

KABI010034272021



**IN THE COURT OF I ADDL.DISTRICT & SPECIAL JUDGE
AT BALLARI**

PRESENT:

SRI SADANANDA M.DODDAMANI, B.A.,LL.B
I ADDITIONAL DISTRICT & SPECIAL JUDGE, BALLARI.

DATED THIS 19th DAY OF JANUARY 2022

S.C. NO:106/2021

COMPLAINANT : The State by Police Sub-Inspector, Moka
Police Station, Moka, Ballari Dist.

(By Learned Public Prosecutor)

//Vs//

Accused No.1: Nitravatti Shivashankarappa @ Koudike
Shivashankarappa @ Kuruva
Shivashankrappa, S/o.Late Mallappa, 61
years, Coolie, R/o.Nitravatti Village,
Halharvi Mandalam, Aluru Taluk, Kurnool
Dist., A.P.

(By Sri Y.Kotresh, Advocate)

Accused No.2: Manjunatha, S/o.Chidanandappa, 32 years,
Beldar Work, R/o.Nitravatti Village, Halharvi
Mandalam, Aluru Taluk, Kurnool Dist., A.P.,
now R/o.Beside Railway Gate, Martha Halli,
Bengaluru.

(By Sri P.Narayana Murthy, Advocate)

Accused No.3: Smt.Yerramma, W/o.Late Mallikarjuna, 54 years, R/o.Maruthi Camp, Kurugodu Taluk, Ballari Dist.

(By Sri S.Ranga Swamy, Advocate)

ORDERS ON BAIL APPLICATIONS FILED
U/S 439 OF CR.P.C.,

1. The learned counsels representing the accused Nos.1 to 3, have filed the bail applications **u/S.439 of Cr.P.C.**, seeking to enlarge the said accused persons on bail in **Crime No.105/2021** of the complainant Moka Police Station, Ballari Dist., for the offences punishable **u/Ss.302, 201, 447 of IPC.**

2. The brief facts of the prosecution case are, as under:

That the complainant when he was in Ballari on 28.7.2021 at about 8.00 a.m., received phone call from the Forest Inspector Mr.Mallikarjuna that as usual at about 7.45 a.m., when he was in Moka Forest on duty, some person came there and informed that some unknown persons have murdered in the Moka Forest. So, immediately the complainant along with Forest Inspector went to the spot and wherein, they saw the dead body was lying and the age of the person who died is about 50 – 55 years. It is further alleged that the said person was murdered by entering illegally in the Moka Forest in between 27.7.2021 in the evening and 28.7.2021 at 7.45 a.m. It is further alleged

that some persons might have entered into Moka Forest area for some purpose and at that time, they assaulted unknown person on his back side of the head and caused bleeding injuries. It is further alleged that the said unknown person was wearing one white shirt and one white panche and the said clothes have become blood-stained. It is further alleged that the persons who have murdered the said unknown person in order to destroy the evidence, entered into Moka Forest area and assaulted him on the back side of head and murdered him. So, the complainant informed the said incident to his higher authorities and they directed the complainant to go on further investigation of the case and he informed the complainant to take steps in respect of the incident in question. So, the complainant lodged the complaint. It is further alleged that the police have registered FIR against unknown persons for the above said offences. It is further contended that after recording the statement of accused No.3, who is none other than the wife of the deceased, his son Shivaraja and Gudihiridala Yerrappa on 28.7.2021 at VIMS Hospital, Ballari and at the time of filing the charge sheet, they have included the names of accused Nos.1 to 3. Thereafter, the police have arrested the accused Nos.1 to 3 and now they are in judicial custody.

3. It is further contended by the accused persons that they are innocents and peace loving citizens and they have not committed any

offence much less the offences alleged against them. It is further contended that they have not committed the offences alleged against them and a false case has been foisted only at the instance of some persons who are not in cordial terms with the accused. It is further contended that the complainant has cooked up a false story and plain reading of the complaint itself shows that the complainant is not aware about who committed the offences. It is further contended that the complainant came to the spot only after hearing the death of some unknown person from Mallikarjuna, Forest Officer. So, it is contended that the said aspect itself shows that the complainant is not at all aware about the alleged incident. It is further contended that even the said Mallikarjuna from whom the complainant has received information is not an eye-witness to the incident in question. It is further contended that without making proper investigation and enquiry, the accused persons have been falsely implicated in the present case. It is further contended that the accused No.3, Shivaraj and Gudihiridala Yerrappa in their statement stated that the deceased has got illegal intimacy with one Smt.Nageswaramma and the said Nageswaramma and her family members might have committed the murder of the deceased and the said fact has not at all been considered by the police. It is further contended that there are no incriminating materials to connect the accused persons in the present case.

