

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

Dated this the 1st day of December 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)

Applicant/Claimant: Wajid Nawaz Khan
s/o Humayun Khan,
aged about 35 years,
r/at Ward No.16,
1st Karmikanagara,
Sidlaghatta Town and Taluk,
Chikkaballapura District.
(Represented by Sri A.Ramesh, Advocate)

ORDER ON APPLICATION FILED BY THE
APPLICANT/CLAIMANT UNDER
SECTION 451 & 457 OF CR.P.C.

Power of attorney holder of the claimant made an application under Section 457 of Cr.P.C. seeking interim custody of Motor Cuycle Jupiter bearing registration No.KA-40-EB-7786, Chassis No.MD626EG4X4HIH92589, Engine No.EG4HH1445871

2. It is contended that the applicant Wazid Nawaz Khan is the brother of one Amjad Nawaz who is killed. The deceased Amjad Nawaz was the owner of the vehicle above referred.

After his death, the wife of the deceased has executed a power of attorney in favour of the applicant. Further it is contended that the vehicle is required for day to day use, the vehicle will be damaged if it is exposed to sun shine and rain in the police station and that the applicant will be bound by the conditions that may be imposed by this court.

3. Learned Public Prosecutor resisted the application. The application is resisted on the ground that the witnesses have to identify the vehicle during the trial and the applicants may change the colour during the trial and the applicants may change the colour of the vehicle and since it is seized in connection with a heinous offence, learned Public Prosecutor prayed to reject the application.

4. Heard Sri A.Ramesh, learned counsel for the applicant and learned Public Prosecutor for the state.

5. Only point that arises for my consideration is that “Whether the applicant is entitled for the interim custody of the vehicle?” and my answer to the above point is in ‘affirmative’ for the following;

REASONS

6. Accused No.1 to 9 have been charge sheeted for the offences punishable under Sections 302, 120(B), 114 read with

Section 34 of IPC.

7. Case of the prosecution is that the 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.

8. 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.

9. Two wheeler bearing registration No.KA-40-EB-7786, Chassis No.MD626EG4X4HIH92589, Engine No.EG4HH1445871 belonged to the victim Amjad Nawaz. In this regard the applicant has produced the R.C., Insurance policy and death certificate and also a family tree.

10. Perusal of the records shows that the applicant has

also made an application before the committal court. But no order was passed on it.

11. Nodoubt, the vehicle which is now sought to be released is involved in the present case. The deceased was in fact, coming in the said vehicle. The R.C. stands in the name of deceased Amjad Nawaz.

12. Power of attorney executed by the wife and children of deceased Amjad Nawaz is also available in the records. In fact it was produced before the committal court.

13. Any way, while considering an application under Section 457 of Cr.P.C. the court is not considering the title to the property.

14. Now, the vehicle is kept in the police station. If the vehicle is kept idle being exposed to sun shine and rain, the value will certainly diminish.

15. So far as the identification of the property is concerned, it would be appropriate to take photographs and then produce it before the court. Further, if at all the vehicle is required for identification purpose, it can be secured also.

16. Under such circumstances, at this stage no reasons are

appearing to reject the application. Hence, I am of the opinion that it would be appropriate to release the vehicle into interim custody of applicant by imposing certain conditions. Hence, I answer the point under consideration accordingly and pass the following;

ORDER

Application filed by one Wajid Nawaz Khan s/o Humayun Khan as a GPA holder of the wife and children of deceased Amjad Nawaz under Section 457 of Cr.P.C. is hereby allowed.

Release the Motor Cycle Jupiter bearing registration No.KA-40-EB-7786, Chassis No.MD626EG4X4HIH92589, Engine No.EG4HH1445871 into the interim custody of the applicant subject to the following;

CONDITIONS

- 1) Applicant shall execute Indemnity Bond for Rs.20,000/- (Rupees twenty thousand only) with one surety for like sum.
- 2) He shall not change the colour of the vehicle during the trial.
- 3) He shall not alienate the vehicle during the pendency of the proceedings.
- 4) He shall produce the vehicle either before the court or before the Investigating officer whenever directed.
- 5) Investigating officer before releasing the vehicle shall

prepare a panchanama and take photographs of the vehicle and the same be produced before the court.

Call on 15.12.2021.

(Dictated to the Judgment-writer, computerized by him. Script thereof is corrected and then pronounced by me in the open court on this the 1st day of December 2021).

(H.S.MANJUANTHA)

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