

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 28TH DAY OF DECEMBER, 2012

BEFORE

THE HON'BLE DR. JUSTICE JAWAD RAHIM

CRIMINAL PETITION No. 7552/2012

BETWEEN:

PRADEEP BIN LINGARAJU
AGED 26 YEARS
2ND MAIN ROAD
2ND CROSS ROAD
VINOBANAGAR
TUMKUR – 572 101

... PETITIONER

(BY SRI. JAGADEDESH PATIL, ADVOCATE)

AND:

STATE OF KARNATAKA
BY TUMKUR NEW EXTENSION
POLICE STATION

... RESPONDENT

(BY SRI. RAJA SUBRAMANYA BHAT, HCGP)

This Criminal petition is filed under Section 438 Cr.P.C. praying to enlarge the petitioner on anticipatory bail in the event of his arrest in Cr. No.153/2007 of New P.S., Tumkur, which is registered for the offence

punishable under Section 143, 147, 148, 323, 324, 307, 384 R/w 149 of IPC.

This Petition coming on for Orders this day, the Court made the following:-

ORDER

Petitioner is arraigned as accused No.3 and he is presently facing charge for the offences punishable under Sections 143, 147, 148, 323, 324, 307, 384 R/w 149 of IPC in CC No. 1842/2010 arising out of Cr. No. 153/2007. He pleads not guilty. Apprehending arrest seeks direction to the Investigating Officer to release him in the event of arrest.

2. Heard the petitioner's counsel Sri.Jagadeesh and learned Government Pleader, Sri. Raja Subramanya Bhat. Perused records.

3. It is manifest from the case that Chethan, the complainant, who is victim lodged a report in which he averred that he is studying in third year diploma in the Arya Bharathi College at Tumkur. On 30.09.2007 at

about 7.45 PM while he was having coffee in Kushi Hotel besides B.H. Road, near Muslim Hostel and he was about to leave the place, received a call on his mobile telephone from Rajesh, the accused No.1. Rajesh enquired him as to where he was and when he informed about his location Rajesh asked him to be there only. Rajesh also questioned the complainant as to whether the person by name Diwakar is also available. When the complainant told that he is not with him Rajesh told him that he will join the complainant and they both will go to meet Diwakar. After about lapse of 10 minutes, Rajesh came in a car and asked the complainant to sit in the car thereafter he took the car towards Bhatawadi and from there the car moved via 80 feet road (Ring Road), where two to four persons were standing and Rajesh asked them to join them in the car and then they left that spot and proceeded further. On the way the car was stopped and the complainant was pulled out from the car and assaulted.

4. According to the complainant, even while travelling he asked them where they were taking him, they asked him to keep quite and some of them hit him with his head. When the car moved towards Shettahalli Main Road, the accused No.1 Rajesh took sword (Long) and hit him but he escaped with injury on his elbow. It is alleged they robbed Rs.3,500/- and asked him to keep quite and thereafter at the instance of the Rajesh other accused are alleged to have assaulted him on the other parts of the body causing injuries. However, he managed to escape and ran towards main road where he stopped a mini passenger vehicle and straightaway proceeded to Bangalore. From there he informed his mother to sent one Srinivasa. He admitted him to Sarvodaya Hospital and then lodged a complaint.

5. As per the said allegations, it is Rajesh who said to be main culprit Diwakar is said to be the person who instigated Rajesh to kill the complainant. As far as

other accused are concerned, it appears they were told by the Rajesh to kill the compliant. As rightly pointed out by the learned counsel for the petitioner, the name of the petitioner, Diwakar was not mentioned in the complaint or during further investigation. It is only in the final report he is shown as accused No.3.

6. Learned counsel for the petitioner would contend that the material collected by the prosecution does not prima facie make out any case against the petitioner and therefore, his implication is without just cause. He also submits may there was an incident, in which accused Nos. 1 and 2 and other accused assaulted him, and thus then have to answer.

7. Per contra, learned Government Pleader would contend it is a case of conspiracy to murder the complainant and each one has indulged in avert act. Thus petitioner cannot be placed on different pedestal.

8. As I have already referred to in para supra, the main allegation is that the Rajesh and the other accused assaulted the complainant and there is no overt act attributed to the petitioner. He has been implicated subsequently by split charge sheet. Till now he has not been arrested. Considering all attending circumstances and the nature of the injuries suffered by the victim and the fact that there is no attribution of overt acts to the petitioner in causing injuries to the complainant, he could be trusted with bail subject to appropriate conditions. Accordingly the following

ORDER

- i) Petition is allowed.
- ii) The petitioner is directed to appear before the investigating officer in charge of investigation in Crime No.153/2007 of New Extension Police Station within three weeks from now and on his appearance, the investigating officer may arrest him and as NBW is issued against him and produce before the court.
- iii) The learned Magistrate shall release him on bail on his executing a bond in a sum of Rs.50,000/- with one solvent surety for the likesum to the satisfaction of the Magistrate.

- iv) He shall not tamper the prosecution material.
- v) He shall give regular attendance before the Trial court.

**SD/-
JUDGE**

Bsv