

KABR010013702022



**IN THE COURT OF II ADDITIONAL DISTRICT & SESSIONS
JUDGE & SPECIAL JUDGE, BENGALURU RURAL DISTRICT,
BENGALURU.**

Dated this the 20th day of August 2024

Present: Shri.K.Guruprasad. B.A., LL.B
II Addl. District & Sessions Judge,
Bengaluru Rural District, Bengaluru.

Spl.C.259/2022

COMPLAINANT : State by Hebbagodi Police

[Reptd. by Public Prosecutor]

-Vs-

ACCUSED No.1 : THIMMESH

(By Sri.BM-Advocate)

ORDER ON BAIL APPLICATION OF ACCUSED NO.1

The counsel for accused No.1 has filed application u/s 439 of Cr.P.C requesting the court for grant of regular bail in favour of accused No.1 in Cr.No.23/2022 of Hebbagodi police station registered for the offences punishable under section 302, 201, 114 and Section 3(2)(v) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989.

2. The brief facts of the prosecution case are that deceased Sagar was working in Mahendra Electric Mobility Pvt . Ltd., Factory at Bommasandra Industrial Area, Anekal Taluk and was on intimate terms with accused No.2 and had lent Rs. 20,000/- to her. When accused No.2 failed to repay the said amount, the deceased Sagar blackmailed her to disclose the fact to her friends and began to insult her. Thereafter, the accused No.2 being fed up with said Sagar disclosed this fact to accused No.1 and two children in conflict with law and abetted them to finish deceased Sagar. It is further prosecution case that on 15.1.2022 at 7.45 p.m, deceased Sagar came in vehicle of the said factory being driven by CW.23 and got down near Nadson Factory in front of shop of CW.13. At that time, accused No.1 and 2 and children in conflict with law were present at the spot. Accused No.2 introduced deceased Sagar to accused No.1 and said two children in conflict with law. Thereafter, the said accused No.1 and children in conflict with law took deceased Sagar in a motor cycle No.KA-51-HP-2769 to Government Gomal land bearing Sy.No.350 of Hulimangala Village, Anekal Taluk. At that place, accused No.1 and said two children in conflict with law assaulted deceased Sagar by hands and with clubs on the head, hands and other parts of the body causing bleeding injuries as result of which, deceased Sagar succumbed to said injuries. It is further prosecution case that accused No.2 was also present at the scene of offence and abetted other

accused persons to commit offences. After death of deceased Sagar, accused No.1 and children in conflict with law poured petrol on the dead body and burnt it to destroy evidence. Thereafter, CW.1 who is a Municipal garbage worker traced out the said dead body and lodged complaint before the police in Cr.No.23/22.

3. After issuance of notice, CW.7 who is father of deceased appeared through video conference and submits that bail shall not be given to accused No.1 and that he would adopt the objection filed by learned SPP. Learned SPP has filed objection to the bail application.

4. Heard counsel for the accused No.1 and learned SPP. Perused the bail application, objections and court records.

5. The following points arise for my consideration and determination:-

1. Whether there are sufficient grounds to grant regular bail to the accused No.1 in Cr.No.23/2022 of Hebbagodi police station?

6. My answers to the above points are as under:-

Point No.1 - In the Negative

Point No.2 - As per final order

for the following

REASONS

7. **Point No.1:** The counsel for accused No.1 has submitted that he is innocent of the offences alleged against him and that there is no independent eye witness to the incident and the case of the prosecution entirely rests on the circumstantial evidence. It is further submitted that accused No.1 does not have any criminal antecedents and he is a permanent resident of Nandana Hosur Village, Hosadurga Taluk. It is further submitted that the accused is in judicial custody for more than 2 years. It is also submitted that the accused will offer surety to the satisfaction of this court and will not tamper with the prosecution witnesses and will be regular in facing the trial. It is further submitted that the accused will not abscond from this court and will abide by all the terms and conditions that may be imposed by this court. It is further submitted that when this court rejected the bail application of the accused, the accused preferred an appeal before Hon'ble High court in CrI.Appeal No.2140/2023 which came to be rejected on 5.3.2024 with an observation to dispose off the present case within four months from the date of order and since the trial court has not completed the trial within stipulated time fixed by Hon'ble High court, present application is filed for grant of regular bail. It is further submitted that due to non-completion of trial by the prosecution, liberty of the accused has been curtailed and as such, the accused is entitled

for grant of bail. Hence, the accused has requested to enlarge him on bail.

8. On the other hand, learned SPP has opposed grant of regular bail in favour of accused No.1 and submitted that there are no sufficient grounds for grant of regular bail in favour of the accused and as such, the accused is not entitled for regular bail. It is further submitted that if the accused is released on regular bail, he may abscond and tamper with the witnesses and destroy the evidence. It is further submitted that if the accused is released on regular bail, he may repeat the offences and may abscond and remain absent before the court on the court hearings. Therefore, learned SPP prayed to reject the bail application.

