

**HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

Criminal Petition No.10522 OF 2023

Between:

Muttavarapu Sirisha

... Petitioner

And

The State of Telangana

Through Public Prosecutor and another. .Respondent/Complainant/A6

DATE OF JUDGMENT PRONOUNCED :27.12.2023

Submitted for approval.

THE HON'BLE SRI JUSTICE K.SURENDER

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|---|--|--------|
| 1 | Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes/No |
| 2 | Whether the copies of judgment may be marked to Law Reporters/Journals | Yes/No |
| 3 | Whether Their Ladyship/Lordship Wish to see their fair copy of the Judgment? | Yes/No |

K.SURENDER, J

*** THE HON'BLE SRI JUSTICE K. SURENDER**

+ CRL.P. No.10522 of 2023

% Dated 27.12.2023

Muttavarapu Sirisha

... Petitioner

And

\$ The State of Telangana

Through Public Prosecutor and another ..Respondents/Complainant/A6

! Counsel for the Petitioner: Rachna Reddy & Associates

^ Counsel for the Respondents: Addl. Public Prosecutor for R1
Sri C.Sharan Reddy for R2

>HEAD NOTE:

? Cases referred

¹ (2012) 12 Supreme Court Cases 180

² (2002) 1 Supreme Court Cases 649

³ (2005) 3 Supreme Court Cases 143

⁴ M.Cr.C.No.16087 of 2021 dated 18.04.2022

THE HON'BLE SRI JUSTICE K.SURENDER**CRIMINAL PETITION Nos.10522 of 2023****ORDER:**

1. The petitioner herein is the defacto complainant seeking cancellation of bail granted to the 2nd respondent, who is A6 in Crime No.927 of 2023 on the file of Miyapur Police Station, Cyberabad registered for the offences under Sections 302, 307, 498-A, 120-b r/w 34 of IPC, vide order dated 20.09.2023 in Criminal Petition No.8797 of 2023.

2. Briefly, the case of the prosecution is that on 26.06.2023, the petitioner's mother was admitted in the hospital for ill-health. While being treated, she died on 05.07.2023. On 26.07.2023, the petitioner's sister-in-law underwent tests and it was found that she had arsenic poison in her body. On 29.07.2023, the petitioner's brother was also tested in a lab in US and his blood/urine tested positive for arsenic. Similarly, petitioner's father was tested positive vide report dated 03.08.2023. On 05.08.2023, petitioner's father and sister-in-law were admitted to the hospital. The petitioner also was tested positive for arsenic on 08.08.2023.

3. The back ground of the case is that A3 and A4 in the present case tried to inject succinyl choline in the neck of the father of the petitioner unsuccessfully. All the sequence of events led to suspicion that all the family members including the mother were administered arsenic poison by mixing in chilli powder in their house. The said mixing was done in between 17.03.2023 to 09.04.2023, during which period, A1 had came to India for three weeks and the petitioner suspects that during the said period, A1 with the help of the 2nd respodnent/A6 might have mixed arsenic in the chilly powder. A1 and A6 only had access to the locked flat. There is no other person who would have mixed arsenic apart from A1 and A6 in the back ground of the differences between the petitioner and her husband i.e., A1.

4. This Court, by order dated 20.09.2023 in Criminal Petition No.8797 of 2023 granted bail to the 2nd respondent/A6. The ground on which bail was granted to the 2nd respondent/A6 is at para 5 of the order dated 20.09.2023, which reads as follows:

“5. On instructions, learned Additional Public Prosecutor would submit that as on date, the investigation does not reveal that there was any poison that was found either in the body of the dead person or in the body of the complainant and others.”

5. Smt. B.Rachana Reddy, learned Senior Counsel appearing for the petitioner would submit that the very basis for granting bail is incorrect instructions by the learned Additional Public Prosecutor. In fact, the remains of the deceased after funeral were sent for testing to the Forensic Science Laboratory and the results are awaited. Further, the petitioner, her father, sister and brother were tested positive for arsenic poison. The only person who could have mixed arsenic is A1 and A6 who had access to the Flat of the complainant's family. A6 was living in the same building complex. The said act of mixing arsenic was done in between 17.03.2023 to 09.04.2023, when A1 visited India, during which time, complainant and others were in the USA. The attempt made by A3 and A4 to inject succinyl choline injection on 25.06.2023 in the neck of the father of the complainant and subsequent events also clearly establish that it was the 2nd respondent/A6, who had mixed arsenic deliberately to commit murder of petitioner's mother and all the family members.

