

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.515 OF 2021
(Arising out of SLP(Criminal) No.3785 of 2021)

KANUMURI RAGHURAMA KRISHNAM RAJU

APPELLANT(S)

VERSUS

THE STATE OF ANDHRA PRADESH & ORS.

RESPONDENT(S)

O R D E R

Leave granted.

This appeal has been filed challenging the order of the High Court dated 15.05.2021 passed in Criminal Petition No.2998/2021, on the application of the appellant herein filed under Sections 437 and 439 of the Code of Criminal Procedure to enlarge the appellant/accused on bail in Crime No.12/2021 of CID, Police Station Mangalagiri, Guntur, Andhra Pradesh registered for offences punishable under Sections 124-A, 153(A), 505 read with Section 120-B of the Indian Penal Code (for short 'IPC'). By the said order, the High Court has stated that it would not be inclined to entertain the petition on the ground that the appellant can approach the concerned Trial Court and seek necessary relief.

Brief facts of the case are that after enquiry by

the State CID and on the directions of the Additional Director General of the CID to institute an FIR based on the said enquiry report, an FIR was lodged on 14.05.2021 with the following allegations:

- "Sri Raju did not restrict himself to fair criticism of the Government, but has made every attempt to create hatred, contempt disaffection towards the Government. Not only has he done this through his words, but also used visual gestures of face and hands to provoke his followers to take up violence. They are seditious in nature.
- Sri Raju has particularly targeted 'Reddy' Community and 'Christian' community and has tried to stoke hatred against them by trying to portray that Government has been favouring the two. That he has been successful in doing this is very apparent from the comments to the videos, thus causing public disharmony.
- Two media channels TV5 and ABN by allotting pre meditated and organised slots have clearly shown that there was a meeting of minds of Sri Raju with the heads of these media channels and all of them together conspired against the government.
- All the speeches looked like a well orchestrated conspiracy to create disaffection and bring contempt and hatred against the Government by Sri Raju and a few media groups and also to cause disharmony in public. By creating a feeling of hatred on the grounds of caste and religion."

It was in this connection that the petition for bail was filed before the High Court, which has been dismissed. Challenging the said Order, this appeal has been filed.

In brief the contention of Shri Mukul Rohatgi, learned senior counsel appearing for the appellant is that the appellant is a sitting Member of Parliament of ruling party of the State and he having issued certain statements which were critical of the Chief Minister, the said FIR has been filed. It is contended that the ruling party has a grudge against the appellant as he had applied for cancellation of bail of the Chief Minister. According to the learned counsel for the appellant, the statements issued by the appellant were mere criticism of the actions of the State Government and in no case such a criticism, which according to the learned senior counsel would be classified as fair criticism, could be treated as sedition to be punishable under Section 124-A of IPC. According to the learned senior counsel, the said section has been included in the FIR only to ensure that the offence becomes non-bailable, as the other sections under which the appellant is charged are offences punishable below seven years.

The appellant has been arrested on 14.05.2021 and it is the specific contention of the learned senior counsel for the appellant that he has been tortured and injured in police custody, of which mention has also been made by the Magistrate while considering the application for remand. The Magistrate, by its order dated 15.05.2021, had asked for a medical report from

the Government doctors as well as directed that the appellant be also examined by a private hospital. On the same day, the impugned order was passed by the High Court on the bail application filed by the appellant. Further on that day itself, pursuant to a letter addressed by the senior counsel for the appellant, the High Court passed another order after treating the said letter as a Habeas Corpus petition [W.P.(SR) No.14718/2021]. By the said order, the High Court had directed examination of the appellant by a Medical Board headed by the Superintendent of Government General Hospital, Guntur. Pursuant thereto, the Medical Board submitted its report dated 16.05.2021, which has also been placed on record.

The matter came up before this Court on 17.05.2021 and after hearing learned senior counsel for both the parties, this Court passed the following directions:

“Considering the totality of the facts and circumstances, as well as keeping in view the directions issued by the Magistrate and also the High Court at various stages and particularly taking into consideration that Kanumuri Raghurama Krishnam Raju has undergone heart bye-pass surgery very recently and the injuries noticed in the medical report, we deem it proper to direct as under:

(1) The petitioner-Kanumuri Raghurama Krishnam Raju shall forthwith be taken to the Army Hospital Secunderabad for medical examination. The Y category security, provided under orders of the Delhi High Court, shall escort Kanumuri Raghurama

Krishnam Raju only till the Army Hospital and need not be present at the time of medical examination.

(2) The medical examination of the petitioner-Kanumuri Raghurama Krishnam Raju shall be conducted by the medical board of three doctors of the hospital to be constituted by the head of the Army Hospital, Secunderabad, Telangana.

(3) As agreed by the learned counsel for the respondent/State the petitioner-Kanumuri Raghurama Krishnam Raju be medically examined in the presence of a Judicial Officer, who may be nominated by the Chief Justice of the Telangana High Court.

