

**IN THE COURT OF THE II ADDL.DISTRICT AND SESSIONS
JUDGE AT CHIKMAGALUR**

**Present: Sri. Manjunath Sangreshi, B.A.LL.B.[HONS.]
II Addl. District & Sessions Judge,
Chikkamagaluru.**

Dated this the 04th day of April 2019

S.C.35/2019

Complainant: State by Ajjampura Police,
Represented by the Public
Prosecutor, Chikmagalur.

-V/s-

Accused: 1. Asharani,
W/o.Swamy,
Aged about 25 years,
House Wife.

2. Vijayakumara,
S/o. Late Sidramappa,
Aged about 51 years,
Agriculturist,

3. Bharath,
S/o.Vijayakumara,
Aged about 22 years.
Student

All are R/o.Benkikere
Channagiri Hobli and Taluk
Davanagere District.

(Represented by Sri.B.M.Laxmana
Gowda, Advocate)

ORDERS ON BAIL PETITION U/sec. 439 OF Cr.P.C.

This is the petition under section 439 of Cr.P.C., filed by accused No.1 to 3 seeking the benefit of bail in connection with Cr.No.303/2018[S.C.No.35/2019] of Ajjampura Police Station registered against them for the offences punishable under sections 120-B, 302, 201 R/w.sec 34 of IPC.

2. The brief facts of the prosecution case are that on 09.11.2018, the complainant Smt. Rashmi, Grade I Secretary of Bukkambudi Grama Panchayath filed a written complaint to the police stating that, when she was in her office got a credible information of finding of a dead body kept in a gunny bag near bukkayanakere. Upon said information, the complainant along with her staff rushed to the said spot where they found a gunny bag tied with electric wire. When they opened the said bag, they found a dead body without head and that was partly decomposed. Further, it was noticed that there were cut injuries caused by weapons on the left shoulder and fingers of left hand of the dead body. It was later revealed that the dead body was of one Rudraswamy as it was identified by his mother. During Investigation, it was also revealed that on 07.11.2018 deceased Rudraswamy went to the house

of A.1- Asharani and thereafter, mother of deceased could not contact him and his mobile phone was switched off. The investigating Officer enquired with some other persons and got the said information. The Investigating Officer for the purpose of investigation, obtained CDRs of the mobile phone number of deceased and Asharani and got information about the contact between Asharani and deceased prior to 09.11.2018. On the basis of the said information, he has taken custody of accused No.1 to 3 and interrogated them. During interrogation, the accused No.1 to 3 are stated to be confessed that deceased Rudraswamy had left his wife and he was residing for some time in Bengaluru. He came in contact with Accused No.1 and thereafter, he had illicit relationship with Accused No.1. After sometime, deceased started blackmailing of Accused No.1 stating that he had some photographs with accused No.1 and he would expose the same to her husband. Accused No.1 intimated this fact to accused no.2 to 4 and all of them hatched a plan to finish Rudraswamy. Accordingly, they materialized their said plan. All of them assaulted the deceased with deadly weapons, murdered him and separated his head from his body with an intention to screen the offence and kept his headless body in a gunny

bag, tied stone to the said bag and threw it in a pond. Thereafter they threw head in another pond. Thereafter, the police have arrested the accused and the jurisdictional court sent them to judicial custody. After the completion of investigation, the respondent police have filed charge-sheet against these accused along with accused no.4 who is absconding now. Hence, this petition.

3. The counsel for the accused contended that the offences alleged is non-bailable and triable by this Hon'ble court. The accused have not committed any offence much less the offence alleged against them. The accused persons are innocent of the same and the accused persons are the permanent resident of Bengaluru and Davanagere District respectively. Accused Nos. 2 is an agriculturist by profession and Accused No.3 is a student. They are eking out their livelihood by doing agricultural work. They have got both movable and immovable properties. There are no reasonable grounds to believe that the accused persons have committed the offence alleged against them. The accused persons hail from a respectable family and having deep roots in the society and there are no chance of their absconding from the jurisdiction of this Hon'ble Court if they are let on bail.

4. The counsel for the accused further submitted that there are no prima-facie materials to show that the accused persons have committed the above offences. That there are no direct witnesses to the alleged incident of murder. The case rests solely on circumstantial evidence. The accused are ready to furnish surety for their release on bail and they will abide by any of the reasonable conditions that may be imposed by this court in case they are let on bail. Hence, it is prayed to allow the petition and grant the bail.

5. The learned public prosecutor has filed his objections denying the averments made in the petition. That there is a prima-facie case against the accused persons. That the Investigating Officer has secured sufficient incriminating evidence against the accused. That there are possibility of the accused persons of damaging the case of the prosecution if they released on bail and they may also abscond from the jurisdiction. Accordingly, he has sought for rejection of the bail petition.

