directly attributed to the accused and these allegations are corroborated by other material and circumstances on record.

25. Hon’ble Apex Court further held that the aforesaid factors are only illustrative. It is difficult to clearly visualize all situation and circumstances in which a person may pray for anticipatory bail. If a

wise discretion is exercised by the concerned judge, after consideration of entire material on record then most of the grievances in favour of grant of or refusal of bail will be taken care of. The legislature in its wisdom has entrusted the power to exercise this jurisdiction only to the judges of the superior courts. In consonance with the legislative intention, the discretion would be properly exercised.

26. Hon'ble Apex Court further held that irrational and indiscriminate arrest is gross violation of human rights.

27. In **JOGINDER KUMAR V. STATE OF U.P**² a 3 Judge Bench of the Hon'ble Apex Court referred to the Report of the National Police Commission in which it is mentioned "power of arrest was one of the chief sources of corruption in the police. The report suggested that by and large nearly 60% of the arrests were either unnecessary or unjustified and that such unjustified police action accounted for 43.2% of the expenditure of the prison department". Personal liberty is a precious fundamental right and it should be curtailed only when it becomes imperative according to the peculiar facts and circumstances of the case.

28. Relying on the said judgment, in **SUSHILA AGGARWAL AND OTHERS V. STATE (NCT OF DELHI) AND OTHERS**³, Hon'ble Apex Court further held that despite several law commission reports and recommendations of several committees and commissions,

²³ 2020 (5) SCC 1

arbitrary and groundless arrests continue as a pervasive phenomenon. Parliament has not thought it appropriate to curtail the power or discretion of the courts, in granting pre-arrest or anticipatory bail, especially regarding the duration, or till charge sheet is filed, or in serious crimes. Therefore, it would not be in the larger interests of society if the court, by judicial interpretation, limits the exercise of that power: the danger of such an exercise would be that in fractions, little by little, the discretion, advisedly kept wide, would shrink to a very narrow and unrecognizably tiny portion, thus frustrating the objective behind the provision, which has stood the test of time, these 46 years.

29. In **FIREMAN GHULAM MUSTAFA V. STATE OF UTTARANCHAL**⁴ Hon'ble Apex Court held that to justify a conviction under Section 307 of IPC, the Court has to see whether the act was done with the intention to commit murder. The nature of injuries caused may be of assistance in coming to a finding as to the intention of the accused, such intention may also be gathered from the circumstances like the nature of weapons used, parts of the body where the injuries were caused, severity of the blows given, the motive and other facts of the case.

30. In **SMT.PARISHA TRIVEDI AND ANOTHER V. STATE OF CHATTISGARH**⁵, the Chattisgarh High Court at Bilaspur stressed upon the 177th Report of Law Commission of India under the

⁴ 2016 (15) SCC 752

⁵ MCRCA NO.944 OF 2024

heading **“INTRODUCTION TO THE DOCTRINE OF ARREST”**

the same is relevant, it is extracted below:

“Liberty is the most precious of all the human rights. It has been the founding faith of the human race for more than 200 years. Both the American Declaration of Independence, 1776 and the French Declaration of the Rights of Man and the Citizen, 1789, spoke of liberty being one of the natural and inalienable rights of man. The Universal Declaration of Human Rights adopted by the General Assembly of the United Nations on 10-12-1948 contains several articles designed to protect and promote the liberty of individual. So does the International Covenant on Civil and Political Rights, 1966. Above all, Article 21 of the Constitution of India proclaims that no one shall be deprived of his right to personal liberty except in accordance with the procedure prescribed by law. Even Articles 20(1) & (2) and Article 22 are born out of a concern for human liberty. As it is often said, ‘one realises the value of liberty only when he is deprived of it’. Liberty, along with equality is the most fundamental of human rights and the fundamental freedoms guaranteed by the Constitution. Of equal importance is the maintenance of peace, law and order in the society. Unless, there is peace, no real progress is possible. Societal peace lends stability and security to the polity. It provides the necessary conditions for growth, whether it is in the economic sphere or in the scientific and technological spheres.”

31. In the light of said submissions, it is relevant to note that to attract offence under Section 109 of BNS, there should be intention to kill. This Court has to see the nature of injuries, nature of weapons

used by the petitioners. This Court has also to consider the parts on which the victims received the injuries. Ofcourse, this is an application filed under Section 482 of BNSS seeking anticipatory bail. This is not an application filed under Section 528 of BNSS to quash the proceedings in Crime No.153 of 2024. Therefore, this Court has to consider the nature of accusations against the petitioners, injuries received by the victim and other factors as to whether the petitioners have intention to kill the victim, LW-22 and others.