(4) The proceedings of medical examination of the petitioner-Kanumuri Raghurama Krishnam Raju shall be videographed and be submitted to the Registrar General of the Telangana High Court in a sealed cover for being transmitted to this Court.

(5) We direct that the petitioner-Kanumuri Raghurama Krishnam Raju shall be admitted in the Army Hospital and kept there for medical care until further orders, which shall be treated as judicial custody of the petitioner-Kanumuri Raghurama Krishnam Raju. The expenses, if any, for hospitalization in the Army Hospital shall be born by the petitioner-Kanumuri Raghurama Krishnam Raju.

The learned counsel for the respondent/State prayed for and is granted two days time to file their reply in both the petitions. Let the same be filed by 19.05.2021 after serving copies on the counsel for the petitioners as well as the Central Government. The petitioners shall file rejoinder affidavit, if any, by 20.05.2021. By consent of the learned counsel for the parties, list these matters on 21.05.2021."

In compliance of the said directions of this

Court, medical report of the Medical Board of the Army Hospital comprising of two full Colonels and one Lieutenant Colonel of the Army, has been placed before us. In the said report, the Medical Board has observed as under:

"A. Foot

Examination of Foot	Rt. Lower Limb	Lt. Lower Limb
a) Pedal edema	Non pitting edema present over the lower one third of the leg and the dorsum of the foot	Non pitting edema present over the lower one third of the lg and the dorsum of the foot
b) Ecchymosis	Present over the dorsum of the foresoot including the toes and over the plantar aspect of the forefoot and over the medial longitudinal arch	Present over the dorsum of the mid-foot, forefoot, the second toe and the plantar aspect of the lateral aspect of the foot and over the medial longitudinal arch.
c) Tenderness	Present over the medial malleolus, the sole of the foot over the ecchymotic region	Present over the ecchymotic patch of the heel and over the second toe
d) Movements	Normal ankle movements.	Painful ankle movements.
	Painfully restricted subtalar and forefoot joint movements including interphalangeal joints.	Painfully restricted subtalar and forefoot joint movements including interphalangeal joints.

B. Clinical examination of hip joint, thigh, knee joint and legs on both sides:
Normal

4. Xray Both Feet (Dorso-plantar and Oblique views) No.10260 dt.18 May 2021: Undisplaced fracture of the distal phalanx of the second toe (left foot)"

Placing reliance on the aforesaid report of the Medical Board of Army Hospital, Shri Mukul Rohatgi,

learned senior counsel has submitted that from a bare perusal of the same, it is clear that the appellant has been tortured by the police while the appellant was in custody, so much so that there is an undisplaced fracture of the second toe of the left foot. He has further submitted that the edema, ecchymosis as well as tenderness and other difficulty in movement of the ankle is also a result of the torture, which the appellant had undergone while in police custody. Learned senior counsel had further submitted that the detention of the appellant in the State of Andhra Pradesh would not be safe for the appellant and that he should be enlarged on bail by this Court.

As regards the sedition charges having been levelled against the appellant, the learned senior counsel has submitted that there is no averment that the appellant called upon people to violence or to take up arms or there is any attempt to overthrow the Government through violence, and thus the charge of sedition is completely untenable. In support of such submission, reliance has been placed on the Constitution Bench Judgment of this Court in the case of Kedar Nath Singh vs. State of Bihar - AIR 1962 SC 955, which has been followed in the case of Balwant Singh vs. State of Punjab - (1995) 3 SCC 214.

He has further submitted that in view of the

injuries suffered by the appellant during custody and the manner in which he has been tortured by the State Police, this Court should take Suo Motu cognizance of the same and direct a CBI enquiry in the matter.

Per contra, Shri Dushyant Dave, learned senior counsel appearing for the respondent/State has submitted that since there is an alternative remedy available to the appellant of filing a bail application before the Trial Court, the High Court rightly relegated the appellant to approach the Trial Court and this Court should not interfere with the order passed by the High Court, specially because the High Court has not considered the matter on merits. It is contended that since the appellant does not deny the statements made by him, as have been recorded in the reply affidavit filed by the respondents, the offences against the appellant are prima facie made out, which would need further investigation as well as custodial interrogation of the appellant, and thus he has contended that the appellant ought not to be granted bail by this Court. As regards the report of the Army Hospital, which is substantially different from the medical report of Government doctors filed in compliance of order of the High Court, Shri Dushyant Dave, has very fairly stated that he has no doubt about the correctness of the report of the Army Hospital, but has submitted that since in the report

submitted by the Government hospital there is no fracture shown, which is there in the report of the Army Hospital, according to him, the injury/fracture could have been self-inflicted by the appellant. According to Shri Dushyant Dave, both the reports are honest reports.

Shri Dushyant Dave has further relied on various statements made by the appellant from time to time, which according to him amounts to sedition, as such statements would incite hatred amongst persons of various castes and communities. He, thus, submitted that the appellant should not be granted bail by this Court and this Court need not interfere with the order passed by the High Court.

We have heard learned counsel for the parties at length and have perused the record.

