

KACB010018022023



**IN THE COURT OF THE I-ADDL. DISTRICT &
SESSIONS JUDGE AT CHIKKABALLAPURA**

Dated this the 25th day of September, 2024.

: PRESENT :

Sri. SHIVAPRASAD K.B., B.Com., LL.B.,
I-Addl. District & Sessions Judge,
Chikkaballapura

Spl.S.C.No.123/2023

COMPLAINANT :

The State of Karnataka,
Represented by Assistant
Deputy Superintendent of Police
Chinthamani Sub Division,
Chinthamani
Chikkaballapur District

(Dibburahalli Police Station)

(By the Learned Spl. Public Prosecutor)

INFORMANT:

Gagan B.N. S/o Narayanaswamy
aged about 22 years,
R/at Byraganahalli village,
Shidlaghatta taluk
Chikkaballapur District

[Absent]

- V/S -

ACCUSED No.2 :

Madhu D.
S/o Dyavakrishnappa,
Aged about 32 years,
R/at Sadahalli village,
Bashettihalli Hobli,
Shidlaghatta Taluk,

Chikkaballapur District

ORDER ON BAIL APPLICATION U/S 439 OF Cr.P.C.

The accused No.2 has filed this bail application under Section 439 of Cr.P.C., seeking for his release on regular bail for the offenses punishable under Sec. 302, 120-B, 341, 504, 506 r/w Sec. 34 of IPC., and Sec. 3(1)(r), 3(2)(va) of SC/ST (POA) Act., in Cr.No.121/2023 by the respondent.

2. The accused No.2 by filing the bail application contended that a false case has been registered against the accused No.2. The matter is at the stage of trial. The prosecution examined the material witnesses and the material witnesses are not supported the prosecution case. The prosecution has to examine medical officer and police officials. The petitioner is innocent of the alleged offenses and none of the witnesses had spoken against the accused No.2. The accused No. 2 has not participated in the murder of Narayanaswamy, and only on the voluntary statement of co-accused, he has been arraigned as accused. Further, nothing has been seized from the accused. The accused No. 2 is in judicial custody since one year. He is ready to face the further trial. He is the resident of the address shown in the charge sheet and has deep roots in the society. He has movable and immovable properties. He undertake to cooperate and abide by the

conditions that may be imposed by the court. Hence he prayed to release him on regular bail.

3. The learned Public Prosecutor filed objection statement resisting the bail petition, and it is contended that, from the materials on record there is sufficient material to show the alleged charge against the accused No. 2. The accused No.2 has committed grave offense of murder punishable with extreme penalty. If the accused No. 2 enlarged on bail, he may abscond from the trial. Hence, it is prayed to dismiss the bail petition.

4. Despite the notice, the CW.1-first informant remained absent.

5. Heard learned counsel for the accused No.2, learned Spl. Public Prosecutor.

6. Upon hearing the parties and perusal of the materials on record, the points that arise for my consideration are as under;

Point No.1: Whether the accused No.2 is entitled for regular bail under Sec.439 of Cr.P.C.?

Point No.2. What order?

7. My finding to the above points are as follows:

Point No.1 : In the **Affirmative**,

Point no.2 : As per final order,
for the following;

REASONS

Point No.1:

8. On the complaint of first informant Gagan-CW.1 the son of deceased Narayanaswamy, FIR in Cr.No.121/2023 registered against the accused No.1 and others. After completion of the investigation, the complainant police have submitted the charge sheet against the accused No.1 to 6 for the offences punishable under Sec. 302, 120B, 341, 504, 506 r/w Sec. 34 of IPC., and Sec. 3(1)(r), 3(2)(va) of SC/ST (POA) Act.

9. This court framed the charges against the accused No. 1 to 6 and during trial the prosecution examined PW 1 to 14 witnesses. The matter is fixed for the further trial. At this stage, the accused No. 2 filed the bail application to release him on Regular bail.

10. The learned counsel for the accused No.2 vehemently argued that the material witnesses have been examine in this case and there is no incriminating materials against the accused the accused No. 2. The prosecution has to examine medical and official witnesses and therefore the question of tampering the

prosecution witnesses would not arise. The accused No. 2 is ready to offer the surety and ready to abide by the conditions that may be imposed by the Court. Thus, he prayed to allow the bail application.

11. Per contra, the learned Special Public Prosecutor argued that the matter is at the stage of trial. If the accused No.2 is enlarged on bail he may tamper the prosecution witnesses or abscond from the investigation. Hence, she prayed to dismiss the bail petition.

12. After filing the charge sheet, the accused No. 2 had filed the bail application earlier which came to be dismissed by the Order dated 20.11.2023. The accused No. 2 preferred the Crl.A.No. 2384/2023 challenging the said Order, which also came to be dismissed by the Hon'ble High Court of Karnataka, by the Order dated 7.02.2024. Now the accused no.2 filed the present successive bail application for his release on bail.

