

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

Dated this the 6th day of November 2024

Present

Sri. NAGAVENI, B.A., 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. (Abated)
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, 4, Sri N.M.S., Advocate for A2, Sri
B.S., Advocate for A5, Sri N.V.R., Advocate for A6)

Preamble;	
1. Provision under which the application is filed	Under Section 227 of Cr.P.C. (Section 250 of Bharatiya Nagarik Suraksha Sanhita, 2023
2. Relief sought for	Discharge of accused No.5 from the offences punishable under Sections 498-A, 304-B read with Section 34 of IPC
3. The date on which application is filed	15.07.2024
4. Number of the application	1
5. The date on which the objections are filed by different opponents	22.08.2024
6. The date on which the orders were passed on the said application	06.11.2024

ORDER ON APPLICATION FILED BY ACCUSED No.5
UNDER SECTION 227 OF CR.P.C. (Section 250 of Bharatiya
Nagarik Suraksha Sanhita, 2023)

Accused No.5 filed this application under Section 227 of Cr.P.C. (Section 250 of Bharatiya Nagarik Suraksha Sanhita, 2023) to discharge him of 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.

2. Accused No.5 contends that he has been implicated in this case on the statements of other accused person, at the time of recovery of a knife the other accused persons stated the name of this accused. Further stated that the accused No.1 has never seen the face of the deceased and also he is not present at the time of incident. Further stated that the entire charge sheet which is based on the only testimony of Cw.1, Cw.13, Cw.19, Cw.20 and Cw.29 on few words is not enough for framing of charge and direct the accused No.5 to go for lengthy trial, that incriminating material is there to attract any of the offence against this accused. On these grounds it is prayed to discharge him.

3. Learned Public Prosecutor resisted the application by filing objections. While reiterating the charge sheet averments,

it is contended that this is not a case where the accused can be discharged under section 227 of Cr.P.C. and the entire case has to be tried, that the statements of the witnesses made to the Investigating officer disclose the involvement of accused. On these grounds the prosecution prayed to dismiss the application.

4. Heard both sides.

5. Following points arise for my consideration:

1) Whether accused No.5 is liable to be discharged?

2) What order?

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

Point No.1 : In negative.

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

REASONS

Point No.1:

7. According to the counsel for accused No.5 there is no absolute ingredients to show that the accused No.5 was involved in conspiracy. The allegation that the accused No.5 had paid Rs.2,000/- to accused No.2 for his birthday celebration has not established by the Investigating Agency during the course of investigation. The prosecution has in total cited 46 witnesses, out of which Cw.1 is brother of deceased. Entire case based on

his statement. Other witnesses are all hearsay and panchanama witnesses. There is no eyewitness to the case. As per charge sheet the Investigating Officer too eager to fix the accused persons in this crime instead of investigating the matter to bring the truth regarding the case of murder and the Investigating Officer has taken so much of interest on accused No.5. It shows his intention to fix the accused No.5. Even he has no any direct or indirect participation in this crime. The material documents on record reveals that it is a fit case to discharge the accused No.5.

8. On the otherhand, the learned Public Prosecutor submits that as per the charge sheet the accused No.5 involved in the alleged offences and evidence in this case is not yet commenced. Without completion of evidence, at this stage non-involvement of accused No.5 in this case cannot be considered at all. At the time of investigation the Investigating Officer has collected materials to show that the accused No.5 involved in this case and accordingly Investigating Officer after completing investigation filed charge sheet against the accused persons including the accused No.5. Hence, prayed to dismiss the

application filed by the accused No.5.

9. On perusal of order sheet it reveals that the accused No.5 challenged the charge sheet impleading him as an accused before the Hon'ble High Court of Karnataka in Criminal Petition No.6794/2023. The counsel for the accused submits before the Hon'ble High Court that the accused No.5 is impleaded solely on the basis of the statement of accused No.1 who is alleged to have stated that the knife used for committing the crime was given by the petitioner/accused No.5. Further in the absence of any corroborative material the criminal proceedings is continuing only on the basis of the statement of co-accused. The Hon'ble High Court of Karnataka on 01.09.2023 stayed the matter against the accused No.5. Thereafter the above case is posted only for await stay order on accused No.5 and HBC. On 18.09.2024 the counsel for accused No.5 filed a memo along with xerox copy of order in Criminal Petition No.6794/2023, dated 03.09.2024 passed by the Hon'ble High Court of Karnataka at Bengaluru. The said order reveals that as per the submission of accused No.5 the petition is disposed as withdrawn. Thereafter the counsel for accused No.5 presss the

present application before this court.

10. As per the charge sheet, it reveals that the accused No.5 involved in the alleged offences under Sections 302, 109, 212, 120B, 201 read with Section 34 of IPC and under Section 25(A), 25(1AA) of Arms Act. I have already discussed that the evidence is not yet commenced. In my view without completing the evidence of prosecution witnesses the court cannot come to conclusion with regard to non-involvement of accused No.5 in this case. Hence, at this stage, the accused No.5 is not made out reasonable grounds to discharge him from the alleged offences. Accordingly, point No.1 is answered in negative.

Point No.2:

11. In the result I pass the following:

ORDER

Application filed by the accused No.5 under Section 227 of Cr.P.C. (Section 250 of Bharatiya Nagarik Suraksha Sanhita, 2023) is hereby rejected.

(Dictated to the Stenographer Grade-I directly on computer. Script thereof is corrected and then pronounced by me in the open court on this the 6th day of November 2024).

(NAGAVENI)

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