9. In **(2005) 8 SCC 21 (State of Uttar Pradesh through CBI and Amaramani Tripathi)**, Hon'ble Supreme court held that " It is well settled that the matters to be considered in an application for bail are (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) nature and gravity of the charge; (iii) severity of the punishment in the event of conviction; (iv) danger of accused absconding or fleeing if released on bail; (v) character, behaviour, means, position and standing of the accused; (vi) likelihood of the offence being repeated; (vii)

reasonable apprehension of the witnesses being tampered with; and (viii) danger, of course, of justice being thwarted by grant of bail.”

10. If facts and circumstances of this case and materials on record are considered in light of above principles of law, it is clear that there are reasonable grounds to believe at this stage and on available materials on record that the accused No.1 has committed an offence punishable with death or life imprisonment. It is because, it is clear from PM report report that the death was due to head injury and multiple hard and blunt force impact to the head and that those injuries are ante mortem in nature. It is further clear from the PM report that there were also post mortem burn injuries such as:

- a. Superficial and deep burns present across the front of lower limbs, upper limbs, chest and abdomen sparing the back region, right foot. The burns over front of chest are in patches.
- b. The left lower third of leg and foot showed deep burns exposing the bones and inner muscles being charred.
- c. The Right upper thigh showed deep burns exposing the charred bones and muscles.
- d. The left hand showed deep burns exposing the phallenges of the finger.

In PM report, it is also opined that the presence and distribution of burn injuries on the anterior surface of the body indicate that the assailant doused the deceased's body after his death, while he laid on Supine Position(Face up position). The absence of burns on the back and flexor aspect of lower limbs confirm the same. Further mobile phone of the deceased Sagar and the clubs have been recovered by the police on the voluntary statement of accused No.1 and children in conflict with law. Thereafter, CW. 13 Nagaraju who is a witness has given statement before the police for having seen the accused persons and children in conflict with law taking deceased Sagar in motor cycle on 15.1.2022 at 7.45 p.m. CW.23 Harish is a driver of the vehicle of the factory who has given statement before the police that deceased Sagar got down from the vehicle near Nadson Factory. There is also electronic evidence in this case. Therefore, though there are no direct eye witnesses in this case, there are sufficient circumstantial evidence in this case to connect the accused No.1 to the commission of murder of deceased Sagar. Moreover, the accused No.1 was present at the scene of offence and actively participated in the crime by assaulting deceased with club and pouring petrol on the dead body and burning it to destroy evidence. Thus, there is specific overt act by the accused No.1.

11. So far, PW.1 to PW.5 have been examined in this case and Ex.P-1 to Ex.P-11 and MO.1 to MO.14 have been marked in this case. No doubt, some of the witnesses have not supported the prosecution case. However, merely because the witnesses who are examined before this court have not supported the case of the prosecution, that itself is not a ground to enlarge the accused on bail as observed by Hon'ble High court in para 8 of its judgment in Crl.Appeal No.2140/2023.

12. It is clear from the judgment of Hon'ble High court in Crl.Appeal NO.2140/2023 that while rejecting the bail petition, Hon'ble High court observed that if the trial is not concluded within period of four months from the date of order i.e., 5.3.2024, the accused is permitted to file fresh bail petition before the trial court and in that event, such application shall be considered and disposed off in accordance with law. Thereafter, counsel for accused submitted copy of the said order in Crl.Appeal No.2140/2023 before this court on 3.7.2024. This court has repeatedly issued witness summons to CW.1, CW.3 and CW.4. But, the concerned police could not secure the presence of witnesses. Hence, this court has issued strict directions to the concerned police to secure the presence of witnesses in this case. Thus, this court came to know the direction of Hon'ble High court in Crl.Appeal No.2140/2023 on

3.7.2024 and thereafter, this court has endeavored to expedite the trial.

13. Further, if the accused No.1 is released on bail, he may abscond and may not be available for the trial. In fact, accused No.2 has remained absent since 12.8.2024 and as such, this court has issued NBW against accused No.2. Further more, if the accused No.1 is released on bail, he may threaten the prosecution witnesses and tamper with the prosecution evidence.

14. In **ILR 2016 Karnataka 1516 (State of Karnataka Vs. D.D.Sandeep)**, it is held that “Merely because accused has been in custody and police have filed charge sheet is not sufficient to grant bail and that the court has to consider gravity of accusation and danger of accused absconding and reasonable apprehension of witnesses being influenced and put to danger have to be kept in mind.”

15. Therefore, merely because accused No.1 has been in judicial custody since last 2 years and charge sheet has been filed after completion of investigation, that fact itself is not ground for enlargement on bail, particularly when there are sufficient materials on record at this stage to believe that the accused has committed offence alleged against him. Therefore,

there are sufficient grounds to reject the bail petition. Accordingly, I answer point No.1 in the Negative.

16. **POINT No.2**: In view of my finding on point No.1, I proceed to pass the following order:

ORDER

The bail application filed by accused No.1 is
rejected.

(Dictated to the Judgment Writer, transcribed by her, thereof corrected by me and then pronounced on this the 20th day of August 2024).

(K.GURU PRASAD)
II Addl. Dist. & Sessions Judge,
Bengaluru Rural District, Bengaluru.

**ORDER PRONOUNCED IN OPEN
COURT:**

ORDER

The bail application filed by accused
No.1 is rejected.

(K.GURUPRASAD)
II Addl. Dist. & Sessions Judge,
Bengaluru Rural District, Bengaluru.