

KACM010009902024



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

Dated this the 21st day of June, 2025

PRESENT

Sri. Manjunatha, B.A., LL.B,
II Addl. District & Sessions Judge
Chikkamagaluru

S.C.No.34/2024

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

-VS-

Accused : 1. Dinesh Kumar S/o. Charku
Ram, Aged about 22 years,
R/at Tata Estate Line House,
Gabgal village, Balur Hobli,
Mudigere Taluk.

Permanently R/at:
Salgi village and Taluk, Salgi,
Lohardagga, Jharkhand State.

(Represented by Sri.P.E.S.,Advocate)

ORDER

The accused No.1 has filed this application under section
439 of Cr.P.C., for enlarging him on bail in the above case

registered against him for the offences punishable under sections 302 and 201 of IPC r/w section 34 of IPC.

2. By denying the allegations made against him, it is contended by the accused No.1 that he has not committed any of the offences alleged against him and he is innocent of the same. Further it is contended that the I.O. has not followed the procedural aspect while arresting him and it has violated the right of the accused as discussed in the judgment of Hon'ble Supreme Court in Vihan Kumar verdict. The petitioner is hailing from the respectable family and having deep roots in the society and as such there is no chance of abscondance if he is let on bail. The accused No.1 is in judicial custody from the date of his arrest.

3. It is further contended by the accused No.1 that the complainant police have submitted charge sheet by completing investigation and as such, his presence is not required for further investigation. The accused No.1 is ready to abide by the terms and conditions that may be imposed by this court and also to furnish surety for release him on bail in the above case to the satisfaction of the court. Therefore, the accused No.1 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 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 completed, the accused has no permanent abode, he hails from Jarkhand State and if at this stage, this accused is released on bail, he may flee from justice and thereby he would hamper the trial and he 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. Heard arguments and perused the record.

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

POINTS

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

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

Point No.1: In Affirmative

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

REASONS

8. **Point No.1** : It is the case of the prosecution that, both accused No.1 and 2 hail from Sagli Village, Jharkand. About 4 years prior, accused No.2 married one Chattubya and from their wedlock, they have a 3 year old child by name Shivakumar. Since her husband was addicted to alcohol, accused No.2 deserted his company and she was residing along with her son in her parental home in Sagli Village. About 6 months prior to the date of incident, accused No.1 brought accused No.2 and her son Shivakumar to the Tata Coffee Estate in Balur and they were staying together in a house situated in coolie line. Further the accused No.1 used to quarrel with accused No.2 on the pretext 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 having an apprehension that if the child was alive, he cannot marry accused No.2, hence on 18.12.2023 at about 1 p.m., accused No.1 quarreled 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 the accused No.2 and they decided 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.2 went there and brought Shivakumar back to home and bathed him and changed his cloths. Then the accused No.1 once again, took the child in the guise of taking him to the hospital at about 2.45 p.m., around 400 meters away form the Tata coffee estate, at the curve on the road towards Balur, strangulated the child and committed murder. After that he again took the child to coolie line in the Coffee estate in front of CW.2 Vinod, CW.3 Rakesh and CW.8 Thangavelu and pretended that the child was unconscious and brought the child to M.G.M.Hospital, Mudigere along with CW.2 and CW.3 with an intention to cause disappearance of evidence committed by him. With these

allegations, the complainant police submitted charge sheet against the accused persons for the offences punishable under sections 302 and 201 of IPC R/w section 34 of IPC

9. The learned counsel for accused has vehemently argued that after completing investigation, charge sheet has been laid against this accused and therefore his presence is no more required for further investigation and there is no hope of trial getting completed in the near future. The accused No.2 was enlarged on bail as per the order of Hon'ble High Court of Karnataka in Crl.Petition No.6052 of 2024 and as such the accused No.1 is also entitled to be released on bail on the ground of parity also. Per contra, as noted above, the learned Public Prosecutor has contended that the trial is yet to be completed and this accused hails from Jarkhand State and if he is let on bail, he may flee from justice and hamper the trial.

10. It is pertinent to note that even for the sake of argument, it is accepted that there is prima-facie case against the accused persons for the above said offences, the offence under section 302 of IPC alleged against the accused is exclusively triable by this Court and it is punishable with death or imprisonment for life. It is seen from the record that the accused No.2 in this case, is granted bail by the

Hon'ble High Court of Karnataka in Crl.Petition No.6052 of 2024.

On the ground of parity, this accused No.1 is seeking bail.

11. Further the learned counsel for the petitioner has relied upon the judgment of **Hon'ble Supreme Court in 2025(2) KCCR SN 52 SC between Vihaan Kumar V/s The State of Haryana and another dated:07.02.2025**, wherein it is held that:

“ F. CONSTITUTION OF INDIA – Article 22(1) – Duty of the court – Held: (Per Abhay S. Oka,J): When a violation of article 22(1) is established, it is the duty of the court to forthwith order the release of the accused - That will be a ground to grant bail even if statutory restrictions on the grant of bail exist - The statutory restrictions do not affect the power of the Court to grant bail when the violation of Articles 21 and 22 of the Constitution is established”.

