

KACM010004992014



**IN THE COURT OF II ADDITIONAL DISTRICT AND  
SESSIONS JUDGE AT CHIKKAMAGALURU**

**Dated this the 06<sup>th</sup> day of January, 2023**

**:PRESENT:**

**Smt. Bhanumathi B.C., B.A.L., LL.B.,**  
II Addl. District and Sessions Judge,  
Chikkamagaluru.

**S.C No.25/2014**

Complainant : State by Birur Police.  
(Represented by Public  
Prosecutor)

-VS-

Accused : 4. V.Chandrappa,  
S/o. Venkateshappa,  
Aged about 22 years,  
R/o J.P.nagar, 8<sup>th</sup> Phase,  
Kothanur Dinne,  
Near Ganesha Temple,  
Babu Reddy Vatara,  
Bengaluru.

(Represented by Sri N.H.  
Yogesh, advocate)

**ORDER**

The accused No.4 has filed this application under section 439 of Cr.P.C., for enlarging him on bail in the above case registered against him and others for the offences punishable under sections 302 and 201 of Indian Penal Code r/w section 34 of the said Code.

2. It is contended by the accused No.4 that after completing investigation the complainant police have submitted charge sheet against the accused for the aforesaid offences and he has not committed any of the offences alleged against him, he is in judicial custody since long time and his detention in the judicial custody is not required for further progress of the case, he hails from respectable family and having deep roots in the society and having movable and immovable properties and hence there is no chance of abscondance if he is let on bail and tampering with the prosecution witnesses and he undertakes to abide by the terms and conditions that may be imposed by the court for granting bail to him. Inter-alia on these grounds, the accused sought for allowing the petition.

3. The learned Public Prosecutor has resisted the above application by filing statement of objections. By reproducing the allegations made in the charge sheet, it is contended by the prosecution that the materials placed on record prima-facie discloses the involvement of this accused in the crime in

question. The trial is yet to be completed and if at this stage, this accused is released on bail, he may involve himself in the commission of similar offences and he may threaten and intimidate the prosecution witnesses. He may also flee from justice and thereby he would hamper the trial and further having regard to the nature and gravity of offence alleged against this accused, the Public Prosecutor sought for rejecting the application.

4. Heard arguments and perused the records.

5. The points that arise for the consideration of this court are:-

### **POINTS**

1. Whether the accused No.4 has made out any ground to enlarge him on bail in the above case?

2. What order?

6. My findings on the above points are as follows:

**Point No.1 : In negative,**

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

### **REASONS**

(Note:- It is made clear that the observations made by this court in the course of this order is only in respect of considering the bail application and the same has no bearing on the merits of the case.)

7. **Point No.1** : I have carefully perused entire materials placed on record. This court is conscious of the fact that the court cannot and is not supposed to sift the evidence made available by the prosecution at the time of deciding the bail application and moreover, this accused was already enlarged on bail on merits. Hence, only for the purpose of deciding whether the accused is entitled for bail or not, I proceed to discuss the facts alleged by the prosecution and whatever I say while disposing this bail application cannot be construed as an expression of opinion on the merits of the main case.

8. In this case, the accused herein and accused Nos.1 to 3 have been charge sheeted for the offences punishable under sections 302 and 201 of IPC with the allegations that the accused No.1 and deceased Puttappa, who is the husband of CW.1 were brothers and there were frequent quarrels between them in respect of the partition of the properties and in the said regard, the accused No.1 with an intention to kill said Puttappa, he developed acquaintance with accused No.2 and 3 and this accused, who hails from Bengaluru and agreed to give Rs.3,00,000/- to accused Nos.2 to 4 to commit murder of Puttaswamy and gave Rs.54,000/- as advanced to them and in pursuance of the same, on 14.10.2013, the accused Nos.2 to 4 developed acquaintance with deceased Puttappa when he had been to consume brandy at Sreenivasa Wine Shop,

Lingadahalli and later accused Nos.2 to 4 took deceased Puttappa @ Puttaswamy with them in a Toyoto Qualis vehicle and when he was under the influence of alcohol, they got him alighted from said vehicle and laid him on the road, accused Nos.3 and 4 held his hands and accused No.2 ran said vehicle over him and as a result, said Puttappa suffered injuries and died in the spot.