4. It is further alleged that the alleged incident had taken place on 27.7.2021 and the FIR was registered on 28.7.2021 and on the same day i.e., on 28.7.2021 the inquest proceedings took place at VIMS Hospital, Ballari in between 3.00 to 5.00 p.m. It is further contended that during the course of inquest proceedings, the I.O., has recorded the statements of one Smt.Yerramma, Shivaraj and Gudihiridala Yerrappa. According to the prosecution, the said Gudihiridala Yerrappa identified the dead body. It is further contended that the accused No.3 is none other than the wife of the deceased and another witness namely Shivaraj who is none other than the son of the deceased, they have also identified the dead body. Both of them have suspected one Nageshwaramma and her associates might have committed the murder of the deceased. It is further contended that in fact, the wife of the deceased at the earliest point of time was taken as a witness, but subsequently, she was converted as co-accused i.e., accused No.3 based upon the alleged phone call details. It is further contended that on the basis of the statement of Shivaraj who is the son of the deceased and accused No.3 would shows that at 3 different stages i.e., on 28.7.2021 during the inquest mahazar, has stated different versions and on the basis of the same, the accused persons were arrested. It is further contended that the I.O., instead of recording statement of Shivaraj who is the son of the deceased and accused No.3 at 3 different stages, he would have produced him before the Magistrate for recording statement u/S.164 (5) of Cr.P.C., but the

same has not done by the I.O. So, what it is contended that the accused persons are in no way concerned to the incident in question, they have been falsely implicated in the present case. It is further contended that the I.O., has depending upon the conversations in 4 mobiles phones mentioned in para-11 of the bail application of accused No.2 and on the basis of the said conversation in the mobile, they have arrested the accused persons. It is further contended that though the I.O., has arrested the accused persons on the basis of the conversation in the 4 mobile phones, but at the time of filing the charge sheet, the I.O., has not produced SDR and CDR details and the non-production of the same itself would go to show that the accused persons have been falsely implicated in the present case. It is further contended that according to the charge sheet, the motive to commit murder of the husband of the accused No.3 is that the deceased told his wife i.e., accused No.3 that he is going to sell the landed property situated at K.Veerapura and out of the amount received from the said sale, he is going to bring the said Nageshwaramma. It is further contended that though it is contended by the prosecution like so, the I.O., at the time of filing the charge sheet has not produced the ROR relating to the landed property situated at K.Veerapura and the same was standing in the name of the deceased i.e., the husband of the accused No.3 and that aspect itself clearly goes to show the false implication of the accused persons in the present case. It is further contended that according to the prosecution, the accused No.1

called the accused No.2 and he gave Rs.500/- and asked him to come back to Bengaluru. It is further contended that no person will agree to commit the murder of any person only for the sake of Rs.500/- and the said aspect itself would shows the false implication of the accused No.2 in the present case. It is further contended that the I.O., instead of producing the documents relating to the landed property located at K.Veerapura, he has produced some irrelevant documents which are nothing to do with the allegations made against the accused persons.

5. It is contended by the accused No.3 that the complainant is not an eye-witness to the incident in question and at the first instance, the case was registered against the unknown persons. It is further contended that the statement of accused No.3 and other persons before the I.O., u/S.161 Cr.P.C., would shows that the accused No.3 and the deceased were not living together since from several years. If really the accused persons have got intention to take away the life of the deceased, need not required for several years. If the accused No.3 had committed offences as alleged by the I.O., definitely the deceased children are informed the participation of accused No.3 in the incident in question along with other accused persons. It is further contended that the deceased has already sold out the landed property to some other persons long back and the deceased has got illegal relationship with one Nageshwaramma and there may be every possibility to take away the life

