

**IN THE COURT OF THE LIX ADDL.CITY CIVIL
& SESSIONS JUDGE, BANGALORE CITY**

Dated this the 9th day of February 2016

PRESENT

**Sri Deshpande.G.S, B.com. LL.M
LIX ADDL.CITY CIVIL & SESSIONS JUDGE,
BANGALORE CITY**

SC.No.61/2016

ACCUSED NO.3

Sri Punith

S/o Gangadharaiah,
Aged about 24 years
R/at Handalagere Village,
Alagere post,
Amruthur Hobli,
Kunigal Taluk,
Tumkur District.

-Vs-

RESPONDENT:

State of Karnataka,
By **Yeshwanthpur** Police,
Bangalore.

Represented by the
Public Prosecutor,
C.C.C.Complex, Bangalore.

ORDER

The accused No.3 has filed this bail application Under Section 439 of Cr.P.C. to release him on bail on the grounds that, he has not committed any offences alleged by the prosecution. He has been falsely implicated in the case. There are no reasonable grounds to believe that, the petitioner has

committed the offences punishable under Sections 302, 392, 201, 120(B), read with Section 34 of IPC. The investigation of the case is already completed and accused No.3 is no longer required for investigation. There are no eye witnesses to the incident. The accused No.3 is implicating in the case on the basis of his alleged confessional statement and recovery of gold ornaments. These facts are yet to be proved during the trial. Accused No.3 is ready to abide any conditions that may imposed by the court. Therefore, the accused no.3 prayed to allow the petition.

2. The prosecution has filed its detailed objections to the bail application of the accused No.3 and contending that, there are reasonable grounds to believe that, the accused No.3 has committed the above said offences along with other accused Nos.1 and 2. If at this stage, the accused No.3 is released on bail, there is a likelihood of tampering the prosecution witnesses and may abscond in the case. In that event, the trial of the case will be hampered. Therefore the accused No.3 is not entitled to release on bail. Hence, the prosecution has prayed to dismiss the bail application.

3. Heard arguments of both sides and perused the records.

4. The points that arise for my consideration are: -

1. Whether the accused No.3 is entitled to release on bail under Section 439 of Cr.P.C.?

2. What Order?

5. My finding to the above points are as under:

POINT No.1: In the **Negative**

POINT No.2: As per final order,

for the following:-

REASONS

6. **POINT NO.1:-** The case of the prosecution in brief is that, the deceased M. Krishnappa was in the habit of visiting the Temples by wearing gold ornaments. This was observed by the accused Nos.1 to 3. They have made a conspiracy to eliminate and rob the said ornaments from him.

7. On 27.06.2015 the accused Nos.1 to 3 have taken the deceased Krishnappa in the car to the Temples and in the evening at 5 or 5.30 P.M., they brought the deceased near Hajarath Gajipeer Sha Darga, situated at Handalaguppe Forest and accused No.1 has assaulted him with hammer on his head and accused No.2 has caught hold his hands and

accused no.3 has strangled his neck with the help of rope and committed his murder. They have robbed 1 KG 200 Grams of gold ornaments from him and his dead body was buried in the land of accused no.1 and caused disappearance of evidence of offence. The son of the deceased had filed a missing complaint in this regard to the jurisdictional police. During the course of investigation, it revealed that, the accused Nos.1 to 3 have committed his murder. The PSI of Yeshwanthapur police station has given the report. On the basis of the same case was registered in Crime No.377/2015 against the accused Nos.1 to 3 in respect of offences punishable under Section 302, 201 read with Section 34 of IPC. During the course of investigation, the Investigating Officer has seized the gold ornaments of the deceased Krishnappa from the accused No.3, on the basis of his confessional statement. After completion of investigation formalities, charge sheet is filed against the accused Nos.1 to 3 in respect of offences punishable under Sections 302, 392, 201, 120(B) read with Sec.34 of IPC. This case is committed to this court under Section 209 of Cr.P.C.

