

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

Dated this the 2nd day of August 2021.

Present

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

S.C.NO.66/2021

Complainant: State by Sidlaghatta Town Police.
(Represented by Public Prosecutor)

Vs.

Accused:

1. Kalandar Khan @ Kallu,
s/o Ibrahim Khan,
aged about 40 years,
r/at. Behind Axis Bank,
Near T.M.Hospital,
Sidlaghatta town,
Chikkaballapura District.
2. Damber Moula
s/o late Mustaf,
aged about 35 years,
1st TMC Layout,
Near Driver Saleem house,
Sidlaghatta town,
Chikkaballapura District.
3. Amith
s/o Govinda,
aged about 26 years,
r/at Pillechar Queatres,
Behind Cocoon market,
Sidlaghatta town.
Chikkaballapura District.

4. Raghavendra Prasad @ Raghu
@ Auto Raghu,
s/o Satyappa,
aged about 30 years,
r/at Pillechar Queatres,
Near Kadiri Yusof house,
Sidlaghatta town.
Chikkaballapura District.

5. Akshay @ Guli,
s/o Venkatesh,
aged about 21 years,
r/at Konganahalli village,
Venugopalaswamy temple road,
Chintamani taluk.
Chikkaballapura District.

6. Pavan
s/o Srinivasa,
aged about 22 years,
r/at Hulugummanahalli village,
Kaiwara post,
Chintamani taluk,
Chikkaballapura District.

7. Srinath
s/o Krishnappa,
aged about 21 years,
r/at Byeregollapalli village,
Patapalya hobli,
Bagepalli taluk.
Chikkaballapura District.

8. Roshan @ Chavand,
s/o Akbar,
aged about 22 years,
r/at 1st TMC Layout,
Crusent school,
Near Tammim house,
Sidlaghatta town,
Chikkaballapura District.

9. Rajesh
s/o late Krishna Murthy,
aged about 22 years,
r/at Felature quarters,
Ward No.14,
Sidlaghatta town.
Chikkaballapura District.

(Represented by Sri R.Chandrashekar,
Advocate for accused No.1 to 8, Sri M.G.S.R., Advocate for A9)

ORDER ON BAIL APPLICATIONS FILED BY
ACCUSED NO.1 TO 9

Accused No.1 to 9 who are in judicial custody filed these applications under section 439 of Cr.P.C. seeking for bail.

2. Accused No.1 to 8 are represented by Sri R.Chandrashekar, learned counsel. Whereas the accused No.9 is represented by Sri M.G.Srinivasarao, learned counsel.

3. But in the bail application instead of mentioning as accused No.1 to 8, it is mentioned as accused No.1 to 7 and 9.

4. Accused persons narrate the allegations as found in the prosecution papers. Further it is contended that the accused No.1 to 7 are arrested on 20.03.2021 and accused No.8 is arrested on 27.03.2021, maruthi car and weapons have already been seized.

5. Further the accused persons are having deep roots in

the society and are respectable persons, that there is no prima-facie case against them, that the complainant is not sure as to whether these accused persons murdered his brother. Further they refer to the contradictory statements made in the complaint and the statement of the witness, further there is an improvement. Further it is contended that the accused No.8 is suffering from cardiac problem, that there is no direct evidence against him, the travelers bungalow where conspiracy is alleged to have been hatched is located in a conspicuous place, further the rider of the two wheeler in which the deceased was proceeding could not witness the incident, that the alleged incident took place before Sidlaghatta police station which is a densely populated area, that the investigation is completed and charge sheet is filed and the case is committed to this court, further statements of the eyewitnesses demonstrate improvement and embellishment, that the accused No.1 and 2 were not present at the spot, further the deceased was a money lender and a political leader and his opponents might have done this, that the accused persons abide by the conditions that may be imposed by this court. On these grounds, the accused No.1

to 8 seek bail.

6. Accused No.9 contends only on the basis of voluntary statements of other accused persons he has been implicated, that his bail application earlier in CrI. Misc.No.443/2021 was rejected by the court, now the matter is investigated and charge sheet is filed and case is committed to this court, that there is no material against him to show that he participated in the criminal conspiracy, nothing has been seized from him, that he is not required for any further investigation and he is readily available to face the trial, that he undertakes to abide by the conditions that may be imposed by this court, that there is no question of tampering or meddling with prosecution witnesses as charge sheet is already filed, that he is a permanent resident of Sidlaghatta town having aged and ailing mother and except him there is none to look after her, that he is innocent and respectable citizen having deep roots in the society and due to COVID-19 pandemic situation he is afraid of getting infected. On these grounds he seeks bail.