6. Heard the argument of both sides. Perused the entire records.

7. For disposal of the bail petition the following points arise for my considerations;

1. Whether accused No. 1 to 3 have made out sufficient grounds for grant of bail under section 439 of Cr.P.C.?
 2. What order?
8. My findings to the above points are as under;

Point No.1: In the Negative.

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

REASONS

9. **Point No.1:-** I have perused the entire charge-sheet materials, statement of accused and other witnesses and also took note of the grounds urged in the bail petition.

10. Looking to the charge-sheet filed against the accused, it indicates that there are sufficient materials to show that the accused have committed the offences alleged against them. Initially F.I.R. has been registered against the unknown persons based on the complaint given by the complainant Smt.Rashmi. After thorough investigation, it is found that these accused persons along with absconded accused no.4 have brutally murdered the deceased Rudraswamy. Accordingly, the police have filed detailed charge sheet against the accused for offences punishable under sections 120-B, 302, 201 R/w.sec 34 of IPC. .

11. The charge-sheet materials categorically speak about the overt act committed by the accused persons. The manner in which the accused have allegedly assaulted the deceased and murdered him mercilessly speaks about the gravity of the act. It may be true that there is no direct evidence of eye witnesses so far as murder of deceased Rudraswamy is concerned. But CDR of Mobile Nos.8746902262 and 9738662167 belonging to accused no.1 and deceased Rudraswamy respectively reveal that prior to the incident there was talk held between accused no.1 and deceased over phone. Further, CW- 7/Smt. Channamma who is the mother of the deceased in her statement has specifically stated that when she contacted her daughter by name Lata and enquired about deceased, her daughter told her that deceased had come to her house and had breakfast at about 09.30 A.M. and he left her house by saying that he is going to the house of Benkikere Asha i.e. accused no.1. Further, the said C.W.7/Smt.Channamma called accused no.1 over phone and asked about her deceased son for which accused no.1 told that the deceased had come to their house at about 10.30 A.M. and left their house at about 03.30 P.M. Thus, these circumstances substantiate the allegations of alleged offences against accused persons.

Moreover, at instance of these accused persons the investigating officer has seized weapons, Car, mobile handsets and other materials etc., which were used for committing the murder of Rudraswamy by the accused. Therefore, the prosecution materials collected during the investigation clearly show that a *prima-facie* case against the accused persons.

12. So far as the submission that the charge-sheet has been already filed, therefore, the accused need not be continued in custody is concerned, the **Hon'ble Apex Court in Virupakshappa Gouda and Another vs The State of Karnataka and another, reported in (2017) 5 SCC 406** was pleased to held that :

“13. On a perusal of the order passed by the learned Trial Judge, we find that he has been swayed by the factum that when a charge-sheet is filed it amounts to change of circumstance. Needless to say, filing of the charge-sheet does not in any manner lessen the allegations made by the prosecution. On the contrary, filing of the charge-sheet establishes that after due investigation the investigating agency, having found materials, has placed the charge-sheet for trial of the accused persons.”

Therefore, merely because charge-sheet is filed, accused are not automatically entitled for bail. On the other hand, as held by the

Hon'ble Supreme Court, filing of the charge-sheet does not in any manner lessen the allegations made by the prosecution but establishes the contrary.

13. Further, the Hon'ble Apex Court was pleased to hold in **Prasanta Kumar Sarkar vs. Ashis Chatterjee and another [(2010) 14 SCC 496]**, that the factors which are to be borne in mind while considering an application for bail are:

- (i) Whether there is any prima-facie or reasonable ground to be believed that the accused had committed the offence.
- (ii) Nature and gravity of the accusation;
- (iii) Severity of the punishment in the event of conviction;
- (iv) Danger of the accused absconding or fleeing, if released on bail;
- (v) Character, behaviour, means, position and standing of the accused;
- (vi) Likelihood of the offence being repeated;
- (vii) Reasonable apprehension of the witnesses being influenced; and
- (viii) Danger, of course, of justice being thwarted by grant of bail.”

Going by the above laid principles, in the case on hand, there is a clear

prima-faice case against accused having committed the offences as stated in the charge sheet.

14. Taking into consideration the gravity of the offence, nature of the offence and circumstances under which alleged offence has taken place, this is not fit case to exercise the discretion under section 439 of Cr.P.C. Hence, this Court is of the view that accused persons have failed to make out valid grounds for grant of bail. Accordingly, I answered the point No.1 in the negative.

15. **Point No.2:-** In the light of above discussion, I proceed to pass the following;

ORDER

The petition filed by Accused No.1 to 3 under section 439 of Cr.P.C is dismissed.

(Dictated to the Typist, transcribed by him, transcript, corrected and pronounced by me in the open court on this 04th Day of April 2019)

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**[Manjunath Sangreshi]
II Addl. District & Sessions Judge
Chikkamagalur.**

*Mk/-