of the deceased by the said Nageshwaramma and others. It is further contended that there is no agricultural land standing in the name of the deceased, as such, the question of selling the agricultural land does not arise at all. So also, there is no documentary proof to show that the landed property was standing in the name of the deceased at K.Veerapura. It is further contended that there is no eye-witness to the incident in question and the entire case of the prosecution rests only on circumstantial evidence. It is further contended that the perusal of the available records would shows that there are no strong circumstantial evidence against the accused persons. It is further contended that the accused persons are ready to furnish surety to the satisfaction of this Court and also ready to abide by the conditions imposed by the Court in the event of their release on bail etc,. In view of the above contentions and other contentions taken in the bail applications, it is prayed to enlarge the accused persons on bail.

6. The learned Special Public Prosecutor has filed detailed objection to the bail applications filed by the accused Nos.1 to 3 stating the facts of the case and contending that, the I.O., by completing the investigation, has filed the charge sheet against the accused persons. It is further contended that the charge sheet materials disclose that the accused Nos.1 to 3 have committed the murder of the husband of the accused No.3. It is further contended that strong materials are available

on record to show that the accused Nos.1 to 3 have committed the murder of the deceased. It is further contended that the trial is not yet commenced, if at this stage, the accused Nos.1 to 3 were enlarged on bail, they may threaten the prosecution witnesses and also flee away from justice etc,. In view of the above said contention and urging so many other contentions in their objection to the bail applications, sought for dismissal of the bail applications filed by the accused Nos.1 to 3.

7. After hearing the arguments, the points raised for my determination are as under;

1) Whether the bail applications filed by the accused Nos.1 to 3 u/S.439 of Cr.P.C., are deserve to be allowed?

2) What Order?

8. My findings to the above points are, as under:

Point No.1 :- **In the negative.**

Point No.2 :- As per final order for the following;

REASONS

9. Point No.1: The learned counsels representing the accused Nos.1 to 3 have addressed their arguments as per the contentions taken by them in their respective bail applications and accordingly, prays for to

release the accused Nos.1 to 3 on bail. The learned P.P., addressed his arguments as per the contentions taken in the objection to the bail applications and accordingly, prays for to dismiss the bail applications filed by the accused Nos.1 to 3.

10. In the light of the arguments canvased on both sides, I have carefully and cautiously gone through the records. Admittedly, the complainant police have registered the case against the accused persons for the offences punishable u/Ss.302, 201, 120-B, 109 R/w Sec.34 of IPC and u/S.24 (C), (2) of Karnataka Forest Act. It is the case of the prosecution that the accused No.1 is the husband of the sister of accused No.3 i.e., to say accused Nos.1 and 3 are the relatives and the accused No.2 is also the relative of accused Nos.1 and 3. It is the further case of the prosecution that in the commission of the murder of the deceased, all the accused persons used their mobile phones and also the mobile phone of the deceased. It is the further case of the prosecution that while the husband of the accused No.3 deceased Mallikarjuna was residing at Maruthi Camp, Kurugodu, at that time, he developed illegal intimacy with one Nageshwaramma, so, the accused No.3 left the company of the deceased along with her children and she was staying separately sine 10 years at Nagalapura village, kudligi Taluk. It is the further case of the prosecution that during the said period, the deceased sold all the properties and the amount received out of selling of the properties, he

used to give to the said Nageshwaramma and he also spent lot of money for the family of said Nageshwaramma. It is the further case of the prosecution that though the accused No.1 several times advised the husband of accused No.3, but he did not heed to his request. It is the further case of the prosecution that subsequently, on the advise of accused No.1 about 2 years back, the deceased came to Maruthi Camp and joined his family i.e., accused No.3 and his children. It is the further case of the prosecution that even during his stay with the accused No.3 and his children, he used to talk with Nageshwaramma in mobile phone and when accused No.3 questioned his said act, at that time, the deceased under the influence of alcohol used to assault accused No.3. It is the further case of the prosecution that he also threatened her that he is going to assault his son CW.6 Shivaraj and also he used to tell her that he is going to sell the property located at K.Veerapura and whatever the amount he is going to receive from selling the said landed property, he is going to give the same to Nageshwaramma. It is the further case of the prosecution that the deceased always used to consume alcohol and under the influence of alcohol, he used to give harassment to accused No.3 and also he used to threaten her by saying that again he is going to bring back that Nageshwaramma to the house. So, the accused No.3 has hatched a plan to put an end to the life of his husband by joining hands with accused Nos.1 and 2 and accordingly, on 8.7.2021 she intimated the said act of her husband to accused Nos.1 and 2. It is the further case of

