

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

Dated this the 2nd day of December 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.3, 4 and 7)

ORDER ON BAIL APPLICATION FILED UNDER SECTION 439
OF CR.P.C. ON BEHALF OF ACCUSED NO.3, 4 & 7

Learned counsel appearing for accused No.3, 4 and 7 filed an application under Section 439 of Cr.P.C. seeking bail to the above named accused persons.

2. Accused persons narrate the allegations made by the prosecution in the charge sheet. Further it is contended that the accused persons were arrested on 20.03.2021 and they are in judicial custody since then, this court rejected their bail application on 02.08.2021 on various grounds, that the F.S.L. report is not submitted yet, that there is no tampering of prosecution witnesses as they are in judicial custody, that they have assisted the investigation and are no more required for investigation, nothing has been recovered from them, that they undertake to abide by the conditions that may be imposed by

this court. On these grounds they seek bail.

3. 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.

4. Heard Sri Sri R.Chandrashekar, learned counsel for the accused No.3, 4, and 7 and learned Public Prosecutor for the state.

5. Following points arise for my consideration:

- 1) Whether the accused No.3, 4 and 7 make out grounds for enlarging them on bail?
- 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. 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.

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. 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.

10. Accused No.1 to 9 are arrested and produced before

the court along with a remand application.

11. 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.

12. 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.

13. In this case, perusal of the records shows that by an order, dated 02.08.2021 the accused No.1, 2, 8 and 9 were granted bail. Whereas the accused No.3 to 7 were denied of the same having regard to the role attributed to them in the charge sheet.

14. Allegations as could be made out from the charge sheet are that the accused No.3 and 4 took the Maruthi omni car belonging to Cw.15. Accused No.8 gave information to accused

No.3 about the movements of the deceased. So, the accused No.4 to 7 were ready in Maruthi omni car, when the deceased was returning, the accused No.9 informed the same to accused persons. Then the accused No.4 to 7 drove the Maruthi van in high speed, dashed to two wheeler in which the deceased was proceeding, accused No.3 came there in an auto and showed the deceased to accused No.4 to 7. Then, it is alleged, that the deceased was assaulted with axe and he eventually died at the spot.

15. It is pertinent to note that the alleged incident took place in a broad day light, that too in the heart of the city and near police station. The charge sheet also mentions that when one police officer tried to stop the vehicle, these accused persons attempted to run over him also.

16. In this case, charges are already framed. But FSL report is awaited.

17. Order sheet, dated 02.03.2022 shows that the P.S.I. had filed an explanation in pursuance of a notice issued by this court for not producing the properties.

18. Explanation shows that the properties are sent to

F.S.L. and the due date fixed by F.S.L. is 01.10.2022 and 5.12.2022. In this regard copies of acknowledgement are also produced.

19. So, the properties are awaited.

20. In this case, some recoveries are also made, such as the clothes which are blood stained belonging to the accused persons and they are stated to be recovered in Bengaluru. These are all the matters of trial.

21. But perusal of the records further shows that these accused No.3 to 7 filed criminal petition No.7186/2021 under Section 439 of Cr.P.C., but the Hon'ble High Court dismissed the petition on 21.10.2021.

22. Just by efflux of time, there is no change in circumstances. The allegations remain as serious as they were earlier. The apprehensions of the prosecution about tampering the evidence and also threatening of the witnesses have not vanished.

23. So, just because the accused persons have spent time in the judicial custody, is not a sole criteria to consider their bail application favourably.

24. As already observed in the order, dated 02.08.2021, statements of eyewitnesses have been recorded. The court must also take notice of the apprehensions that may be in the minds of the witnesses. Further as already observed a ghastly act took place in the broad day light. This will have a chilling effect on the public. There is a serious concern about safety of the public, witnesses and also law and order situation. Under such circumstances, it is not a situation where the bail application can be considered favourably. For these reasons I answer the point under consideration accordingly.

Point No.2:

25. In the result, I pass the following:

ORDER

Bail application filed on behalf of the accused No.3, 4, and 7 under section 439 of Cr.P.C. is hereby rejected.

Call on 16.12.2022.

(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 December 2022).

(H.S.MANJUANTHA)

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