

**IN THE COURT OF THE II ADDL. DISTRICT & SESSIONS
JUDGE, CHIKKABALLAPURA, SITTING AT CHINTAMANI**

Dated this the 24th day of January 2023.

Present

Sri. H.S.MANJUNATHA, B.A.L., LL.B.
II Addl. District & Sessions Judge, Chikkaballapura,
Sitting at Chintamani.

S.C.NO.03/2023

Complainant:

State by Chintamani Rural Police,
Chintamani taluk.
(Represented by Public Prosecutor)

Vs.

Accused:

1. Hemanth Kumar @ Chala
s/o Chalapathi @ Chala,
aged about 24 years,
r/at 2nd cross, Ashraya Badavane,
Chintamani town.
2. Mahesh @ Rajahuli
s/o Venkataravanappa @ Rajahuli,
aged about 22 years,
r/at 2nd cross, Ashraya Badavane,
Chintamani town.
3. Sharath Kumar N
s/o Narayanaswamy,
aged about 25 years,
r/at near Venkatadri college,
Ashraya Badavane,
Chintamani town.
4. Madhu R.K.
s/o Kadirappa,
aged about 23 years,
r/at Ward No.2, Ashraya Badavane,
Chintamani town.

5. Kumar
s/o Muninarayanappa,
aged about 43 years,
r/at Ashwini layout,
in front of K.S.R.T.C. depot,
Chintamani town.

6. Channakeshavareddy
s/o late Srinivasareddy,
aged about 23 years,
r/at Ward No.2, Ashraya Badavane,
Chintamani town.

(Represented by Sri R.Chandrashekar,
Advocate for accused No.3 and 4)

ORDER ON BAIL APPLICATIONS FILED BY

ACCUSED NO.3 and 4

Accused No.3 and 4 separately filed applications under Section 439 of Cr.P.C. seeking bail.

2. Accused No.3 in his application narrates the allegations found in the F.I.R. Further it is contended that the investigation is completed, nothing has been recovered from him, that the case against him is based on voluntary statement of accused No.1, which is a weak piece of evidence, that there is no last seen theory, regarding accused he has no prior antecedents, that there are no eyewitnesses to the incident, that he is arrested on 04.10.2022 and till then he is in judicial custody, that he undertakes to abide by the conditions that may be imposed by

this court. On these grounds he seeks bail.

3. Accused No.4 in his application also narrated the allegations made in the charge sheet. Further it is contended that his earlier bail application in CrI.Misc.No.348/2022 was rejected on 31.10.2022 and since now charge sheet is filed the present application is filed, that the investigation is completed, nothing has been recovered from him, case against him is based upon the voluntary statement of accused No.1 which is a weak piece of evidence, that he has no antecedents, that he is in judicial custody and that he undertakes to abide by the conditions that may be imposed by this court. On these grounds accused No.4 seeks bail.

4. Learned Public Prosecutor resisted the application. In the objections while reiterating the contents of F.I.R. and the charge sheet contends that the offences are serious one and hence, accused persons are not entitled for bail. Accused No.3 and 4 are politically and financially powerful. If bail is granted they may threaten the witnesses not to speak and there is likelihood of accused destroying the evidence. Further it is contended that there is likelihood of accused No.3 and 4

absconding and thus, delaying the proceedings. On these grounds prosecution prays to reject the applications.

5. Heard Sri R.Chandrashekar, learned counsel for accused No.3 and 4 and learned Public Prosecutor for state.

6. Following points arise for my consideration:

1) Whether the accused No.3 and 4 make out grounds for enlarging them on bail?

2) What order?

7. My findings on the above points are as under:

Point No.1 : In affirmative.

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

REASONS

Point No.1:

8. Perused the records. The respondent police registered F.I.R. against unknown persons for the offence punishable under Section 302 of IPC on the report of one Aravind (complainant).