the prosecution that all the accused Nos.1 to 3 in order to put an end to the life of the deceased, they used to talk in mobile phones and decided to bring the deceased in the Moka Forest by getting him liquor. It is the further case of the prosecution that on 27.7.2021 the accused No.1 asked the accused No.2 to come to Ballari through phone and on the same day, accused No.2 came from Bengaluru to Ballari. It is the further case of the prosecution that on the same day in the night, accused Nos.1 and 2 and husband of accused No.3 met at Moka village. It is the further case of the prosecution that the accused No.1 brought iron rod and also he has purchased one iron pipe from the shop of CW.17 and also they kept those 2 things in Moka Forest area. It is the further case of the prosecution that on the same day at 7.38 p.m., the accused No.1 purchased Tetra liquor pouches from CW.18 who was working in Ruchi Bar and Restaurant. It is the further case of the prosecution that all the accused persons hatched a plan to put an end to the life of the deceased i.e., the husband of accused No.3 and they used to talk with regard to the said aspect through mobile phones. It is the further case of the prosecution that all the accused persons consumed alcohol and brought Mallikarjuna who is the husband of accused No.3 and also made him to drink alcohol and at that time, the accused No.1 assaulted him with iron pipe upon the back side head of Mallikarjuna and due to which, he has sustained severe injuries. It is the further case of the prosecution that subsequently, all the accused persons in order to cause

disappearance of the evidence, they took the deceased in the motor bike and at that time, they also took the mobile phone of the deceased and then they brought the dead body to Tungabhadra LLC canal and wherein the accused Nos.1 and 2 thrown the dead body of the deceased into the canal and then they left their motor bike in front of the house of CW.19 at Veerapura. It is the further case of the prosecution that the shirt of the accused No.1 was blood-stained and even the rod which he employed to hit the deceased was also blood-stained and another rod was also blood-stained and he kept those things in the house of his son CW.20. It is the further case of the prosecution that the I.O., has recorded the statement of accused No.3 and her son Shivaraj and one Gudihiridala Yerrappa and the statement of son of accused No.3 Shivaraj would shows that accused Nos.1 to 3 have hatched a plan to commit the murder of the deceased who is none other than the father of Shivaraj. It is the further case of the prosecution that the I.O., has seized 4 mobile phones and the mobile numbers of the said phones are mentioned at para-3 of the objection filed by the prosecution would shows that there was conversation of accused Nos.1 to 3 in order to put an end to the life of the deceased Mallikarjuna who is none other than the husband of accused No.3. So, the prosecution contended that there are strong materials available on record to show that the accused persons have committed the offences alleged against them.

11. Per contra, the main contention of the learned counsels representing the accused Nos.1 to 3 is that though the accused Nos.1 to 3 in no way concerned to the incident in question, a false case has been foisted against them. It is their further contention that admittedly, unknown dead body was found in the Moka Forest range. It is their further contention that the very FIR would shows that the case was registered in the name of unknown persons. It is their further contention that only at the time of filing the charge sheet, the name of the accused Nos.1 to 3 have been inserted only on the basis of the statement of son of accused No.3 namely Shivaraj. It is their further contention that the I.O., has recorded the statement of accused No.3 and another person Gudihiridala Yerrappa and their statement does not disclose the involvement of accused No.3 and other accused persons in the commission of the offences alleged against them. It is their further contention that the I.O., has recorded the statement of the son of accused No.3 Shivaraj on 3 different stages at the time of inquest mahazar. It is their further contention that there was no need for the I.O., to record his statement on 3 different stages and only on the basis of the said statement of Shivaraj son of the deceased, the I.O., has included the name of accused Nos.1 to 3 in the charge sheet and he has arrested them. It is their further contention that the I.O., instead of recording the statement of Shivaraj on 3 different stages, he would have produced him before the Magistrate to record the statement u/S.164 (5)

