

KACM010028452023



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

Dated this the 26th day of February, 2024

:PRESENT:

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

S.C.No.144/2023

Complainant : The State by Sakharayapatna
Police,

(Represented by Public
Prosecutor)

-VS-

Accused : 1. Kantha @ Kanthamma,
W/o. Manjunatha,
Aged about 36 years,
Housewife,
R/at Saganibasavanahalli village
Birur Hobli, Kadur Taluk.

(Represented by Sri Charan
Naika, Advocate)

ORDER

The accused No.1 has filed this application under section 439 of Cr.P.C., for enlarging her on bail in the above case registered against her for the offences punishable under sections 302, 114, 120-B of IPC r/w section 34 of IPC.

2. It is contended by the accused No.1 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 against her. No quarrel had taken place between she and the deceased in the night of 06.07.2023 as stated by CW.13, CW.17 and CW.22. As per charge sheet submitted by the complainant police, none of the witnesses in their statement have stated about the incident. The deceased Bharathi is none other than the 2nd wife of accused No.2. The accused Nos.1 and 2, deceased Bharathi, CW.21 and the son of accused Nos.1 and 2 lived together in the same house for more than 7 to 8 months. The accused No.1 is in judicial custody since 07.07.2023.

3. It is further contended by the accused No.1 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.1 has two minor children, whose life has become miserable without the assistance of their mother and father and as such the presence of accused is necessary to look after her children.

This accused has not given any statement to the police and the police have taken her signatures forcefully on the statements prepared by them. There is no prima facie material to show that she has committed the offences alleged against her and she has no criminal antecedents. The accused No.1 is permanently residing at the address shown in the cause title and as such there is no chance of her abscondance if let on bail. 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 her on bail in the said 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 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 most of the material witnesses cited in the charge sheet are the relatives of the accused and the residents of same village and if at this stage, this accused is released on bail, she may involve herself in the commission of similar offences and she may threaten and intimidate the prosecution witnesses as she is economically and

politically powerful. She may also flee from justice and thereby she 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.

5. The presence of CW1, who is the mother of deceased has been secured to hear regarding this application and she opposed granting bail to the accused.

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.1 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 07.07.2023, one Rangamma, who is the mother of deceased Bharathi reported complaint in question to the complainant police and it came to be registered against accused Nos.1 to 11 in Crime No.125/2023 for the offence punishable under section 302 of IPC r/w section 34 of IPC. After completing investigation, the respondent police have submitted charge sheet against the accused Nos.1 and 2 for the offences punishable under sections 302, 114, 120-B of IPC r/w. section 34 of IPC.

12. The case of the prosecution in brief is that earlier on 21.12.2022, CW.1, who is the mother of deceased Bharathi, who then aged about 19 years reported complaint to the police regarding missing of said Bharathi and pursuant to said complaint, she was traced by the police on 02.01.2023 and on inquiry, she revealed that she had eloped with the accused No.2 herein, who is the husband of the accused No.1 and having two children and thereby the said missing complaint was closed. One and half month later, Bharathi again left her house and went to the estate in which the accused No.2 was working, forcibly made him to tie tali to her near a temple in the said estate and started leading life with him as his second wife. When the accused No.1, who is the first wife of accused No.2

came to know about the same, she quarreled with her husband, but later she, accepted Bharathi as the second wife of her husband and then she, accused No.2 and Bharathi started living together. At that point of time, everyday, the accused No.1 used to quarrel with accused No.2 and Bharathi on the premise that she has been neglected by accused No.2. Being upset with the everyday quarrel, the accused Nos.1 and 2 held panchayath with the parents of Bharathi and asked them to take Bharathi with them, but they refused to do so by saying that the accused No.2 had already married her by tying tali. At that point of time, the accused No.1 had indirectly issued threat by saying that they are not responsible if anything happens to Bharathi.

