

KACB010029932021



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

Dated this the 26th day of December, 2023.

: PRESENT :

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

Spl.S.C.No.137/2023

COMPLAINANT: The State of Karnataka,
Rep. By Dy.S.P. Chinthmani Sub
Division, Chinthmani,
Chikkaballapur District

(Chinthmani Rural Police Station)

[By learned Spl.Public Prosecutor]

INFORMANT: Muneppa,
S/o late Chikka Hanumappa,
aged about 50 years,
R/at Hussainpura village,
Ambajidurga Hobli,
Chinthmani Taluk,
Chikkaballapur District

**[Sri. Manjunatha J,
Designated DLSA panel Counsel]
V/S**

- ACCUSED:**
1. Venkataravana
S/o Srinivasa,
aged about 23 years,
 2. Somashekar
S/o Srinivasa,

Both are R/at Hussainpura village,
Ambajidurga Hobli,
Chinthmani Taluk,
Chikkaballapur District

(Accused No.1 & 2
in Spl.S.C.No.137/2023)

**(Rep. by Sri. R.C.Chandrashekar,
Advocate)**

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

The accused No.1 and 2 have filed this bail application under Section 439 of Cr.P.C., seeking for their release on regular bail for the offences punishable under Sec. 323, 504, 302 r/w Sec.34 of IPC, Sec.3(1)(r), (s) 3(2)(va) of SC/ST (POA) Act, registered in Cr.No.383/2023 by the complainant.

2. The accused No.1 and 2 by filing the bail application contended that they are in judicial custody since from the arrest on 22.09.2023. There is no external injuries to the deceased and there is no previous enmity between the deceased and the

accused. The deceased was a age old and drunkard person and suffering from various ailments. The son of complainant, one Akash Nayak instructed the accused no.1, 2 to perform the program during immersion of Ganesh idol free of cost, however they refused as they engaged in the saloon business. On the date of Ganesh idol immersion, the deceased fell down, consuming alcohol and his death was natural death. Taking advantage, the first informant and Akash Nayak foisted false case. There is no specific act against the accused and allegations are bald in nature. There is delay in recording the statement of Meena. The postmortem report and medical opinion show the death of deceased Narayanaswamy cannot accurately stated. The accused No.1 and 2 are ready to abide by the terms and conditions that may be imposed by the Court. Hence, they prayed to allow the bail application.

3. The prosecution has filed objection statements resisting the petition averments. It is contended that the investigation has been completed and charge sheet has been filed. The charge sheet materials prima facie the accused No.1 and 2 have involved in the alleged offences, hence they are not entitle for regular bail. The accused No.1 and 2 are politically and economically influential persons and if they are

enlarged on bail, they may tamper the prosecution witnesses and hamper the trial. Hence, it is prayed to dismiss the bail application.

4. Pursuant to the notice, the first informant/complainant appeared and the Designated DLSA panel counsel has represented him and filed objection statement contending that charge sheet revealed that the accused No.1 and 2 abused the deceased taking his caste name, assaulted him with hands and legs on his stomach and due to the said injuries the deceased died. The postmortem report supports the case of prosecution. The alleged offences is serious in nature punishable with death or imprisonment for life. Hence, he prayed to dismiss the bail application.

5. Heard the learned counsel for the accused No.1 and 2, learned Spl. Public Prosecutor and designated DLSA panel Counsel.

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

1. Whether the accused No.1 and 2 are entitled for regular bail under Sec.439 of Cr.P.C.?

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. The complainant police registered the FIR in Cr.No.383/2023 against the accused No.1, 2 and others on the complaint of first informant for the offences punishable under Sec.302 r/w Sec.34 of IPC. During investigation, the prosecution added the provisions under Sec.3(1)(r)(s), 3(2)(va) of SC/ST (POA) Act in the case.

9. During investigation, the accused no.1 and 2 arrested on 05.10.2023 and produced before the court and they have been remanded to judicial custody. Since then, they are in judicial custody. After investigation the prosecution laid the charge sheet.

