

KACM010028452023



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

Dated this the 06th day of May, 2024

:PRESENT:

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

S.C.No.34/2024

Complainant : The State by Baluru Police,
(Represented by Public
Prosecutor)

-VS-

Accused : 2. Payal Kumari,
D/o. Avad Bihari Baida,
Aged about 23 years,
Labourer,
R/at Tata Estate Line,
Gabgal Village,
Mudigere Taluk,
Chikkamagaluru District.
(Represented by Sri.N.D,
Deputy Chief Defense Counsel
of LADCS, Chikkamagaluru)

ORDER

The accused No.2 has filed this application under section 439 of Cr.P.C., for enlarging her on bail in the above case registered against her and accused No.1 for the offences punishable under sections 302 and 201 of IPC r/w section 34 of IPC.

2. By denying the allegations made against her, it is contended by the accused No.2 that she has not committed any of the offences alleged against her and she is innocent of the same, but she has been falsely implicated at the instance of the persons, who are inimical towards her. It is submitted that the accused No.2 is in 7th month of her pregnancy having some medical complications like low B.P and low sugar level in blood and as such she needs nutritious food and good mental health and also needs to take regular health check up for the best interest of the child in her womb. There is no reasonable ground to believe that the accused No.2 as committed the alleged offences. She hails from respectable family and having deep roots in the society and as such there is no chance of abscondance if she is let on bail. The accused No.2 is in judicial custody from the date of her arrest.

3. It is further contended by the accused No.2 that the complainant police have submitted charge sheet by completing investigation and as such, her presence is not required for further investigation. The accused No.2 is ready to abide by the terms and conditions

that may be imposed by this court and also to furnish surety for release her on bail in the above case to the satisfaction of the court. Inter-alia on these grounds, the accused sought for allowing the application.

4. 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 after completing investigation, the respondent police have submitted charge sheet against the accused Nos.1 and 2 for committing murder of 3 years old child of accused No.2 herein and the materials placed on record prima-facie discloses the involvement of this accused in the crime in question. The trial is yet to be commenced, the accused has no permanent abode, she hails from Jarkhand State and if at this stage, this accused is released on bail, she may flee from justice and thereby she would hamper the trial and she may also threaten and intimidate the prosecution witnesses. Further having regard to the nature and gravity of offence alleged against this accused, the Public Prosecutor sought for rejecting the application.

5. The presence of CW1, the informant and the manager of coffee estate of TATA company in which the accused herein was working as a coolie and at which the incident had taken place has been secured to hear regarding this application and he opposed granting bail to the accused by saying that she hails from

Jarkhand State and she is let on bail, it would be difficult to secure her presence for the trial.

6. Heard arguments and perused the record.

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

POINTS

1. Whether the accused No.2 has made out any ground to enlarge her on bail in the above case?

2. What order?

8. 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.)

9. **Point No.1** : In the case of **Prashanthkumar Sarkar -VS- Ashish Chaterjee and another** reported in **2010(14)SCC 496**, the Hon'ble Apex court has indicated that the following factors are required to be kept in mind while considering the bail application in respect of a heinous offence:-

i)whether there is any prima facie or reasonable ground to believe 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, behavior, 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.

10. By keeping in mind the above factors, 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. However, 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.

11. It is seen from the record that on 19.12.2023, CW1-Karumbaiah, who is the manager of TATA Coffee Estate situated at Gabgal Village, Mudigere Taluk reported

complaint to the complainant police with the allegation that around 150 labours were working in the said Estate on daily wage basis and they were residing in the coolie line houses in the said estate. Similarly the accused No.2 herein and her husband i.e., accused No.1 came to their estate in the month of July 2023 and by doing work at Koove Section of said estate, they lived in the coolie line house of said estate, they had a son aged about 3 years by name Shivakumar. On 18.12.2023 at around 3.45 p.m one Tangavelu, who was in charge of Koove Section called him over phone and informed that said child of accused was lying unconscious in the said estate. Immediately who went their and noticed that said child of the accused was in unconscious state and he also noticed a small injury at his right hand. On enquiry, the accused disclosed that on that day at around 3.00 p.m said child went missing and when they were searching for him, they heard his cry at some distance from their house and accordingly when they went their, they noticed that blood was oozing from his mouth and he had passed stool, and thereafter he became unconscious. Then the informant sent said child with his parents and the supervisor by name Vinod and Rakesh to the hospital at Mudigere and later at 5.00 p.m, the doctor who examined Shivakumar at said hospital had declared his death and his dead body was kept the mortuary of M.G.M Hospital Mudigere. The informant informed the same to his higher officers and as they entertained suspicion

regarding the death of said child, he reported complaint. The complainant police initially registered said complaint in UDR No.19/2023.