6. Learned Senior Counsel relied on the following judgments in support of her contentions: i) **Kanwar Singh Meena v State of**

Rajasthan and another¹; ii) Harjeet Singh alias Seeta v. State of Punjab and another²; iii) Panchanan Mishra v. Digambar Mishra and others³ and iv) Father of prosecutrix-x v. State of Madhya Pradesh through Mahila thana District Katni (Madhya Pradesh) and others⁴. On the basis of the judgments, learned Senior Counsel argued that the grant of bail has to be after consideration of the gravity of the crime, the evidence in the case, tampering with the evidence etc. In the present case, when the very foundation for grant of bail is factually incorrect, the bail can be cancelled by this Court. It is not necessary that the petitioner has to approach the Hon'ble Supreme Court seeking cancellation of bail. In the back ground of the present case, when this Court was misled into granting bail by stating that arsenic poison was not found in any of the family members, which is factually incorrect, the 2nd respondent's bail has to be cancelled and sent to prison.

7. Further, learned Senior Counsel also relied on the characteristics of arsenic. It was argued that arsenic was a common poison used to slowly administer to a person and commit murder. For the reason of its characteristics, death may appear to

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be due to natural reasons. Having knowledge about the way in which arsenic works, A1 and the 2nd respondent/A6 have mixed the poison in the chilli powder.

8. Learned Senior Counsel also provided printouts of report published by the United States Secret Service in a case of arsenic poison. Similarly, the news reports in the Times of India, an article in the USA regarding dentist killing his wife by arsenic poison by mixing it in protein shakes.

9. On the other hand, learned Additional Public Prosecutor filed the report of the Investigating Officer. In the said report, it is stated that the petitioner's mother, prior to her death was admitted at various hospitals for treatment and her dead body was cremated on 05.07.2023 for which reason autopsy was not conducted. However, her bones collected after funeral were sent for FSL examination and report is awaited. Further, the petitioner and others were tested positive for the presence of arsenic in their bodies.

10. Learned counsel appearing for 2nd respondent/ A6 submits that once this Court had granted bail, except in cases of violation of conditions of bail, this Court cannot cancel the bail as it amounts to reviewing its own order. Even on facts, no case is made out

against the A6. The death occurred on 05.07.2023 and the complaint was filed after 1 ½ months on 18.08.2023 only on account of differences between A1 and his wife. The 2nd respondent/A6 is made scapegoat and falsely implicated.

11. Having granted bail, this Court cannot cancel the bail unless conditions are violated. However, keeping in view that the basis for grant of bail is for not finding arsenic poison in the deceased, complainant and others, however it is factually incorrect, for the said reason, the public prosecutor was asked to provide the entire CD file and the same was provided by the learned Additional Public Prosecutor.

12. I have gone through the CD file.

13. The police have been investigating into the case by collecting medical reports, recording statements, confessions of accused etc.

The foundation of the complaint is mainly on the basis of the suspicion of the defacto complainant and others that arsenic poison was mixed by A1 and A6 who had access to the Flat of complainant in between 17.03.2023 to 09.04.2023, when A1 visited India. Except for the said suspicion that A1 with the help of A6, might have mixed arsenic poison in chilli powder, there is no

evidence to show that the 2nd respondent had purchased any substance containing arsenic poison. In the absence of any proof that A6 had procured arsenic poison in any form either rat poison or any other substance, the suspicion that arsenic poison must have been mixed by A6, who lives in the same apartment, cannot form basis to pass any order, as prayed for by the petitioner/defacto complainant.

14. Genesis of the complaint is suspicion against the accused. Assumption and suspicion without any admissible proof cannot form basis for incarceration by cancelling bail.

15. Accordingly, the Criminal Petition fails both on facts and Law and same is dismissed.

K.SURENDER, J

Date :27.12.2023

Note: LR copy to be marked.

b/o.kvs.