

THE COURT OF VI ADDITIONAL SESSIONS JUDGE,
BENGALURU RURAL DISTRICT, BENGALURU.

Dated this the 25th day of February 2022

PRESENT: Shri Chennappa Gouda,
B.A., LL.B(Honours)
C/c I Addl. Dist. & Sessions Judge,
Bengaluru Rural District, Bengaluru.

S.C No.291/2018

Complainant : State by Tavarekere police.

Represented by Public Prosecutor.

Vs.

Accused No.1 : Mohan H
S/o Hanumanthaiah
Aged about 29 years,
R/at Kodigehalli colony,
Yeshwanthapura Hobli,
Bengaluru.

Rep. By Chandrappa K.N
Advocate.

: Order on Bail Application of Accused No.1 :

The Accused No.1 has filed bail application U/Sec. 439 of Cr.P.C. praying to release him on regular bail.

2. In the bail petition the accused No.1 has contended that he is innocents of the alleged crime.

The person who were enimically with him colluded with respondent police deposed against him and foisted a false case. The petitioner is in judicial custody for a period of 4 years 8 months. The above case there is no enmity between the complainant and this accused. There was no ill will between the accused. There was no previous enmity between the deceased and the petitioner the circumstances not yet proved by the prosecution in the above case. The investigation officer completed the investigation and filed a charge sheet. He has old aged parents, he is male member in the family and he is only the persons to look after his parents. He is respectable person in the localities and has got deep roots in the society. He is the permanent resident of the above said address. He is ready and willing to offer surety to the satisfaction of this court deems him fit to enlarge on bail. He is ready to abide by any conditions imposed by this court. Hence, pray for grant of regular bail.

3. On the other hand the learned Public prosecutor has filed objections to the bail application he has contended that the grounds stated in the bail application are not maintainable either in law or on

facts. On careful perusal of the charge sheet materials, during investigation, the investigation officer has arrested accused No.1 & other accused persons. Investigation officer recorded the voluntary statement of the accused No.1, in the voluntary statement accused No.1 admitted that he & other accused persons committed the murder of the deceased. On the basis of the voluntary statement, investigation officer secured the seizure mahazar witnesses. At the instance of accused No.1 the Investigating officer recovered the long, cable wire, knife, which were used for the commission of offence and drawn mahazar as shown by the accused in the presence of the pancha witness. On perusal of the charge sheet materials there are strong prima facie case against the accused No.1, he is the main culprit. The alleged offence against the accused No.1 & other accused is heinous & grave in nature. Section 302 of IPC is punishable with either death or imprisonment for life. This case is based upon the direct evidence and circumstantial evidence. The Hon'ble Court released accused No.1 there are a chances of absconding, tampering with prosecution materials and threatening the prosecution witnesses, hence,

the accused No.1 is not entitled for bail. Among other grounds, he has prayed for rejection of the bail application.

4. Heard the arguments for both the counsels for the accused No.1 and learned public prosecutor.

5. The following points arise for my considerations are:

1. Whether the accused No.1 is entitled for grant of regular bail as prayed for?

2. What order?

6. My findings on the above points are as follows:

Point No.1: In the Negative.

Point No.2: As per the final order
For the following:

REASONS

7. Point No.1: At the outset the respondent police have charge sheeted against the accused No.1 to 6 in CC.No.269/2018 (SC.291/2018) for the offences punishable U/Sec. 143, 147, 148, 342, 307, 302 R/w 149 of IPC. The present case is committed

and now the case is posted for FDT.

8. The Brief facts are as follows:

One Ramesh is the complaint, alleged that his marriage was performed with one Sahana who is the Daughter of Malathhali Muniyappa since form 1 year back, after there marriage they were living in their native place for few months, then as per the quarrel of his wife he came to Bengaluru and that time one female child was born to them, to look after them. He left his wife to her wife grandmother house which is situated at kamalanagar, in that time without came to the knowledge of the complainant his wife and her family members went to the Chikkanna swamy temple due to the same there was a quarrel took place between both the family members on 16.05.2017 to get a Bhagya Lakshmi scheme the complainant intended to get his wife to his native place and went to her grandmother house to bring them with his paternal uncle son namely Aruna, Eshwar, cheluvaraj and also his father in law Muniyappa, but they are refuse to send her. Then they came back to their house thereafter at about 10.00 pm the same was came to the knowledge of his brother Venkatesh then he went along with Aruna

to Kodigehalli colony to ask his Father in law, mean while morning at about 5.30 am the said Aruna made a phone call to told him came to Anupama Hospital then he went to the hospital along with one Kiran and Ashok, in that time he came to know that they sustain injuries, after enquiry he came to that when his brother and friend went to ask his father-in-law regarding his wife matter in that time the said Mohana and other persons restrained them and assaulted them with deadly weapons and made a injuries and restrained them in a house. Then on 17.05.2017 morning at about 5.00 am they lived them near Kodigehalli bridge with their efforts they are admitted to the hospital the above said issue regarding his family. Therefore, he intimates to same his family members and elders then later he filed a complaint against accused No.1 and other accused persons. Hence the complaint.