13. I have carefully perused the materials placed on record. According to prosecution case, the deceased and accused No.6 are members of Adi-dravida caste and accused No.1 to 5 are the members of Vokkaliga caste and since four years, accused No.1 had the illicit relationship with accused No.6. On 04.08.2023 the

accused No.1 came near the house of accused No.6. While the CW.8 the husband of accused No.6 came in front of the house, hearing the horn sound of the motorcycle of the accused No.1, he threw the mobile phone towards the accused No.6. At that time, a quarrel took place between the accused No.1 and CW.8. In this regard, the CW.8 requested the deceased Narayanaswamy to advise the accused No.1. As such the deceased convened a panchayath near the Silkworm house of accused No.3 and during panchayath, the accused No.1 abused the deceased Narayanaswamy and threatened with dire consequences. Thereafter, on the advise of deceased Narayanaswamy, the CW.8 lodged the complaint before the complainant police and NCR No.144/2023 registered. After enquiry in the said proceedings, a quarrel took place between accused No.1 and deceased at the outside of police station and the deceased threatened to lodge the atrocity case if he intervene with the affairs of the women belong to his caste and he also abused the brother of accused No.1. As the deceased objected for the illicit relationship between accused No.1 and 6, the accused No.1 and 6 developed ill-will against the deceased and accused No.6 abetted the accused No.1 to eliminate the deceased. Accordingly, the accused No.1 conspired with his friends accused No.2 to 5 at the vacant land of North-

East properties situated at Belluti village and the Silkworm house of accused No.3 to eliminate the deceased. As per their conspiracy, on 24.08.2023, the accused No.1 to 3 followed the deceased who was traveling in the Omni car bearing Reg.No.KA-03-M-2225 and while the deceased was proceeding towards his village in the aforesaid Omni car, at 7.30 p.m., the accused no.3 stopped the said car of deceased near the land of CW.12 on the pretext of talking with regard to the land transaction. At that time, the accused No.1 and 2 came from the backside of deceased and the accused no.1 threw the chilly powder on the face of deceased. The deceased attempted to run away from the spot, however the accused No.1 to 3 followed him and assaulted him with chopper and dagger knife on his vital parts of the body and caused grievous injuries. Due to the deadly assaults, the deceased fell down and died at the spot. Thus, the prosecution alleged that the accused No.1 to 6 have committed the alleged offences.

14. On perusal of the record, the death of deceased Narayana Swamy is not in dispute. To prove the alleged offences leveled against accused, the prosecution examined CW 1 complainant as PW 1, Eye witness CW 2 and 3 as PW 7 and 8. The circumstantial witnesses CW.4, CW.5, CW.6, CW.7, CW.8, CW.9, CW.10, CW.11, CW.12, CW.13, CW.14 have been

examined as PW.8, PW.2, PW.3, PW.9, PW.4, PW.10, PW.5, PW.6, PW.11, PW.12, PW.13 and PW.14 respectively. At this stage, the court can not appreciate the evidences lead by the prosecution. However, it is to be noted that prosecution examined its material witnesses in the case. Now, the matter is at the stage of further trial of the case. The prosecution has to examine circumstantial witnesses, Inquest pancha witnesses, registered owners of seized motor cycles, panch witnesses to the seizure mahazars, medical witness and official witnesses in the case.

15. From the record, it appears that the panch witnesses to the spot and seizure mahazars are the Government officials. Thus, now the prosecution has to examine the official, medical and police and circumstantial witnesses in the case. The accused no.2 is in judicial custody since from his arrest. As the prosecution examined its material witnesses relied by it, there is no question of tampering their evidences. The accused No. 2 undertake to co-operate with the trial and abide by the conditions that may be imposed by the Court. The Prosecution apprehends that if the accused No.2 is enlarged on bail he may tamper the prosecution evidences. The prosecution already examined its vital witnesses and the prosecution has to examine circumstantial witnesses, official witnesses, medical and police witnesses in the case and there is

remote possibility of tampering their evidences. Further, the apprehension of the prosecution if any, can met by imposing stringent conditions. Under the aforesaid facts and circumstances, this court is of considered view that the accused No.2 can be admitted to regular bail, imposing stringent conditions. Thus, I hold the point No.1 is in **Affirmative**.

Point No.2:

16. In view of my above finding, I proceed to pass the following:

O R D E R

The bail application filed by accused no.2- Madhu D. S/o Dyavakrishnappa under Section 439 of Cr.P.C., is **allowed**.

The accused No.2 shall be released on regular bail on execution personal bond of Rs.1,00,000/- with **two sureties** for the likesum on following conditions:

1) He shall regularly appear before the Court.

2) He shall not commit any similar offence.

3) He shall not tamper, threaten or intimidate the complainant or the prosecution witnesses in any manner

directly or indirectly.

(Dictated to the STENOGRAPHER, transcript computerized by her, SCRIPT corrected, signed and then pronounced by me in the open Court on this the 25th day of September 2024.)

Sd/-

(SHIVAPRASAD K.B.)

I Addl. District & Sessions Judge
Chikkaballapura.