8. The accused No.3 – Punith has filed the bail application under Section 439 of Cr.P.C. to release him on bail.

9. The learned counsel for the accused No.3 submitted that, there are no reasonable grounds to believe that, the accused No.3 has committed the above said offences. According to prosecution the accused has strangled the neck of the deceased with the help of rope. But, doctor has not found any ligature mark around the neck at the time of conducting P.M. This shows that, the death of deceased is not caused due to strangulation of his neck. According to prosecution the accused No.3 was arrested on 24.07.2015, but the gold chain of the deceased worn by the accused No.3 was seized on the next day on 25.07.2015. It is difficult to believe the version of the prosecution about the seizure of said ornament from the accused No.3. Whether the accused No.3 has given any such confessional statement or not is yet to be proved during the trial. Now at this stage, prima-facie case is not made out against the accused No.3. Therefore, the accused No.3 is entitled to release on bail. Hence, the learned counsel for the accused No.3 prayed to allow the

application. He has cited the decisions reported in 1990 CrL.L.J. 782 – Man Raj V/s. State of U.P., 2014 AIR SCW 1722 – Dinubhai Bogabhai Solanki V/s. State of Gujarat, and unreported decision of Hon'ble High Court of Karnataka in CrL.Petition No.3521/2005 dated 20.01.2006 – Syed Aslam @ Aslam V/s. State of Karnataka, in support of his contentions.

10. The learned Public Prosecutor on the other hand, submitted that, the accused Nos.1 to 3 have committed the murder of the deceased Krishnappa by assaulting him with hammer on his head and by strangulating his neck with the help of rope and thereafter the accused Nos.1 to 3 have taken the ornaments from him and buried his dead body in the land of accused No.1. After lapse of more than twenty days, the accused Nos.1 to 3 were arrested and the place of burial was pointed out by the accused. Thereafter, dead body was exhumed from that place and P.M. was conducted. The dead body was decomposed. Ligature mark cannot be found on the neck of the dead body at that stage. Hence, the contention of the learned counsel for the accused No.3 cannot be accepted. During the course of investigation, the Investigating Officer has seized the gold ornaments of the

deceased from the possession of the accused No.3 and Manipur Finance, on the basis of the confessional statement of the accused No.3. Prima-facie case is made out that, the accused No.3 has committed the murder of deceased Krishnappa to rob his gold ornaments. The accused have committed the heinous offence. If at this stage the accused NO.3 is released on bail, there is a likelihood of tampering the prosecution witnesses and may abscond in the case. In that event, the trial of the case will be hampered. Therefore, the accused No.3 is not entitled to release on bail. Hence, learned Public Prosecutor prayed to dismiss the bail application.

11. On perusal of prosecution papers, it is prima-facie made out that, the accused No.3 has committed the offences punishable under Sections 302, 201, 120(B) read with Sec.34 of IPC along with accused Nos.1 and 2. The gold ornaments of the deceased were recovered from the accused No.3 on the basis of his confessional statement. If at this stage, the accused No.3 is released on bail, there is a likelihood of tampering the prosecution witnesses and may abscond in the case. In that event, the trial of the case will be hampered.

Hence, accused No.3 is not entitled to release on bail. The decisions cited by the learned counsel for the accused No.3 are not applicable to the case on hand. Hence, bail application filed by the accused No.3 is liable to be dismissed. Therefore, point NO.1 is answered in the Negative.

12. **Point No.2:-** In view of the above discussions and my finding to the point No.1, I proceed to pass the following:-

ORDER

The bail application filed by the
accused No.3 under Section 439 of
Cr.P.C. is dismissed.

(Dictated to the Judgment-Writer directly on computer, typed by her, corrected, signed and then pronounced by me in the open court on this the 9th day of February 2016).

(DESHPANDE.G.S.)
LIX Addl. C.C. & Sessions Judge,
BANGALORE CITY.

09.02.2016:

Order pronounced in the open court [vide separate orders] with the following operative portion:

ORDER

The bail application filed by the accused No.3 under Section 439 of Cr.P.C. is dismissed.

**(DESHPANDE.G.S.)
LIX Addl. C.C. & Sessions Judge,
BANGALORE CITY.**