The jurisdiction of the Trial Court as well as the High Court under Section 439 of the Code of Criminal Procedure is concurrent and merely because the High Court was approached by the appellant without approaching the Trial Court would not mean that the High Court could not have considered the bail application of the appellant. As such, in our view, the High Court ought to have considered the bail application of the appellant on merits and decided the same. However, since the High Court has not considered the matter on merits and much water has flown since

the passing of the order of the High Court, as now there are two medical reports of the appellant, one by the government hospital on the direction of the High Court and the other by the Army Hospital on the directions of this Court, we deem it fit and proper to consider the bail application of the appellant on merits.

In our view, considering the injuries as reported by the Medical Board of the Army Hospital, we can prima facie form an opinion that the appellant may have been ill-treated while in police custody. Further, we are of the opinion that the charges against the appellant are not such in which custodial interrogation would be required as all the statements made by the appellant are on record and the FIR has been lodged only after a detailed enquiry by the State CID. Considering the totality of the circumstances and also the health position of the appellant, specially that the appellant has undergone heart bypass surgery in December 2020, which is not denied by the respondent and has also been noted in the report of the Medical Board of the Army Hospital, we deem it just and proper that the appellant be enlarged on bail on the following conditions:

1. The appellant will cooperate in the investigation, he shall present himself for interrogation, if called upon, by the investigating officer and shall not

influence any witnesses or try to interfere with the investigation.

2. The appellant shall be given at least 24 hours notice by the investigating officer, if he is to interrogate the appellant.

3. The interrogation shall be permitted in the presence of an advocate for the appellant, who may not be part of the interrogation but be present at some distance.

4. The appellant shall not address the press (print or visual media) on any of the subjects which relate to this case and the pending proceedings.

5. The appellant shall further furnish a personal bond of Rs.1,00,000/- (One Lakh Only) and provide two securities of the like amount to the satisfaction of the Trial Court within ten days from his discharge from the Army Hospital.

It is further provided that the appellant shall be discharged from the Army Hospital, as and when the doctors so advice.

The appeal stands allowed to the extent as indicated above.

.....J.
(VINEET SARAN)

.....J.
(B.R. GAVAI)

New Delhi;
MAY 21, 2021.

ITEM NO.25+26

Court 9 (Video Conferencing)

SECTION II

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Cr1.) No(s).3785/2021

(Arising out of impugned final judgment and order dated 15-05-2021 in CRLP No.2998/2021 passed by the High Court Of Andhra Pradesh At Amravati)

KANUMURI RAGHURAMA KRISHNAM RAJU

Petitioner(s)

VERSUS

THE STATE OF ANDHRA PRADESH & ORS.

Respondent(s)

(IA No. 62278/2021 - APPLICATION FOR EXEMPTION FROM FILING ORIGINAL VAKALATNAMA/OTHER DOCUMENT, IA No. 62277/2021 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

WITH

Special Leave Petition (Cr1.) No(s).3809/2021

(IA No.62281/2021 - EXEMPTION FROM FILING AFFIDAVIT, IA No.62280/2021 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

Date : 21-05-2021 These matters were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE VINEET SARAN
HON'BLE MR. JUSTICE B.R. GAVAI

For Petitioner(s) Mr. Mukul Rohatgi, Sr. Adv.
Mr. B. Adinarayana Rao, Sr. Adv.
Mr. Ashok Bhan, SR. Adv.
Mr. Byrapaneni Suyodhan, Adv.
Mr. Mayank Jain, Adv.
Ms. Tatini Basu, AOR

For Respondent(s) Mr. Dushyant Dave, Sr. Adv.
Mr. V. Giri, Sr. Adv.
Mr. Sudhakar Reddy, AAG
Mr. J.N. Bhushan, AAG
Mr. C. Sumon Reddy, Adv.
Mr. Mahfooz Ahsan Nazki, AOR
Mr. Polanki Gowtham, Adv.
Mr. Shaik Mohamad Haneef, Adv.
Mr. T. Vijaya Bhaskar Reddy, Adv.
Mr. Amitabh Sinha, Adv.
Mr. K.V. Girish Chowdary, Adv.
Mr. Shrey Sharma, Adv.

UPON hearing the counsel the Court made the following
O R D E R

SLP(Cr1.) No.3785/2021

Leave granted.

The appeal is allowed in terms of the signed order.

Pending application(s), if any, stands disposed of.

SLP (Cr1.) No.3809 of 2021

Heard learned senior counsel for the parties.

In view of the order dated 17.05.2021 passed in this special leave petition as well as the order dated 21.05.2021 in Criminal Appeal No.515 of 2021 @ out of SLP(Cr1.) No.3785/2021, no further order need be passed in this special leave petition.

The special leave petition is disposed of accordingly.

Pending application(s), if any, stands disposed of.

(ARJUN BISHT)
COURT MASTER(SH)

(R.S. NARAYANAN)
COURT MASTER (NSH)

(signed order is placed on the file)