9. It is seen from the records that during the course of investigation, this accused was arrested and produced before the court on 29.10.2013 and he was remanded to judicial custody and subsequently, he was released on bail on 26.07.2014. Since the accused was already released on bail on merits, this court is not supposed to look into the merits or demerits of the case. Hence, I proceed to consider whether the accused, who remained absent from the court proceedings and whose presence has been secured under NBW, has made out any ground to once again enlarge him on bail.

10. It is seen from the records that when the matter was set down for judgment, this accused remained absent and pursuant to NBW issued against him, he was apprehended and produced before the court on 28.11.2019, on which he was again taken to judicial custody. Further it is seen from the records that subsequently, he filed application under section 439 of Cr.P.C and it came to be allowed and he was released on bail on

07.03.2020. It is further seen from the records that again when the matter was set down for recording further statement of accused under section 313 of Cr.P.C, this accused remained absent and by noting the submission made by his counsel that said accused was not responding to him, the court has issued NBW against him and in pursuance of the same, this accused was apprehended and produced before the court on 13.01.2022, on which, he was taken to judicial custody as he remained absent repeatedly and since then this accused is in judicial custody. Now the accused No.4 come up with similar application to enlarge him on bail.

11. As stated above, this accused was earlier enlarged on bail on merits and subsequently, when he remained absent, his presence was secured under NBW and he was again taken to judicial custody. At that point of time, the accused No.4 filed an application under section 439 of Cr.P.C and it was allowed and again he was released on bail on 07.03.2020 with condition that he should keep himself present on all hearing dates without fail. But this accused again continuously remained absent and his presence could be secured only under NBW on 13.01.2022 and since he jumped the bail conditions, he was taken to judicial custody.

12. It is pertinent to note that even in the interregnum period, this accused remained absent on several occasions and later appeared and got

recalled NBW issued against him. In the present application, the accused has not made out any ground to explain his continuous and frequent absence from the court proceedings by violating the terms and conditions imposed on him by the court while admitting him on bail.

13. The danger of accused fleeing from justice is one of the important factor to be kept in mind at the time of considering the bail application. It is to be noted that if an accused person obtains an anticipatory bail or regular bail, it is obligatory on his part to make himself available for investigation and later for trial and he having obtained the benefit of bail, cannot make himself scarce by remaining absconding. Further in the case on hand, when the accused is very much aware of the pendency of case and terms and conditions stipulated by this court at the time of granting bail to him coupled with the fact that the accused has not assigned any reason for his absence, this court is of the humble opinion that in facts situation, the accused loses his right to seek bail since he violated the terms and conditions granted earlier by this court by making himself unavailable from the court proceedings.

14. In addition to this, it is to be noted that this matter is of the year 2014 and the matter is set down for arguments on merits and if at this stage, the accused is again let on bail, the possibility of

he again fleeing from justice and causing hindrance for the disposal of the matter cannot be ruled out. Further, since the matter is of the year 2014 and the same is set down for arguments on merits, the same would be disposed of at the earliest on priority. Having regard to these aspects and further having to regard to previous conduct of this accused after he was admitted on bail, this court is of the humble opinion that this accused has not made out any ground to enlarge him on bail. Accordingly, I answer Point No.1 in negative.

15. **Point No.2:** In view of the above findings on point No.1, I proceed to pass the following:

### **ORDER**

The application filed by the accused No.4 under Section 439 of Cr.P.C. is hereby rejected.

(Dictated to Judgment Writer directly on computer, script corrected and then signed by me on this the 06<sup>th</sup> day of January, 2023)

Sd/-

(BHANUMATHI.B.C)  
II Addl. District & Sessions Judge,  
Chikkamagaluru.