9. The learned counsel for the accused No.1 is argued that the accused No.1 is innocent of the alleged offences the respondent police have falsely implicated the accused No.1, the respondent police have made accuse No.1 as a scapegoat there is no

specific overact attributed by the accused No.1. There is no previous enmity between the deceased and accused. On perusal of the charge sheet materials none of the independent prosecution eye witnesses have stated about the specific role of the accused, accused No.1 was arrested on 23.05.2017 and he is not required for police custody. Hence accused will be enlarged on bail. Hon'ble High court of Karnataka granted bail to accused No. 3 to 6 in Crl.Pet.No. 7926/2017, 7791/2017 and 7883/2017 in the said crime. The accused is standing at higher pedestrian than accused No.3 to 6 already enlarged on bail. Hence, he has also entitled for regular bail on the principle of parity. The petitioner is ready and willing to abide by the terms and conditions imposed by this Court he is ready to offer surety to the satisfaction of this Court the accused is law abiding citizen and having deep roots in the society accused No.1 is the bread earning member in the family hence prays to grant regular bail.

10. Learned public prosecutor argued that, on careful perusal of the materials available on record there is prima facie case against the accused person further argued that the investigation officer has

visited the scene of occurrence and prepared the spot panchanama during the investigation, the investigation officer has arrested the accused No.1 and other accused persons, the investigation officer has recorded the voluntary statement of the accused No.1. The investigation officer has recorded the statement of material witnesses such as CW.3 to 16 and star witnesses CW.2 is the eye witnesses to the incident she specifically deposed the role of the accused No.1 the investigation officer has collected the material documents as well as seized the material objects which was used for the commission of the offences. Taking in to consideration contents of entire charge sheet available in the charge sheet papers there are reasonable grounds to believe that accused No.1 & other accused have committed the offences punishable U/Sec. 143, 147, 148, 342, 307, 302 R/w 149 of IPC. The present case is committed. The alleged offences are heinous in nature. The offences U/Sec. 302 is punishable with death or imprisonment for life. If the accused is granted with a bail he may flew away from the jurisdiction of this Court and hamper the proceedings. If this Hon'ble Court released the accused on bail there is a chance

of tampering the prosecution witnesses. If this accused No.1 granted bail there is also a chance of committing similar type of offences. Hence, prays for rejection of the bail application.

11. I have carefully gone through the contents of the complaint, FIR, charge sheet materials produced along with petition and the objections. As could be seen from the complaint it reveals that the alleged incident has taken place on 16.05.2017 between 10.30 pm to 11.00 pm, FIR was registered on 17.05.2017 at 6.30 p.m. The offences alleged against the accused No.1 and other accused are for the offences punishable U/Sec.143, 147, 148, 342, 307, 302 R/w 149 of IPC. The materials placed on record disclose that FIR was registered on the basis of the complaint lodged by one Ramesh, after registering the case the investigation officer has visited the place of incident and conducted the mahazar at the place of incident. The police have conducted inquest mahazar, seized the belongings of the deceased. The investigation officer during his investigation has deputed his officials to trace out the accused persons. The officials have arrested the accused No.1 on 23.05.2017 and produced before the

investigation officer after completion of arrest the investigation officer comply the arrest procedure. The investigation officer has recorded the voluntary statement of the accused No.1. On the basis of the voluntary statement of the accused No.1 the investigation officer has seized the certain materials, seized deadly weapons like long, rod, cable wire, knife etc., which were used for commission of offences.

12. On perusal of the entire prosecution materials the prima facie discloses that there are specific allegations of assault to the deceased by the accused No.1 with long repeatedly. CW.2 has specifically stated about the role of the accused No.1. In the present case there is no inordinate delay in filing of the FIR after the incident. Prima facie discloses that the overtacts attributed against the accused that he has assaulted the deceased with deadly weapons.

13. The offence of the Section 302 of IPC is punishable with death or imprisonment for life. The alleged offence is heinous in nature. The Hon'ble Supreme Court in its case between **Virupaksha**

Gowda & Another V/s. State of Karnataka & Another vide its order dated 08.03.2017 has held that bail cannot be granted in the case of heinous offences only on the ground that charge sheet is already filed.

14. In case reported in **(2018) 11 SCC 458 (Prasad Shrikant Purohit V/s State of Maharashtra)**, it has been held as under:

“The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the court granting bail to consider, among other circumstances, the following factors also before granting bail: they are:

(a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.

(b) Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.

(c) Prima facie satisfaction of the court in

support of the charge.”