13. It is further alleged by the prosecution that as there was 48 days program in the newly constructed Antharaghattamma temple at Sagani Basavanahalli village on 06.07.2023, the accused No.2 took accused No.1 as well as Bharathi to the village to participate in said festival. On that day, at the invitation of the sister of this accused, her relatives had come to her house for festival. At that point of time, the accused Nos.1 and 2 had been to the house of said sister of this accused to invite her relatives for the dinner on that day. At that point of time, said relatives refused to go to the house of accused by saying that they would not come to the house, who have no reputation. Therefore, the accused returned back to their

house and had dinner with Bharathi at around 7.30 p.m. Later at 8.30 p.m, Bharathi went to the toilet situated behind the house of the accused, the accused Nos.1 and 2 followed her by hatching criminal conspiracy to kill her by thinking that they were dejected by their relatives because of her, they have no peace since her entry to their life and their reputation would get further spoiled if they allowed her to stay with them. The accused No.2 kept a watch around by holding his mobile torch on and immediately when Bharathi came out from the toilet, the accused No.1 dragged her to the field situated behind the house by holding her hair, pushed her on the ground and when she was lying in the prone position on the ground, the accused No.1 smothered her by squeezing her neck and killed her.

14. It is vehemently argued by the learned counsel for accused that the accused No.1 is innocent of the alleged offences, but she has been falsely implicated in the crime in question, no quarrel had taken place between the accused No.1 and the deceased in the night of 06.07.2023, none of the witnesses have stated about the alleged incident and there is no material to show her involvement in the crime in question.

15. It is to be noted that CW.20-Thanuja, who is the daughter of the accused herein is cited as eyewitness to the incident in question. In her statement recorded by the police under section 161

of Cr.PC, on 06.07.2023 at around 8.30 p.m, she heard some scream behind their house. Accordingly, she went to said place by putting on the torch and therein she noticed that her mother i.e., accused No.1 herein sat on the back of Bharathi by lying her on the ground in prone position. Her mother i.e., accused No.1 made signal and asked her to switch off the light. By switching off the light, she stood there and after some time, her mother raised up, but Bharathi had not raised. She became panic and tried to talk with her mother, but she took her to the house and by that time, her father i.e., accused No.2 also came to the house and disclosed that they had killed Bharathi and insisted her to not to disclose the same to anyone. Later her mother changed her clothes, which was stained with blood and next day morning she took her and her brother to Sakharayapatna in an auto and from there, she asked the driver to drop them at Brahmasamudra and she left by saying that she would go to police station. Even in the statement recorded by the Magistrate recorded under section 164 of Cr.PC, aforesaid Tanuja has stated about the aforesaid facts.

16. In the case on hand, the accused has not disputed that deceased Bharathi was living with the accused as the second wife of accused No.2. It is the specific case of the prosecution that the accused No.2 was spending more time with said Bharathi and as such this accused being his first

wife got irritated as she was annoyed by the same and therefore, she has the motive to end the life of Bharathi. In addition to this, as noted above, CW.20, who is none other than the daughter of the accused herein has stated that she had seen her mother i.e., accused No.1 herein sitting on the back of Bharathi by lying her on the ground in the prone position.

17. In addition to this, as per the postmortem examination report, reddish contusion were noted over the front of upper part of neck below and lateral to chin, right and left upper eyelid and reddish contused abrasion were noted over left cheek, outer aspect of mid part of left forearm and inner aspect of mid part of left leg. At this stage, these injuries corroborates the case of prosecution that the deceased was dragged by the accused herein, she was made to lie on the ground in the prone position, the accused smothered her by squeezing her neck and sat on her back as stated by CW.20. 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.

18. It is also contended by the prosecution that the material witnesses cited in the charge sheet are the close relatives of this accused and the residents of same village and the trial is yet to be commenced and if at this stage, if the accused is let on bail, there is every chance of she influencing

and intimidating the prosecution witnesses and tampering its evidence. Having regard to the facts and circumstances of the case, this court finds some substance in the contentions urged by the prosecution.

19. 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.

20. 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 the material witnesses cited in the charge sheet are the close relatives of the accused and some of the witnesses are the residents of her village and if at this stage, the

accused is released on bail, she may threaten, influence and intimidate the prosecution witnesses and tamper its evidence.

21. 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....”

22. 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.

23. Further the prime consideration of criminal justice system is fair trial for which witnesses must feel protected for free, frank and fearless deposition and in the case on hand, the evidence of family members of deceased and other material witnesses is yet to be recorded. Having regard to the facts and circumstances of the case, the possibility of this accused intimidating and influencing the prosecution witnesses and tampering its evidence cannot be ruled out.

24. 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...”

25. 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.

26. 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 involving herself in the commission of similar offences, 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.

27. **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.1 is hereby rejected.

(Dictated to Stenographer Grade-I directly on computer, script corrected and then signed by me on this the 26th day of February, 2024)

Sd/-

(BHANUMATHI.B.C)

II Addl. District & Sessions Judge
Chikkamagaluru