Cr.P.C. The said conduct of the I.O., itself would clearly shows the false implication of accused Nos.1 to 3 in the case in hands. It is their further contention that as per the charge sheet, the motive behind the alleged murder is in two parts. One is the illegal relationship of the deceased with one Nageshwaramma, that was the main cause for the dispute in the deceased family. The second part was the deceased was having intention to sell some of the remaining land situated at K.Veerapura village and he wants to spend that amount to the said Nageshwaramma with whom the deceased was having illegal contact. Though the I.O., has contended that the deceased was intended to sell the remaining land located at K.Veerapura, but he has not produced ROR relating to the said properties and instead of producing the relevant documents, he has produced some unnecessary documents which are in no way concerned to the landed properties situated at K.Veerapura village. It is their further contention that the I.O., has collected mobile phones of accused Nos.1 to 3 and also the deceased and on the basis of the conversation in the mobile phones, they arrested accused Nos.1 to 3 on the ground that they hatched plan to commit the murder of the deceased Mallikarjuna who is none other than the husband of accused No.3. So far as the said aspect is concerned, they contended that though the prosecution has contended like so, there was conversation of accused Nos.1 to 3 commit the murder of the deceased, but the I.O., at the time of filing the charge sheet has not produced the SDR and CDR details and the non-production of the

same would itself creates a doubt about the alleged commission of the murder of the deceased Mallikarajuna by these accused persons. It is their further contention that the I.O., by completing the investigation, has filed the charge sheet, as such, the presence of accused persons is not required for any further custodial interrogation. So, in view of their above main arguments, they urged to release the accused persons on bail.

12. In the light of the arguments canvased on both sides, I have gone through the records. It is an undisputed fact that the deceased is none other than the husband of accused No.3. So also, it is an undisputed fact that at the first instance, the FIR was registered in the name of unknown persons. So also, it is an undisputed fact that during the course of investigation on the basis of the materials collected by the Investigating agency, the accused Nos.1 to 3 have been arrested on the ground that they have collected sufficient acceptable materials to show that they have committed the brutal murder of the deceased Mallikarajuna who is none other than the husband of accused No.3. The main contention of the learned counsels representing the accused Nos.1 to 3 is that accused Nos.1 to 3 are in no way concerned to the incident in question. It is their main contention that absolutely there is no materials to show the involvement of the accused persons in the commission of the murder of the deceased Mallikarajuna. It is their main contention that the I.O., has recorded the statements of accused No.3, Shivaraj who is none

other than the son of the accused No.3 and one Gudihiridala Yerrappa. It is their main contention that the statement of accused No.3 and Gudihiridala Yerrappa shows that nothing is forthcoming in their statement with regard to commission of murder of the deceased by the accused persons. It is their contention that the I.O., has recorded the statement of Shivaraj who is the son of accused No.3 on 3 occasions on 3 different dates at the time of inquest mahazar and on the basis of the statement given by him on 3 different dates, the I.O., has arrested the accused persons and he has included their names in the charge sheet.

13. It is their further contention that though the prosecution contended that the I.O., has collected the mobile phones of accused Nos.1 to 3 and the deceased and the conversation forth-coming in the said mobile phones would shows that accused Nos.1 to 3 hatched a plan to put an end to the life of the deceased, but the I.O., has not produced SDR and CDR details at the time of filing the charge sheet, as such, they contended false implication of accused Nos.1 to 3 in the present case.