10. The factual matrix of the prosecution case is that, on 19.09.2023 at 7.00 p.m., while deceased - Narayanaswamy was at the house of Naveen and Meena, the accused No.1 came to the said house, and

called Akash Nayak, brother of Meena. While the deceased Narayanaswamy objected to take Akash Nayak, the accused No.1 abused touching his caste. Thereafter, the accused No.1 returned to his home and came back to the house of said Naveen and Meena along with accused No.2 to 4. They shouted towards deceased Narayanaswamy touching his caste and trespassed into the house of said Naveen and Meena and assaulted deceased Narayanaswamy. While he fell down, Meena, Naveen, Keshav, Sunil, Muneppa- first informant rescued Narayanaswamy. As the deceased suffered pain, on the next day, the first informant shifted him to Shidlaghatta Government hospital and later, he was taken District hospital, Chikkaballapur for higher treatment, however, he died on 21.09.2023 at 1.30 p.m. at the said hospital. Thus, the prosecution alleged that the accused No.1 to 4 have committed the aforesaid alleged offences.

11. The learned counsel for the accused No.1 and 2 argued that there is no material to connect the accused No.1 and 2 with the death of Narayanaswamy. He further argued that the death of Narayanaswamy is due to over consumption of alcohol and damage to the small intestine. Hence, there is no prima facie case for the alleged offences. He further submitted that the

accused No.1 and 2 are ready to co-operate the trial and abide by the conditions. Hence, he prayed to allow the bail application.

12. Per contra, the learned Special Public Prosecutor vehemently contended that due to the assault against the deceased the small intestine of deceased damaged and death caused. The charge sheet material shows the prima facie case against the accused No.1 and 2 and therefore they are not entitle for regular bail. He further contended that if the accused No.1 and 2 enlarged on bail, they may tamper the prosecution witnesses and hamper the trial. Hence, he prayed to dismiss the bail application.

13. The designated DLSA panel counsel has supported the arguments of the learned Special Public Prosecutor.

14. I have carefully perused the charge sheet materials and arguments advanced by the parties. As could be seen from the records, Muneppa, the first informant, brother of deceased Narayanaswamy, lodged the complaint alleging that on 19.09.2023 at 7.00 p.m., the accused No.1 to 4 came near the house and abused said Narayanaswamy filthily touching his caste and assaulted mercilessly in the backdrop of

previous enmity; and on the next day, he shifted the deceased Narayanaswamy to the hospital for medical treatment as he suffered stomach pain, however he died at the District hospital, Chikkaballapura.

15. On perusal of the postmortem report it does not show any physical injuries to the deceased Narayanaswamy. After receipt of the FSL reports the medical officer opined that the death is due to peritonitis and perforation of small intestine. He also opined that there is chances of peritonitis and perforation of small intestine can be sustained due to blunt trauma abdomen when a person hit on the abdomen with fist or kicked. The deceased died after two days after the incident. The medical opinion indicated there is chances of such perforation and peritonitis if the person hit on the abdomen fist or kicked. Under the said circumstances, the question whether the death of deceased was due to assault or kicking by the accused No.1 and 2 two days earlier to death is required to be thrashed during the full fledged trial. Now the investigation is completed and the accused No.1 and 2 are not required for further investigation. The accused No.1 and 2 are in judicial custody since from their arrest. The detention of the accused No.1 and 2 shall not be a pre-trial punishment.

The accused No.1 and 2 are ready to co-operate with the trial. They are the permanent residents of Hussainpura village, Chinthmani Taluk and they can be secured for trial purpose. Under the said circumstances, this Court is of the considered view that the accused No.1 and 2 can be enlarged on regular bail subject to conditions. Hence, I hold the point No.1 is in the **affirmative**.

Point no.2:

16. In view of my above finding on point no.1, I proceed to pass the following:

ORDER

The bail application filed by the accused No.1-Venkataravana S/o Srinivasa, accused No.2- Somashekar S/o Srinivasa, under Sec.439 of Cr.P.C., is, **allowed**.

The accused No.1 and 2 shall be released on regular bail on executing personal bond for a sum of Rs.1,00,000/- each and one surety for the likesum to the satisfaction of the Court subject to following conditions:

1. They shall not commit similar offences.

2. They shall regularly appear before the Court.

3. They shall not tamper the first informant or prosecution witnesses in any manner directly or indirectly.

If any one of the above conditions are violated, the bail granted will automatically stands canceled without intimation.

(Dictated to the STENOGRAPHER directly on computer, computerized by him, SCRIPT corrected, signed and then pronounced by me in the open Court on this the 26th day of December - 2023)

Sd/-

(SHIVAPRASAD K.B.)

I Addl. District & Sessions Judge
Chikkaballapura.