7. 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 persons are politically and financially powerful. If bail is granted they may threaten the witnesses not to speak and there is likelihood of accused persons destroying the evidence. On these grounds prosecution prays to reject the applications.

8. Heard Sri Sri R.Chandrashekar, learned counsel for the accused No.1 to 8, Sri B.Srinath, learned counsel for accused No.9 and learned Public Prosecutor for the state.

9. Learned counsels submitted that the accused No.1, 2, 8 and 9 were not present at the time of alleged incident and only on the basis of voluntary statement of accused No.1, accused No.8 is implicated. Further they would refer to the statement as recorded by the Investigating officer to contend that there is improvement, embellishment and even contradictions in the statements. Further it is contended that the very complaint itself is on the basis of suspicion as complainant himself is not sure about who had done the alleged incident.

10. Further it is contended that after due deliberation only the complaint seems to have been filed so as to implicate these

accused persons in the background of some enmity.

11. Learned Public Prosecutor contended that a heinous crime is committed in broad day light in the heart of the city. Thus terrifying public at large and release of accused persons on bail will send a wrong signal. Hence, learned Public Prosecutor prays to reject the bail applications.

12. After having heard both sides, the following points arise for my consideration:

- 1) Whether the accused No.1 to 9 make out grounds for enlarging them on bail?
- 2) What order?

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

Point No.1 : Partly in affirmative.

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

REASONS

Point No.1:

14. Perused the records. The respondent police registered F.I.R. for the offences punishable under sections 302, 120-B read with section 34 of IPC on the report of one Mazid Nawaz (complainant), who is the brother of one Amzad Nawaz who is alleged to have been murdered.

15. Report discloses that the deceased Amzad Nawaz is a merchant. On 20.03.2021 he had been to supervise his house which is under construction. While returning in a two wheeler along with one Nawaz pasha, the accused persons came in a Maruthi omni car bearing registration No.KA 40 M 1633 from behind, dashed the two wheeler near Sidlaghatta Railway bridge. By this the deceased Amzad Nawaz fell down. Then the accused persons got down from the Maruthi omni, assaulted him with axe. By this Amzad died.

16. Complainant thereafter refers to the incident of a past enmity between the deceased and the accused No.1 herein who happens to be his relative.

17. Accused No.1 to 9 are arrested and produced before the court along with a remand application.

18. The materials on record shows that the accused No.3 and 7 had contacted one Srinath s/o Krishnappa of Byresolapalli village in Bagepalli taluk and persuaded him to eliminate Amzad Nawaz.

19. While determining a petition for bail, the court must take into consideration the gravity of the offences alleged, the

impact made on the society either in granting or refusing the bail, possibility of implicating the accused falsely to settle the scores. It is also established principles of law that only seriousness of the allegation is not a decisive factor while considering a petition for bail.

20. In this case, the allegation is of murdering a man in broad day light. The allegation against the accused persons is that they hatched conspiracy to physically eliminate Amzad Nawaz.

21. It is true that the truth or otherwise of the allegations will have to be proved during the trial.

22. But the court must also consider the probable impact of enlarging the accused persons, accused of heinous offence. In this case, the murder took place in a broad day light. It is stated that the accused persons came in a Maruthi van, dashed the two wheeler from behind. All these indicate that there was some pre-plan.

23. Perusal of the charge sheet shows that the Investigating officer is said to have recorded voluntary statements of accused persons and some blood stained clothes

were also recovered at the instance of the accused persons. Those blood stained clothes and others have been sent to FSL.

24. In this case, the specific allegation is against the accused No.3 to 7. According to prosecution papers the accused No.3 and 4 took the Maruthi omni car belonging to Cw.15 on the pretext of visiting Boyikonda Gangamma temple. This is recorded in the C.C.T.V. Thereafter they purchased axes and all the accused persons hatched a plan to eliminate the deceased.