14. So far as the said contention of the learned counsels representing for the accused Nos.1 to 3 is concerned, it can be said that the son of the deceased by name Shivaraj has given statement before the I.O., about commission of the murder of his father by his mother by joining her hands with accused Nos.1 and 2. So also, the call details collected by the I.O., in the mobile phones of accused Nos.1 to 3 and the

mobile phone of the deceased would shows there was conspiracy in between accused Nos.1 to 3 to put an end to the life of the deceased. No doubt, at the first instances, the case was registered in the name of unknown persons and subsequently, during the course of investigation, the Investigating Agency have collected acceptable materials to show the involvement of accused Nos.1 to 3 in the commission of the murder of the deceased Mallikarjuna who is none other than the husband of the accused No.3. When such strong materials are available on record, at this stage, whatever the contention taken by the learned counsels representing the accused Nos.1 to 3 cannot be accepted. It is the contention of the learned counsels representing the accused Nos.1 to 3 that the deceased Mallikarjuna had illegal intimacy with one Nageshwaramma and he has sold the landed property located at Veerapura village and he has spent all the amount received from the sale of the said landed property to said Nageshwaramma and her family members and subsequently, on the advise of the accused No.1, the deceased came back and started to live along with his family i.e., accused No.3 and his son and during his stay, he used to consume alcohol and used to assault his wife i.e., accused No.3 and threatening them that he is going to sell the remaining property situated at K.Veerapura and he will bring back Nageshwaramma and accused Nos.1 to 3 have not at all committed any offences alleged against them. What they contended that the said Nageshwaramma and her family members have committed the murder of the husband of

accused No.3. They further contended that the deceased threatened the accused No.3 that he is going to sell the remaining property located at K.Veerapura, but the I.O., has not produced ROR relating to the said property and that aspect itself would go to show the false implication of the accused Nos.1 to 3 in the present case. So far as the said contention of the learned counsels for the accused Nos.1 to 3 is concerned, even for a moment assumed that the I.O., has not produced ROR relating to the remaining land located at K.Veerapura, but the very contents of bail applications would show that the accused persons have contended that the deceased has sold some property located at K.Veerapura and he was threatening the accused No.3 that he is going to sell the remaining landed property located at K.Veerapura. When such would be the case, at this stage, on the basis of the above said contention i.e., to say the I.O., has not produced ROR relating to the landed property located at K.Veerapura village, it cannot be said that the case set up by the prosecution at this stage cannot be disbelieved. Even the contention of the learned counsels representing the accused Nos.1 to 3 that the I.O., has not produced SDR and CDR details at the time of filing the charge sheet is also not a ground to disbelieve the case of the prosecution at this stage. As it is already stated above, the Investigating Agency during the course of investigation, have collected strong materials to show that the accused Nos.1 to 3 have committed the murder of the deceased Mallikarjuna. So also, the materials on record at this stage would show that the I.O., has seized

the objects employed by the accused persons in the commission of the murder of the deceased Mallikarjuna. When such would be the case, what ever the contention taken by the learned counsels representing the accused persons in the bail applications and also during the course of their arguments, cannot be accepted. It is well established law that while considering the bail application, the Courts need not made elaborate discussion about the merits of the case. The contention of the learned counsels representing the accused Nos.1 to 3 is that the I.O., by completing the investigation, has filed the charge sheet, as such, their presence is not required for any further interrogation. So far as the said contention of the learned counsels representing the accused Nos.1 to 3, it can be said that the filing of the charge sheet is not a conclusive proof and on the basis of the same, one cannot claim bail that too in this type of heinous offence. The above view of mine is supported by a decision rendered **in Cr. 2017 (2) SC page-56**. Admittedly, the accused persons herein have committed the brutal murder of the deceased Mallikarjuna. In this type of offence, the Court by taking liberal view enlarged the culprits on bail, certainly, it would send wrong signal to the society. Admittedly, the trial is not yet commenced, if at this stage, the accused persons were let on bail, the apprehension of the prosecution that they may threaten the prosecution witnesses from disclosing the true facts relating to the case in hand and also flee away from justice, cannot be ruled out. So, by considering the over all facts and circumstances of the

case, this Court is of the opinion, that there is no merit in the bail applications filed by the accused Nos.1 to 3. Accordingly, **point No.1 for consideration is answered in the negative.**

15. Point No.2: In-view of my findings to point No.1, I proceed to pass the following:

ORDER

The bail applications filed by the accused No.1 to 3 **u/S.439 of Cr.P.C., are hereby dismissed.**

(Dictated to the Judgment Writer, transcribed and typed by her, corrected by me and then pronounced in the open Court on this 19th Day of January 2022)

(SADANANDA M.DODDAMANI)
I ADDL.DISTRICT & SPECIAL JUDGE,
BALLARI.