12. On perusal of the record, the accused No.1 was arrested and produced before the jurisdictional Magistrate on 21.12.2023 with a remand application and procedure followed by the investigating officer after arrest of the accused. However, grounds of arrest as discussed in the above referred decision has not been complied except the formalities that the arrest of accused was informed to his relatives and accused was subjected to medical examination. The accused No.1 is in judicial custody since from the date of his

arrest.

13. Relying on the above decision of the Hon'ble Supreme Court, the learned counsel for accused has argued that in this case the complainant Police have not complied with the requirements of Article 22(1) of the Constitution and there is clear violation of Article 22(1) of the Constitution and hence, accused is entitled to be released on bail on this ground alone.

14. It is well settled principle of law that the granting of bail is discretionary power of the Court and every case should be considered on the basis of facts of each case. The ***Hon'ble Supreme Court in (2012) 1 Supreme Court cases 40 (Sanjay Chandra Vs. CBI)***- has held that :

“every person detained or arrested is entitled to speedy trial-Trial may take considerable time and accused will have to remain in jail longer than the period of detention – Therefore, it is not in the interest of justice that the accused should be in jail for an indefinite period – Court will have to consider while granting bail about the seriousness of charges and severity of punishment – Merely the offence alleged against the accused is serious one itself should not deter the Court from enlarging on bail when there is no serious contention from the

prosecution that if the accused is released on bail, they would interfere with the trail or tamper with the witness.”

15. By applying the ratio laid down by the Hon'ble Supreme Court of India, the present fact of the case has to be analyzed and considered. I have perused the averments made in the application and other materials produced on record. Though at this stage this court cannot conclude that the accused No.1 is innocent of the offences alleged against him, until full-fledged trial.

16. The main point that has to be looked is whether the accused No.1 is required to be detained after filing of charge sheet by the complainant police and 06 witnesses are already examined and Ex.P.1 to 22 documents have already been marked, when there is no claim for custodial interrogation by the complainant police. Moreover, the accused No.2 in this case, is already been enlarged on bail as per the order passed by the Hon'ble High Court of Karnataka. Hence, on the ground of parity also, this accused No.1 is entitled for bail. Further when the accused No.1 is ready to furnish valid surety and abide by the conditions imposed there are no reasons to reject the bail application as it is the settled principle of law that bail is not to be withheld as a punishment. It has to be taken into consideration that the requirements as to bail

are merely to secure the attendance of the accused No.1 at trial.

17. Therefore, relying on the ratio laid down by the Hon'ble Supreme Court in the above referred decisions, I am of the opinion that generally it is the rule to allow bail rather than to refuse bail. Further the fact that an offence is serious one does not afford a sufficient ground to refuse bail, but the guiding principle while exercising discretion is the probability of the accused No.1 appearing to take his trial and not, he supposed guilt or innocence.

18. In the instant case the complainant police have laid charge sheet and therefore, the presence of accused No.1 in the custody may not be necessary for further custodial interrogation. The accused No.1 is the permanent resident as shown in the cause title and this fact has not been disputed by the prosecution, as such the presence of accused No.1 can be secured easily and hence, the question of absconding of the accused No.1 does not arise at all.

19. The objections raised by the learned Public Prosecutor that the accused No.1 would not be available for the trial and would abscond and tamper the prosecution witness would be met with by imposing stringent conditions on his release. Therefore, the

accused No.1 has made out sufficient grounds for his release on bail at this stage as prayed for. Accordingly, I answer point No.1 in the **affirmative**.

20. **Point No.2:** In view of answer of this Court on point No.1, this court pass the following:-

ORDER

The bail application filed by the accused No.1 under section 439 of Cr.PC (483 of BNSS) is hereby allowed.

The accused No.1 is hereby ordered to be released on bail on him executing personal bond for a sum of Rs.2,00,000/- with two sureties for the like sum to the satisfaction of this Court subject to the following conditions:-

1. The accused No.1 shall regularly appear before this court as and when directed.
2. He shall not directly or indirectly holdout threats to the prosecution witnesses or lure them in any manner.
3. He shall not tamper with the prosecution witnesses in any manner.
4. He shall not commit similar offences or any offence in future and shall not intimidate the complainant.
5. He shall furnish his residential ID address proof.

6. In the event of violation of any of the above conditions, the above bail shall stand automatically canceled.

(Dictated to Stenographer Grade-III directly on computer, script corrected and then signed by me on this the 21st day of June, 2025)

Sd/-
(Manjunatha)
II Addl. District & Sessions Judge
Chikkamagaluru