9. Gist of the report is that the brother of complainant by name Durgesh @ Chinna married one Hema one and a half years ago and living in Anjani extension. The said Durgesh was working in Specks dot in near K.S.R.T.C. depot in Chintamani.

10. On 04.10.2022 at about 8 a.m. one Kiran made a

phone call to the complainant and informed him that somebody has murdered Durgesh in a vacant site behind Royal Enfield showroom at Kanampalli village. Then the complainant goes to the spot and finds that his brother is killed by some persons by cutting the neck with weapon.

11. Police registered F.I.R., then they arrested the accused No.1 to 4 and produced them before the Prl. Civil Judge & JMFC, Chintamani and they were remanded to judicial custody.

12. Now, after completing the investigation the charge sheet is filed against accused No.1 to 6. Accused No.5 and 6 are enlarged on bail.

13. Case against present accused No.3 and 4 is that at the alleged time of occurrence they were with the accused No.1 and facilitated the accused No.1 in stabbing the deceased Durgesh and in fact encouraged him to give one or two more blows.

14. In the back ground of the alleged incident, according to prosecution enmity between accused No.5 and deceased exists and also the alleged incident that had taken place between the accused No.1 and the deceased, one year prior to the alleged incident.

15. I have gone through the entire charge sheet now made available. Recoveries are said to have been made on the information furnished by accused No.1 and 2. A two wheeler and a mobile phone are also recovered from the accused No.3.

16. But it is pertinent to note that the entire case against the accused No.3 and 4 is entirely based upon the voluntary statement of accused No.1. It is alleged that these accused No.3 and 4 were with the accused No.1 and 2. By the very nature, voluntary statement is a weak piece of evidence, its usefulness on the basis of discoveries made notwithstanding. Any way the fact remains that except the voluntary statement of accused No.1, there is no direct evidence against these accused No.3 and 4.

17. However, the worth and credibility of the evidence against the accused No.3 and 4 though on the basis of voluntary statement, is a matter to be decided during the trial.

18. While considering a petition for bail what the court has to look to is the gravity of the offences alleged, specific roles attributed, availability of accused during the trial and likelihood of tampering with the prosecution witnesses.

19. So far as the gravity of the offences is concerned, the accused persons are charge sheeted for the offences punishable under Sections 302, 109, 212, 120B, 201 read with Section 34 of IPC and Sections 25(1A), 25(1AA), 27 of Indian Arms Act, 1959. Though the offences alleged are grave in nature, since investigation is completed and charge sheet is filed, at this stage, the materials made available now will have to be considered. As already observed except the alleged voluntary statement there is no direct evidence against these accused No.3 and 4.

20. Further as could be made out from the records of the committal court accused No.1 to 4 are arrested and they are in judicial custody from 6.10.2022.

21. So far as accused No.4 is concerned, nodoubt his earlier application was rejected in the month of October 2022. But thereafter investigation is completed and charge sheet is filed. Having regard to all these circumstances, continuation of accused No.3 and 4 in judicial custody would amount to punishment before trial having regard to the nature of the evidence found against them. Under such circumstances, there

are no reasons to reject their prayer for bail.

22. So far as the apprehension of the prosecution regarding availability of accused persons during trial, appropriate conditions can be imposed. For these reasons I answer point under consideration accordingly.

Point No.2:

23. In the result, I pass the following:

ORDER

Bail application filed by the accused No.3 and 4 under Section 439 of Cr.P.C. are hereby allowed.

Accused No.3 and 4 be enlarged on bail on their executing bond for Rs.50,000/- (Rupees fifty thousand only) each with one surety for like sum and subject to following:

CONDITIONS

- 1) They shall not tamper with the prosecution witnesses.
- 2) They shall regularly attend the court on all hearing dates.

Call on 08.02.2023.

(Dictated to the Judgment-writer in the open court, computerized by him. Script thereof is corrected and then pronounced by me in the open court on this the 24th day of January 2023).

(H.S.MANJUANTHA)

II Addl. District & Sessions Judge,
Chikkaballapura, Sitting at Chintamani.