12. Later one Raju K.G, working as Assistant Sub Inspector of Police at Balur Police Station who took over the investigation of said case, conducted inquest on the dead body of said child Shivakumar and got his postmortem examination done at District Hospital, Chikkamagaluru and received the provisional postmortem examination report from the Medical officer of said hospital on 20.12.2023. In the said report the provisional opinion as to cause of death is mentioned as death was due to asphyxia as a result of throttling and its sequelae which is sufficient to cause death in ordinary course of nature and all the injuries noted on the dead body were antemortem in nature and fresh at the time of death. On perusal of the provisional postmortem examination report, aforesaid ASI suo moto registered case in Cr.No.49/2023 for the offences punishable under section 302 and 201 of IPC against unknown and then the investigation was taken over by CPI Mudigere.

13. According to prosecution during investigation, it was found that the accused No.1 and 2 herein had lied that they were couple to the estate officials, but in fact they had not married and the deceased child was born to accused No.2 through her first husband and by leaving her first husband, she was living with accused No.1 in the said estate with said child and it was also found that on

18.12.2023 at 3.00 p.m when child went missing, the accused No.1 himself brought said child and thereafter it was disclosed that the child had lost conscious and thereby the investigating officer entertained doubt about the involvement of the accused in the death of child. Further according to prosecution in the investigation, it is established that the accused No.1 used quarrel with accused No.2 on the premise that Shivakumar, who is born to accused No.2 through her first husband is an obstacle to their relationship as he would remind him of his father and similarly on 18.12.2023 at around 1.00 p.m the accused No.1 quarrel with accused No.2 in the matter of nurturing said Shivakumar and at the point of time, the accused No.1 told accused No.2 that Shivakumar is an obstacle to their life, in future her husband may also come in search of him and if he is no longer in their life, they may live happily and if he again annoys him, he would kill him and for that, the accused No.2 told him to do anything by taking him somewhere. Accordingly at around 1.30 p.m on that day, the accused No.1 took Shivakumar to a distance of 200 meters from their house at coolie line and therein he squeezed his neck and returned home by throwing him to a slope at the estate under the impression that he had died and disclose the same to accused No.2 and they decided to not to disclose the same to anyone and to pretend as if the child was killed by some animal. After some time they heard the cry of Shivakumar and as such the accused No.1

went there and brought Shivakumar back to home and then accused No.1 took Shivakumar with him by saying that he would taking to hospital and at around 2.45 p.m at the curve on the road towards Balur, he again squeezed the neck of Shivakumar and killed him and took him back near their house and lied to others that he had lost consciousness. With these allegations, the complainant police submitted charge sheet against accused for the offences punishable under sections 302 and 201 of IPC R/w section 34 of IPC.

14. In the case on hand, the accused No.2 herein, who is the mother of the deceased child aged about 3 years, who was born to her first husband is alleged to have instigated the accused No.1, with whom she lived as a couple in the coolie line of TATA Estate of Koove village to kill her son by thinking that he was an obstacle to their relationship and she is also alleged to have caused the disappearance of the evidence of commission of offence. At this stage, there is sufficient material to show that accused No.2 lived with accused No.1 in the coolie line of aforesaid estate along with her son, who was born to her first husband by deserting him i.e., her first husband. At this stage, nothing has been brought on record to show that except the accused herein, some other persons would have any animosity to take the life of a child of 3 years old.

15. In addition to this as per the postmortem examination report, as many as 9 external

injuries, which were antemortem in nature were noted on the dead body and it is opined that the death was due to asphyxia as a result of throttling and its sequelae which is sufficient to cause death in ordinary course of nature. In view of the same, this court is of the humble opinion that the material placed on record by the prosecution sufficiently makes out a prima facie case for trial against this accused.

16. Though the accused has contended that she has been falsely implicated in crime in question, she has not made out any ground to substantiate her contention. Hence, the contention of false implication urged by the accused cannot be accepted at this stage. Further no reason is forthcoming at this stage to disbelieve the allegations levelled against this accused. Thus, the materials placed on record sufficiently makes out a prima facie case against the accused as there are reasonable grounds to presume her involvement in the crime in question.

