



**IN THE COURT OF THE I ADDL DISTRICT AND
SESSIONS JUDGE, BENGALURU RURAL DISTRICT,
BENGALURU.**

Present : Sri Hosamani Pundalik,
I Addl. District & Sessions Judge,
Bengaluru Rural District, Bengaluru.

Dated this the 20th day of September 2023

S.C/291/2018

Complainant :

The State of Karnataka by
SHO of Thavarekere Police Station,
Bengaluru Rural District, Bengaluru.

(By Public Prosecutor)

V/S

Accused No.1:

MOHAN.H., S/o.Hanumanthaiah,
Aged about 29 years, R/at
Kodigehalli Colony, Kodigehalli,
Yeshwanthapura Hobli, Bengaluru.

ORDER

This is an application is filed by the accused No.1
under Sec.439 of Cr.P.C. for grant of regular bail for the
offences punishable under Section 143, 147, 148, 342,
307, 302 r/w.149 of IPC.

2. The case of the accused No.1 in brief is as under:

That the accused No.1 is innocent and law abiding citizen and he has not committed any offence as alleged against him. The accused No.1 is respectable person in th society has got deep root in the society. The accused No.1 is in judicial custody from the date of his arrest and there is no offence to connect the accused with the offence. There is no reasonable grounds to believe that the accused No.1 has committed an offence that is exclusively punishable with death or imprisonment for life. The accused No.1 is bread earner in the family. There is no person to take care of his mother. The other accused already enlarged on bail by the Hon'ble High court of Karnataka and accused No.1 is entitled for bail on parity ground and accused No.1 is ready and willing to furnish surety and ready to abide by any conditions that may be imposed by this Court and prayed to allow the application for regular bail.

3. Per contra, it is contended by the Learned Public Prosecutor by filing objection that the application filed on behalf of the accused No.1 is not maintainable. It is contended that as per the Charge Sheet and records prima-facie the accused No.1 has committed the offences punishable u/s.143, 147, 148, 342, 307, 302 r/w.149 of IPC., which is serious in nature. It is stated that accused No.1 has not shown reasonable grounds in his application for enlarging him on bail. As such, at this stage if the accused No.1 is released on bail, he may

tamper the prosecution witnesses and hamper the trial and also there is every chance of absconding and hence prayed to dismiss the application.

4. Thereafter, I have heard the arguments advanced by the learned counsel for the accused No.1 and that of the learned Public Prosecutor for the State.

5. The points that would arise for my consideration in this case are as under:

1. Whether the accused No.1 is entitled for regular bail under Sec.439 Cr.P.C. as sought for ?

2. What Order ?

6. 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

7. **Point No.1:** The Deputy Superintendent of Police, Magadi Sub Division, Ramanagara filed charge sheet against the accused persons for the offences punishable u/s.143, 147, 148, 342, 307, 302 r/w.149 of IPC alleging that on 16.5.2017 at about 10.30 p.m at Kodigehalli colony, Yeshwanthapura Hobli, Bengaluru North Taluk, Bengaluru, near the house of the accused No.1, the brother of the complainant by name deceased Venkatesh and C.W.2 went to the house of accused No.1 for

bringing Sahana to matrimonial house, when they asked the accused for sending Sahana to the matrimonial house, at that time all the accused were member of unlawful assembly and in prosecution of common object of such assembly, the accused persons refused to send Sahana to matrimonial house. The accused persons tied the clothes to the eyes of Venkatesh and C.W.2 and taken to the house of C.W.23 and confined them and accused No.1 assaulted to Venkatesh with long chopper on his head, face, legs and also assaulted to C.W.2 on his face and accused No.2 assaulted to Venkatesh and C.W.2 with knife on his hands, neck, face and accused No.3 assaulted with cable wire and other accused assaulted with clubs and committed murder of Venkatesh and caused grievous injury to C.W.2 and thereby committed the offences punishable under section 143, 147, 148, 342, 307, 302 r/w.149 of IPC.

8. The learned counsel for the accused No.1 submitted that accused No.1 is innocent and law abiding citizen and he has not committed any offence as alleged against him. The accused No.1 is respectable person in th society has got deep root in the society. The accused No.1 is in judicial custody from the date of his arrest and there is no offence to connect the accused with the offence. There is no reasonable grounds to believe that the accused No.1 has committed an offence that is exclusively punishable with death or imprisonment for

life. The accused No.1 is bread earner in the family. There is no person to take care of his mother. The other accused already enlarged on bail by the Hon'ble High court of Karnataka and accused No.1 is entitled for bail on parity ground and accused No.1 is ready and willing to furnish surety and ready to abide by any conditions that may be imposed by this Court and prayed to allow the application for regular bail.

9. Per contra, it is contended by the Learned Public Prosecutor by filing objection that the application filed on behalf of the accused No.1 is not maintainable. It is contended that as per the Charge Sheet and records prima-facie the accused No.1 has committed the offences punishable u/s.143, 147, 148, 342, 307, 302 r/w.149 of IPC., which is serious in nature. It is stated that accused No.1 has not shown reasonable grounds in his application for enlarging him on bail. As such, at this stage if the accused No.1 is released on bail, he may tamper the prosecution witnesses and hamper the trial and also there is every chance of absconding and hence prayed to dismiss the application.