25. When the deceased had been to supervise his newly under construction complex near Madina Maszid the accused No.8 gave information to accused No.3. In pursuance of this information the accused No.4 to 7 were ready in the Maruthi omni. When the deceased was returning along with Cw.3 in a two wheeler the accused No.9 had kept an eye over the movements of the police near Sidlaghatta town police station. The accused No.4 to 7 drove the maruthi van in high speed, dashed the two wheeler from behind in which the deceased was proceeding, due to this deceased and the rider of the bike fell on the road, then the accused No.3 came there in an auto, he showed the deceased to other accused persons i.e., accused No.4

to 7. Thereafter the accused No.4 to 7 assaulted the deceased with axe on different parts of the body, due to which he died on the spot. When these accused persons i.e., accused No.3 to 7 tried to escape, then the police came there and tried to stop the car. But however, the accused No.6 tried to run the car over the police, escaped.

26. This is all the allegations made against the accused persons.

27. So far as the accused No.1 and 2 is concerned, they are stated to have had an enmity with the deceased. The accused No.1 is stated to have lost his both hands due to the assault made by the deceased long back, whereas the accused No.2 thought that it is the deceased who informed the police over the accused No.2 indulging sale of ganja.

28. So far as the accused No.8 is concerned, allegation made against him is that he was watching the movements of deceased. The accused No.9 was keeping an eye over the movements of the police.

29. Prosecution wants to bring home the guilt of the accused by stating that all these accused persons hatched a plan.

30. So far as the accused No.3 to 7 are concerned, the Investigating officer has recorded the statement of a witness who claims to have seen the incident. So, as of now there is a direct allegation against the accused No.3 to 7.

31. It is true that the allegations made against the accused persons, irrespective of the nature of the offences alleged, will have to be proved during the trial.

32. So far as the allegations against the accused No.1, 2, 8 and 9, it all depends upon how the prosecution brings on record the evidence relating to conspiracy aspect.

33. However, so far as the accused No.3 to 7 are concerned, the statement of witness is recorded.

34. Learned counsel for the accused persons tried to contend that the rider of the vehicle in which the deceased was moving has not made any statement implicating the accused persons. This may be true. But at the same time, there is also a statement of a witness who claims to have seen the accused No.3 to 7 doing a horrific act in broad day light.

35. Further the allegation against the accused No.3 to 7 is that they tried to run the maruthi van over the police who tried

to stop them and ultimately successful in escaping.

36. With these allegations, now it is to be seen whether granting of bail to all the accused persons is warranted or not.

37. So far as the allegations against the accused No.1, 2, 8 and 9 are concerned, it depends upon the circumstantial evidence which the prosecution may produce during the trial.

38. So far as the allegations against the accused No.3 to 7 are concerned, according to prosecution the Investigating officer has recorded the statement of eyewitness.

39. When a crime happens in the broad day light that too in the heart of a town, it sends a signal of caution. The public at large may be terrified and there may be indication of lapses in the safety of public.

40. A crime is an act against the society also. Well being of the society is also a matter to be taken note of. When the accused persons are alleged to have done a crime in a broad day light it also indicates the attitude of the persons involved in the crime. Under such circumstances, the apprehension of the prosecution that the accused persons may indulge in similar activities if enlarged on bail cannot be easily ruled out.

41. Further according to prosecution there are eyewitnesses. The trial has to be conducted and it takes sometime. If the accused persons, particularly accused No.3 to 7 are enlarged on bail, there is always likelihood of tampering with the prosecution witnesses. So, it would not be safe and proper to enlarge the accused No.3 to 7 on bail having regard to the materials available against them.

42. So far as the accused No.1, 2, 8 and 9 are concerned, the allegations made against them hinges on circumstantial evidence. Under such circumstances, having regard to the allegations made against each of the accused persons I am of the opinion that the accused No.1, 2, 8 and 9 are entitled to be enlarged on bail. So far as the accused No.3 to 7 are concerned, having regard to the allegations made against them, it is not proper to enlarge them on bail. Hence, I answer the point under consideration accordingly.

Point No.2:

43. In the result, I pass the following:

ORDER

Bail application filed by the accused No.1, 2, 8 and 9 under section 439 of Cr.P.C. is hereby

allowed.

Accused No.1, 2, 8 and 9 be enlarged on bail on their executing bond for Rs.1,00,000/- (Rupees one lakh only) each with two solvent sureties for like sum and subject to following:

CONDITIONS

- 1) They shall not get themselves involved in any criminal activities.
- 2) They shall not tamper with the prosecution witnesses.
- 3) They shall regularly attend the court on all hearing dates.

Bail application filed on behalf of the accused No.3 to 7 is hereby rejected.

(Dictated to the Judgment-writer, computerized by him. Script thereof is corrected and then pronounced by me in the open court on this the 2nd day of August 2021).

(H.S.MANJUANTHA)

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