17. The learned counsel for accused has vehemently argued that after completing investigation, charge sheet has been laid against this accused and therefore her presence is no more required for further investigation and there is no hope of trial getting completed in the near future and as such the accused is entitled to be released on bail. Per contra, as noted above, the learned Public Prosecutor has contended that the trial

is yet to be commenced and this accused hails from Jarkhand State and if she is let on bail, she may flee from justice and hamper the trial.

18. In this context, it is relevant to note the decision of **Hon'ble Supreme Court** in the case of **Virupakshappa Gowda and another vs State of Karnataka and another** reported in **(2017) 5 SCC 406**, wherein it has been held at para 12 that:-

“On a perusal of the order passed by the learned trial Judge, we find that he has been swayed by the factum them when a charge sheet is filed it amounts to changed 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....”

19. In view of the proposition held in the above case, it is to be noted that filing of charge sheet does not in any manner lessen the allegations made by the prosecution and on the other hand, it strengthens its accusation. Hence, the contention urged by accused that she is entitled to be released on bail since

charge sheet has been submitted by the investigating agency, is not acceptable.

20. It is also seen from the record that the accused no.2 was staying in the coolie line of TATA Estate at Koove village by doing work in the said estate and she is basically hails from Jarkhand State. Thus it appears that the accused has no permanent abode. The trial is yet to be commenced and if at this stage, the accused is released on bail, it would be difficult to secure her presence. Hence this court finds substance in the contention urged by the prosecution.

21. It is further contended by the learned counsel for accused that presently the accused No.2 is carrying at 7th month pregnancy with some medical complications and she needs nutritious food and good mental health and therefore she may be enlarged on bail. In this regard, it is to be noted that the accused No.2 was staying with accused No.1 at coolie line of TATA Estate by doing coolie work on daily wages basis and further according to prosecution, she had deserted her husband. Further I have gone through the final report submitted by the police. None of the relatives of the deceased and accused No.2 herein are cited as witness in the charge sheet and thus it appears that there is no one to look after her at this stage. Thus nothing has been placed on record to show that the accused No.2 would get better treatment, food and the accommodation than the one given to her in

the judicial custody. Certainly her needs would be taken care by the jail authority. Hence the contention urged by the learned counsel that the accused No.2 is entitled to be released on bail on medical ground is not acceptable.

22. By highlighting certain discrepancies in the materials placed on record, it is contended by learned counsel for accused that these aspects throw serious doubt regarding the allegations leveled against this accused and therefore this accused is entitled to be enlarged on bail. In this context, it is pertinent to note that in the case of **Mahipal Vs. Rajesh Kumar @ Polia and another**, reported in **2020(2) SCC 118**, the Hon'ble Supreme Court has held in paragraph 12 that *"....at the stage of assessing whether a case is fit for grant of bail, the court is not required to enter into a detailed analysis of the evidence on record to establish beyond reasonable doubt the commission of the crime by the accused. That is a matter for trial. However, the court is required to examine whether there is a prima facie or reasonable ground to believe that the accused had committed the offence and on a balance of the considerations involved, the continued custody of the accused sub-serves the purpose of criminal justice system..."*

23. In view of the aforesaid position of law, the court cannot and is not suppose to sift the evidence made available by the prosecution at the time of deciding the bail petition and at this stage, the court is only required to see whether a prima facie case with an element of

genuineness is made out by the prosecution or not against this accused. In the fact situation, in view of the above discussion, this court is of the humble opinion that a prima facie case has been made out by the prosecution regarding the involvement of this accused in the crime in question.

24. Thus, by taking into consideration the facts and circumstances of the case, nature and gravity of accusation made against this accused and its impact on society and the possibility of this accused fleeing from justice if enlarged on bail, without expressing anything on merits or demerits of the case, this court is of the opinion that this is not a fit case to exercise discretion to enlarge the accused on bail and accordingly, I answer Point No.1 in negative.

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

ORDER

The application filed under section 439 of Cr.P.C by the accused No.2 is hereby rejected.

(Dictated to Typist-copyist directly on computer, script corrected and then signed by me on this the 06th day of May, 2024)

Sd/-
(BHANUMATHI.B.C)
II Addl. District & Sessions Judge
Chikkamagaluru.