10. It is well settled law that, at the time of deciding the bail petition, the Court should look at prima-facie material and should not go into merits of the case by appreciation of evidence. It is also well settled principles of law that, Court should avoid elaborate discussion on

merits while dealing with an application for bail. While dealing with an application under Section 439 of Cr.P.C, the Court cannot go into details of evidence to find out whether the evidence will be sufficient in establishing the guilt of the accused. The decision reported in **(2020) 2 SCC 743 in case of Myakala Dharmarajam and others Vs. State of Telangana and another**. Wherein the Hon'ble Supreme Court of India held that “ The factors to be considered while granting bail have been held by this Court to be the gravity of the crime, the character of the evidence, position and status of the accused with reference to the victim and witnesses, the likelihood of the accused fleeing from justice and repeating the offence, the possibility of his tampering with the evidence and witnesses, and obstructing the course of justice, etc. Each criminal case presents its own peculiar factual scenario and, therefore, certain grounds peculiar to a particular case may have to be taken into account by the Court. The Court has to only opine as to whether there is prima facie case against the accused. For the purpose of bail, the Court must not undertake meticulous examination of the evidence collected by the Police and comment on the same. “ Another decision reported in the case of State of **Uttar Pradesh through CBI Vs Amarmani Tripathi, reported in (2005) 8 SCC 21**, wherein the Hon'ble Supreme Court held that: It is well settled principles of law that 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 the accused absconding or fleeing, if released on bail; (v) Character, behavior, 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. The another decision reported in **(2016) 15 SCC 422 in the case of Neeru Yadav Vs State of Uttar Pradesh**, the Hon'ble Supreme Court held that :

Para No.13 : We will be failing in our duty if we do not take note of the concept of liberty and its curtailment by law. It is an established fact that a crime though committed against an individual, in all cases it does not retain an individual character. It, on occasions and in certain offences, accentuates and causes harm to the Society. The victim may be an individual, but in the ultimate eventuate, it is the society which is the victim. A crime as is understood, creates a dent in the law and order situation. In a civilized Society, a crime disturbs orderliness. It affects the peaceful life of the Society. An individual can enjoy his liberty which is definitely of paramount value but he cannot be a law unto himself. He cannot cause harm to others. He cannot be a nuisance to the

collective. He cannot be a terror to the Society and that is why Edmund Burke, the great English thinker, almost two centuries and a decade back eloquently spoke thus.

11. From the perusal of the material available on record, I am of the considered opinion that there is prima-facie and reasonable ground at this stage for believing that the present accused No.1 committed murder of Venkatesh by assaulting with long chopper as alleged against the accused No.1, which is heinous in nature and against the society at large. There are sufficient materials available in the charge sheet to connect the accused No.1 with the crime and prima facie shows the involvement of the accused No.1 in the crime.

12. It is pertinent note that if we carefully appreciate all these facts, it would clearly indicate that the present accused No.1 alongwith other accused committed murder of deceased Venkatesh by assaulting with long chopper deadly weapon and thereby committed the offences punishable under Section 143, 147, 148, 342, 307, 302 r/w.149 of IPC. It is pertinent to note that the offences alleged against the accused No.1 clearly indicate that the accused No.1 has no apprehension of law. Such being the facts, it is not safe to release the accused No.1 on bail. As such, the allegations are very grave, heinous and against to the Society at large. It is pertinent to note that

the bail application filed by accused No.1 was rejected on 25.2.2022 and thereafter the accused No.1 has preferred Crl.Petn.No.4011/2022 against the rejection of bail application by this court. The Hon'ble High court of Karnataka dismissed the Crl.Petn.No.4011/2022 filed by the accused No.1 on 8.7.2022 by relying on the judgment reported in **2018 (12) SCC 129 in case of Anil Kumar Yadav V/s. State (NCT of Delhi)** wherein the Hon'ble Supreme court of India held that while deciding the bail petitions in crimes like murder near fact of the accused being in custody for more than one year is not reliable consideration.

13. It is pertinent to note that considering the nature of accusations against accused No.1, nature of evidence in support thereof, reasonable apprehension of witnesses being tampered with and the larger interest of the public and State, I am of the considered opinion that the accused No.1 is not entitled for bail. In case of grant of bail to the accused No.1 chances of accused No.1 threat to the prosecution witnesses and chance of abscondance cannot be ruled out. Considering the gravity and seriousness of the offences, this court is of considered view that the accused No.1 not entitled for bail.

14. It is pertinent to note that the offences alleged against the accused No.1 clearly indicates that the

accused No.1 has no apprehension of law. Such being the facts, it is not safe to release the accused No.1 on bail at this stage. As such, having regard to all these facts and circumstances, I am of the view that, there are no reasonable and sufficient grounds which warrant this court to enlarge the accused No.1 on regular bail at this stage. Hence, the bail application deserves to be rejected. Accordingly, I answered the point No.1 for consideration in the **Negative**.

15. **Point No.2:** In view of my finding on the above point, I proceed to pass the following:

ORDER

The application filed on behalf of the accused No.1 under Section 439 of Cr.P.C., for grant of regular bail is rejected.

(Dictated to the Judgment Writer directly on computer, corrected and signed by me, then order pronounced in the Open Court, on this the 20th day of September 2023).

(Hosamani Pundalik)
I Addl. District & Sessions Judge,
Bengaluru Rural District,
Bengaluru.