15. The alleged offence is heinous and it's impaired to curtail the liberty of the accused. In the case of **State of Bihar V/s. Raj Ballav Prasad @ Rajballav Yadav @ Raj Ballabh Yadav** reported in **2017 (2) SC 178**, it is held as under:

We are conscious of the fact that the respondent is only an under-trial and his liberty is also a relevant consideration. However, equally important consideration is the interest of the society and fair trial of the case. Thus, undoubtedly the courts have to adopt a liberal approach while considering bail applications of accused persons. However, in a given case, if it is found that there is a possibility of interdicting fair trial by the accused if released on bail, this public interest of fair trial would outweigh the personal interest of the accused while undertaking the task of balancing the liberty of the accused on the one hand and interest of the society to have a fair trial on the other hand. When the witnesses are not able to depose correctly in the court of law, it results in low rate of conviction and many times even hardened criminals escape the conviction. It shakes public confidence in the criminal justice delivery system. It is this need for larger public interest to ensure that criminal justice delivery system works efficiently, smoothly and in a fair manner that has to be given prime importance in such situations. After all, if there is a threat

to fair trial because of intimidation of witnesses etc., which would happen because of wrong doing of the accused himself, and the consequences thereof, he has to suffer.

16. In the decision reported in **Prashanth Kumar Sarkar V/s. Ashish Chatterji** in **2010 (14) SC 496** it is held that:

11. We are of the opinion that the impugned order is clearly unsustainable. It is trite that this Court does not, normally, interfere with an order passed by the High Court granting or rejecting bail to the accused. However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point.

It is well settled that, among other circumstances, the factors to be borne in mind while considering 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 accusation;
- (iii) severity of the punishment in the event of conviction;
- (iv) danger of the 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 influenced; and (viii) danger, of course, of justice being thwarted by grant of bail.

17. In the above said decisions, it has been held that, while considering the bail application, what is required to be looked into is whether there is any prima facie or reasonable grounds to believe that the accused persons have committed the offence, the nature and gravity of offence, character, behaviour, means, position of the deceased and also reasonable apprehension, the witness being tampered and danger of course of justice being thwarted by granting of the bail.

18. In the present case, the entire materials collected by the Investigation Officer at the time of investigation makes out reasonable ground to believe the case of the prosecution. By considering the nature and gravity of the offence alleged against the accused No.1 and by applying the factors mentioned in the above reported decisions, I am of the opinion that the accused No.1 is not entitled for bail only on the ground that the charge sheet is already filed.

19. Counsel for the petitioner argued that,

Hon'ble High court of Karnataka granted bail to accused No. 3 to 6 in Crl.Pet.No.7926/2017, 7791/2017 and 7883/2017 in the said crime. The accused is standing at higher pedestrian than accused No.3 to 6 already enlarged on bail. Hence, he has also entitled for regular bail on the principle of parity.

20. It is just and necessary to refer the decisions reported by the Hon'ble Apex Court reported in **(2021) 6 SCC 230 Ramesh Bhavan Rathod Vs Vishan Bhai, Hirabhai Makwana (koli and other)**

*Head note A. **Criminal procedure code 1973-section 439**-bail on the ground of parity with co-accused-Parity-Manner in which to be determined-While applying principle of parity, court cannot exercise its powers in a capricious manner and has to consider totality of circumstances before granting bail-Parity while granting bail must focus upon role of accused, and not only on weapon carried by accused-Merely observing that another accused who has granted bail was armed with similar weapon (as done by High Court in present case) is not sufficient to determine whether bail can be granted on basis of parity-In deciding aspect of parity, role-parity was sought with A-13 to whom bail was granted on 22.10.2020 on ground (as High Court recorded) that he was "assigned similar role of armed with stick"-Again, bail was granted to A-16 on ground that he*

was armed with a wooden stick and on ground that A-10,A-15 and A-13 who were armed with sticks had been granted bail-high Court herein, held, proceeded on basis of parity on a clearly erroneous and simplistic assessment which cannot pass muster under law.

I carefully gone through the above citation. The above ratio is aptly applicable to the present case in hand. Accused No.1 is the prime accused in this case. The accused No.1 is not entitled bail on the ground of principles of parity, because in the present case there are sufficient material available against the accused No.1 is that he has assaulted the deceased by using deadly weapons such as long and thereby committed the murder of the deceased and also if the accused is granted with bail, he may threaten the prosecution witnesses and may abscond from the jurisdiction of this court. This case is based upon the eye witnesses and other circumstantial evidence. As such, by considering the gravity of the offences against the accused No.1 and manner of commission of murder of the deceased, the accused No.1 is not entitled on bail. The accused No.1 has failed to make out valid grounds for grant of regular bail in his favour. Therefore, I am of the opinion that

the accused No.1 is not entitled for bail at this stage. Accordingly, I answer point No.1 in the Negative.

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

ORDER

Petition filed by the accused No.1
under Section 439 of Cr.P.C. is hereby
rejected.

(Dictated to the Stenographer, typed by her, corrected, signed and then pronounced by me in the open court on this the 25th day of February, 2022)

(CHENNAPPA GOUDA)
C/c I Addl., Dist. & Sessions Judge,
Bangalore Rural District, Bangalore