

**IN THE COURT OF THE PRINCIPAL CITY CIVIL AND  
SESSIONS JUDGE, AT BENGALURU**

Dated this the 13<sup>th</sup> day of January, 2023

**PRESENT:** **Sri Ramachandra D.Huddar,**  
B.Com., L.L.M.  
Principal City Civil and Sessions Judge,  
Bengaluru.

**S.C.No.1177/2014**

**Complainant** : State of Karnataka by  
Konanakunte Police Station,  
Bengaluru.  
[Represented by Public Prosecutor]

Vs.

**Accused** : Balaraju @ Raju,  
S/o Thimmegowda,  
Aged 34 years,  
C/o Puttawamy,  
Behind Satyagraha Soudha,  
Adjacent government school,  
Maddur Town, Maddur Taluk,  
Mandya District.

## ORDER

Accused has filed this petition under Section 439 of Cr.P.C. to grant him regular bail.

2. It is stated by accused No.3 that, he is innocent and has not committed any offence. He has been falsely implicated in

this case. There is delay in lodging the complaint. There are no eyewitnesses to the incident. No witnesses have stated about the involvement of this accused.

It is further stated that, this accused has been granted bail as per the orders of this court on 18.6.2015. At the time of covid due to communication gap between the previous counsel and accused, he was not unable to attend the case.

It is further stated that, he is ready to abide by all the conditions that may be imposed by the court. He is the permanent resident of the address stated in the cause title. He undertakes not to tamper with the prosecution witnesses and he is ready to abide the conditions to be imposed by this court. Therefore, for all these reasons, accused prayed to allow the application.

3. Copy of the bail application is served upon the learned Public Prosecutor. He resisted the bail application by filing detailed objection statement.

4. The learned Public Prosecutor has reiterated the contents of the complaint in his objection statement. In

addition to that, it is contended that, accused is not entitled for bail as prima-facie materials are placed on record by the prosecution. If he is granted bail, he may tamper the prosecution witnesses. Therefore, for all these reasons, it is prayed by the prosecution to dismiss the application.

5. Heard the arguments of the learned counsel for the accused and learned Public Prosecutor. Meticulously perused the records.

6. The points that would arise for my consideration are as under:

1. Whether accused has made out acceptable grounds to grant him regular bail as prayed for?
2. What Order?

7. My answer to the above points are:

Point No.1:- In the affirmative

Point No.2:- As per final order;

for the following:

**REASONS**

8. **Point No.1:-** On scrupulous reading of the charge sheet, it shows that, 8 months prior to the date of incident, the deceased-Sundar took an asbestos sheet shed constructed on the vacant space in Sy.No.50 at Nayak Layout, Jambu Savari Dinne, VIII Stage, J.P. Nagar, Bengaluru and was residing therein. After some days, he brought the accused and both of them were residing in the said shed.

It is further stated that, accused was waiting for selling the old iron scraps which were amassed by Sri Kondaramaiah/C.W.2. Accused on 8.6.2014 fixed the time for selling the said scraps to Sri Saleem/C.W.5, Sri Nawazkhan/C.W.6 and Sri Rizwan Pasha/C.W.7. Accordingly C.Ws.5 to 7 brought a Tata Ace Goods vehicle belonging to Saleem/C.W.8 at 12.00 midnight. The deceased Sundar was sleeping in the house. The accused thinking that if Sundar woke up he will obstruct for selling the scraps, assaulted with axe which was lying there on the head of the deceased Sundar and committed his murder.

9. It is not in dispute that, the applicant/accused was granted regular bail by this court as per orders dated 18.6.2015. The order sheet do suggest that, during trial in this case, he remained absent before the court. Therefore, the court has taken coercive steps to secure his presence, as he was absconding. The accused was arrested by the police after issuance of NBW against him and now he is in judicial custody.

10. The learned counsel for the accused submits that, as the accused has already been granted bail, as he is produced under warrant, he be granted bail. He further submits that, At the time of covid due to communication gap between the previous counsel and accused, he was not unable to attend the case.

11. In this case Cws.1 to 9 have been examined. Even on reading the evidence of these witnesses, there is no supportive evidence given by them. Accused undertakes not to tamper with the prosecution witnesses and he is ready to abide the conditions to be imposed by this court. It is not in

dispute that, earlier this accused was granted bail, if now he is granted bail with conditions, it would meet the ends of justice.

12. Law is that, bail is a rule and rejection is an exception. Granting of bail does not amount to acquittal and rejection does not amount to conviction. Liberty of a person cannot be curtailed by putting him behind the bars.

13. The Hon'ble Supreme Court in the case of ***Dataram Singh v. State of Uttar Pradesh, (2018) 3 SCC 22*** held as under:

*“A fundamental postulate of criminal jurisprudence is the presumption of innocence, meaning thereby that a person is believed to be innocent until found guilty. However, there are instances in our criminal law where a reverse onus has been placed on an accused with regard to some specific offences but that is another matter and does not detract from the fundamental postulate in respect of other offences. Yet another important facet of our criminal jurisprudence is that the grant of bail is the general rule and putting a person in jail or in a prison or in a correction home (whichever expression one may wish to use) is an exception.*

*Unfortunately, some of these basic principles appear to have been lost sight of with the result that more and more persons are being incarcerated and for longer periods. This does not do any good to our criminal jurisprudence or to our society.*

14. So also, the Hon'ble Supreme Court of India in the case ***Arnesh Kumar v. State of Bihar, (2014) 8 SCC 273***, which makes it mandatory that in any case where the offence is punishable with imprisonment for a term which may extend to 7 years, the accused may not be automatically arrested and the Magistrate may not authorize the detention casually and mechanically.

15. Considering the nature and gravity of the offence, in the considered view of this court, if the accused is granted bail with stringent conditions, it would safeguard the interest of the prosecution also. Therefore, if all these factual features are put together, it can be stated that, accused has made out acceptable grounds to grant him bail as prayed, but subject to conditions. Hence, I record my finding on point No.1 in the ***affirmative***

16. **Point No.2**: Resultantly, I pass the following:-

**ORDER**

The bail application filed by accused Section 439 of Cr.P.C., is hereby allowed.

Accused is ordered to be released on bail in Konankunte P.S., Crime No.352/2014 on his executing the personal bond for a sum of **Rs.50,000/-** with **one surety** for the like-sum amount, subject to following conditions ;

1. Accused shall appear before the court on every date of hearing, unless otherwise exempted for genuine reason.
2. He shall not leave the jurisdiction of the court without prior permission.
3. He shall not tamper with the prosecution witnesses in any manner.

Breach of any of these conditions would entail cancellation of bail.

(Dictated to the Judgment Writer in open court, transcribed by her, order corrected and signed on this the 13<sup>th</sup> day of January, 2023.)

**(RAMACHANDRA D.HUDDAR),**  
Principal City Civil & Sessions Judge,  
Bengaluru.