

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

Dated this the 26th day of September 2022.

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 APPLICATION FILED

UNDER SECTION 439(2) OF CR.P.C.

Learned Public Prosecutor filed this application under Section 439(2) of Cr.P.C. to cancel the bail granted to accused No.1 as he is involved in C.R.No.117/2022 of the Sidlaghatta Town police much against to the conditions imposed by this court while granting bail on 02.08.2021.

2. Along with the application copy of F.I.R. in C.R.No.117/2022 of Sidlaghatta Town police, order passed by this court on 02.08.2021, copy of the remand application in C.R.No.117/2022 are filed.

3. Accused No.1 resisted the application. It is contended that the accused No.1 after having been enlarged on bail in this case has not entered the Sidlaghatta Town and he has not tampered or threatened the prosecution witnesses. Further it is

stated that the defacto complainant has filed a false complaint to see that the bail is cancelled. On these grounds accused No.1 resists the application.

4. Heard learned Public Prosecutor and Sri R.Chandrashekar, learned counsel for the accused No.1.

5. Only point that arises for my consideration is “Whether bail granted by this court by an order, dated 02.08.2021 is to be cancelled as against accused No.1 for the reason that he has violated the conditions of the bail? and my answer is in the ‘affirmative’ for the following;

REASONS

6. 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.

7. 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.

8. 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.

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

10. 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.

11. Accused No.1 made an application under Section 439 of Cr.P.C. This court on 02.08.2021 granted bail to accused No.1, 2, 8 and 9 by imposing certain conditions including execution of bond for Rs,1,00,000/- with two sureties for likesum. Other conditions are as follows;

- 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.

12. Such being the case, accused No.1 is shown to have been involved in another case i.e., C.R.No.117/2022.

13. C.R.No.117/2022 is registered by the Sidlaghatta Town police on the report of one Afroz Pasha. The said report pertains to an incident, dated 02.08.2022. It is alleged that the present accused No.1 and others assaulted one Fyroz, the brother of complainant with one long.

14. Truth or otherwise of the allegations made in C.R.No.117/2022 is a separate matter.

15. Learned counsel for accused No.1 would contend that the accused No.1 had not gone to Sidlaghatta town since he was granted bail in this case.

16. He would also contend that the police have falsely implicated the accused No.1 in C.R.No.117/2022. But said submission cannot be accepted on its face value. Because the accused No.1 does not give any specific reason as to why the police would falsely implicate him. Any way this is a matter to

be dealt with in that case only.

17. But what appears now is that the accused No.1 is shown to be involved in another criminal case. This is much against to the condition imposed by this court while granting bail.

18. When violation of the bail condition is glaring, the court cannot shut its eyes. So, the court has got the power to cancel the bail in case bail conditions are violated.

19. Further in this case, the gravity of the allegations also will have to be taken note of. The accused persons are stated to have murdered a person in the broad day light. For these reasons I am of the opinion that the bail granted to accused No.1 by an order, dated 02.08.2021 is to be cancelled. Hence, I answer the point under consideration and pass the following;

ORDER

Application filed by the learned Public Prosecutor under Section 439(2) of Cr.P.C. is hereby allowed.

Consequently, bail granted to accused No.1 Kalandar Khan @ Kallu by an order, dated 02.08.2021 is hereby cancelled.

For objections of accused No.2 for the application filed by the C.P.I. for cancellation of bail,

call on 12.10.2022.

(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 26th day of September 2022).

(H.S.MANJUANTHA)

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