

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

Dated this the 19th day of April 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 and 4)

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

Accused No.3 and 4 filed this application under Section 439 of Cr.P.C. seeking bail.

2. Accused persons refer to the case of the prosecution. It is contended that the earlier bail applications of the accused persons were rejected on 02.08.2021 on various grounds. The accused persons were arrested on 20.03.2021 and since then they are in judicial custody, that the matter is posted for evidence, Cw.1 filed a memo for appointing a private counsel, that the accused persons are in judicial custody from past two years and that the trial has not commenced, which clearly shoes that the complainant is trying to drag on the proceedings, that they have assisted in the investigation and are not required for further investigation and that they undertake to abide by the

conditions that may be imposed by this court. On these grounds they seek bail

3. Learned Special 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.

Further it is contended that there are eyewitnesses to establish the involvement of accused persons in the alleged crime, further it is alleged that the relatives of the accused persons from the last three months are threatening the witnesses, if bail is granted it would hamper fair trial, that even in the judicial custody also the accused persons behaved indecently with women staff of the jail, no new grounds are shown. On these grounds prosecution prays to reject the applications.

4. Heard Sri H.K.Manjunatha, learned counsel for the accused No.3 and 4 and Sri B.R.Srinath, learned Special Public

Prosecutor.

5. Following points arise for my consideration:

1) Whether the accused No.3 and 4 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. In this case, perusal of the order sheet shows that the Jail Superintendent had filed a requisition to transfer the accused persons to any other prison on the reason that the accused No.1, 3, 4 and 5 to 7 threatened and harassed the other inmates of the prison and also misbehaved with women staff. Jail Superintendent was permitted to transfer the accused persons accordingly.

13. 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.

14. 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.

15. 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.

16. 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.

17. When the matter was posted for evidence, summons was issued to Cw.1. He appeared before the court on 18.01.2023 and made an application stating that the efforts are going on to appoint Special Public Prosecutor. Hence, the matter had to be adjourned.

18. Subsequently, a Special Public Prosecutor is appointed in this case.

19. Though the accused persons are in judicial custody from inception, that would not on its own give any right to seek bail.

20. While considering the bail application, the materials

produced, requirement of the accused persons for investigation and likelihood of witnesses being threatened or induced also will have to be taken into consideration.

21. In this case, as already observed, the alleged incident took place in a broad day light, in the heart of the city. This itself shows the conduct of the accused persons. Though the allegations will have to be proved during the trial, at the same time the court cannot loose sight of the other circumstances.

22. In this case, it is stated that there is an enmity between the accused persons and the deceased. Under such circumstances, the apprehension of the prosecution that these accused persons may threaten the witnesses cannot be ruled out so easily.

23. Though the trial is being delayed for various reasons, complainant cannot be blamed entirely for the said delay. Even if there is a delay it does not prevent the court from looking to the materials available. In this view of the matter there are no grounds to grant bail to the accused No.3 and 4.

24. Learned Special Public Prosecutor placed reliance upon the following decisions;

- 1) 2017(4) KCCR SN 378; in the case State of Bihar and another v. Amit Kumar @ Bancha Rai.
- 2) 2017(1) KCCR 849; in the case of Mallanna and others v. The State of Karnataka, Sirawar Police Station, District Raichur.
- 3) 2018(1) KCCR 597; Mahesh @ Thatte and another v. State of Karnataka.

25. I have gone through the decision. Those decisions laid down guidelines for considering bail application. Every bail application has to be considered in the light of the materials available. Having regard to the reasons stated above, this is not a case where now the application of accused No.3 and 4 can be leniently considered. For these reasons I answer the point under consideration accordingly.

Point No.2:

26. In the result, I pass the following:

ORDER

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

Call on 09.05.2023.

(Dictated to the Judgment-writer, computerized by him. Script thereof is corrected and then pronounced by me in the open court on this the 19th day of April 2023).

(H.S.MANJUANTHA)

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