32. Sri R. Prashanth, learned counsel has produced Medico Legal Patient Record dated 11.11.2024 of LW-22 wherein the following injuries are mentioned:

- 1) Abrasion over (L) forearm 2 cm x 5 cm – Simple
- 2) Superficial abrasion over (L) Thigh – Simple
- 3) Small, multiple, superficial abrasion over ® Hand – Simple
- 4) Superficial abrasion over ® Calf - Simple
- 5) Multiple bruises over the back - Simple
- 6) Pain over (L) Little finger (?) – Fracture – Grievous
- 7) ® Sided diminished wearing and echoing – (?) – Grievous.

Thus, LW-22 received only 5 simple injuries and with regard to two injuries there was question mark before “fracture and grievous”. There is no explanation from learned Public Prosecutor with regard to the same.

33. As discussed supra, in the complaint dated 11.11.2024 and statements of LW-1 to LW-7, LW-17, 21, 22, 23 there are no specific overt acts against the petitioners herein. In fact, the name of 5th

petitioner/A-39 is not there in the complaint dated 11.11.2024. His name was included during the course of investigation. As rightly contended by learned counsel for the petitioners, LW-1 de facto complainant mentioned the names of petitioner Nos.1 to 4 and 6, he is a DSP and identification of the petitioners is not yet completed. Perusal of the aforesaid statements would also reveal that *prima-facie*, there is no evidence that petitioners gathered there with an intention to kill the officers including LW-22. In fact LW-4 to LW-7 stated that petitioners and others tried to attack the officers without opening dialogue and therefore they went away. *Prima-facie* the allegations are against A-2. There are no specific overt acts against the petitioners herein. The role played by each of the accused in commission of offence is not stated by any of the witnesses. The allegations are general in nature.

34. As discussed supra, the contents of complaint dated 11.11.2024 and statements of the witnesses recorded constitute the ingredients of Section 109 of BNS cannot be decided by this Court in a petition filed under Section 482 of BNSS seeking anticipatory bail. This Court cannot do said exercise in the present application. This Court will consider the aforesaid aspects including the accusations against the petitioners, specific overt acts against them etc. Petitioners herein are agriculturists. 6th petitioner is a woman and she is aged about 58 years.

35. It is the specific contention of the learned counsel for the petitioners that so far police have arrested 34 accused and they have

included 71 accused in Crime No.153 of 2024. The police harassed all the 34 arrested accused and they were subjected to 3rd degree methods under the guise of interrogation. The police have also tortured 34 arrested accused. Due to the said attitude of the police, male persons of the aforesaid three villages are not sleeping in the village itself.

36. Learned Public Prosecutor on instructions would submit that the investigating officer has already recorded the statements of 25 witnesses, arrested 34 persons. Thus, the investigation is almost completed.

37. In the light of the aforesaid discussion, this Court is inclined to grant anticipatory bail to the petitioners herein. Therefore, this application is allowed and it is directed that in the event of arrest of the petitioners herein in connection with Crime No.153 of 2024 pending on the file of Bomraspet Police Station, Vikarabad District shall be released on bail subject to compliance of the following conditions:

- (i) the petitioners – accused herein shall be released on bail on their executing a personal bond for a sum of Rs.10,000/- (Rupees ten thousand only) each with two sureties each for a like sum each to the satisfaction of the said Investigating Officer in Crime No.153 of 2024 of P.S.Bomraspet;
- i) They shall appear before the Investigating Officer in Crime No.153 of 2024 of P.S. Bomraspet once in a week i.e., every Monday between 10.00 A.M. and 5.00 P.M till completion of investigation and laying of charge sheet;

- ii) They shall co-operate with Investigation Officer by furnishing information and documents as sought by him in concluding investigation;
- iii) They shall not directly or indirectly either interfere or influence the investigation;
- iv) They shall not involve in any criminal activities which will be prejudicial to fair and expeditious trial.
- v) They shall not threaten or influence the witnesses in any manner.
- vi) However, the investigating officer or other official or constables of the said P.S.Bomraspet shall not harass the petitioners in any manner.

18th DECEMBER, 2024
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K. LAKSHMAN, J

HON'BLE SRI JUSTICE K. LAKSHMAN

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