

KACM010018522024



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

Dated this the 23rd day of August 2024

PRESENT

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

S C No.81/2024

Complainant	State By Lakkavalli P.S., Lakkavalli
	Vs
Accused	2. Nagappa @ Nagaraja, S/o. Late Venkatappa, Aged about 60 years, Agriculturist, 3. Smt.Yashoda W/o. Nagappa, Aged about 52 years, Household work 4. Gopinatha @ Gopi S/o. Nagappa @ Nagaraja, Aged about 31 years, Agriculturist, All are residing at Karakuchi A-Colony, Lakkavalli Hobli, Tarikere Taluk, Chikkamagaluru District. (By Sri I.S.T, Advocate)

ORDER

The learned counsel for the accused No. 2 to 4 has filed bail application under section 439 of Cr.P.C to release them on regular bail.

2. The brief facts of the bail application is that on the basis of the information of informant-Smt.Komala, the complainant Police have registered the case in Crime No.44/2024 against the accused No.1 to 4 for the offences punishable under sections 323, 504, 498-A, 114, 109, 302, 304-B r/w Sec.34 of IPC.

3. During investigation, the complainant police arrested the accused persons and produced them before the jurisdictional Magistrate, wherein they were remanded to judicial custody.

4. The contention of accused Nos.2 to 4 is that the allegations made against them are false and fabricated. They are innocent of the offences alleged against them. They are ready to abide by any conditions imposed by this Court while granting bail. Therefore, the accused Nos.2 to 4 have prayed for allowing this application on the following grounds:-

a. That there are no grounds to believe that they are guilt of the alleged offences.

b. They are the permanent residents as shown in the cause title having no bad antecedents and they have been falsely implicated in the above case.

c. They are ready to offer surety to the satisfaction of this Court.

d. They undertake that they will not flee way, not to tamper the prosecution and to be regular before the Court on all the dates of hearing.

e. That they undertake to abide by all the conditions that may be imposed on them while granting the bail.

f. They are ready and willing to furnish surety to ensure them for regular presence.

5. The learned Public Prosecutor has filed objection in detail contending that the bail application is not maintainable in law or on facts. Further, she has reiterated the contents of complaint and also contended that the alleged offences are heinous in nature and the investigation has already over. At this stage, if the accused No.2 to 4 are granted bail, there is a chance of tampering the prosecution witnesses and also there is chance of their absconding and for the reasons stated in the objection has prayed for dismissal of the bail application.

6. Heard the argument on both sides. Perused the relevant materials on record.

7. The following points are arises for consideration of this court:

1. Whether the accused No.2 to 4 have made out any ground for their release on bail in Crime No.44/2024 in SC No.81/2024 of Lakkavalli P.S. at this stage as sought for?

2. What order?

8. This Court has answered the above points are as under:

Point No.1: In the Affirmative

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

REASONS

9. **Point No.1:** On considering the papers on record, it is evident to note that the complainant police have registered the case against the accused No.1 to 4 in crime No.44/2024 for the offences punishable under sections 323, 504, 498-A, 114, 109, 302, 304-B r/w Sec.34 of IPC based on the complaint of Smt.Komala and after completion of the investigation the complainant police have submitted charge sheet against the accused No.1 for the offences punishable under sections 323, 504, 498-A, 114, 109 and 302 r/w Sec.34 of IPC and the accused Nos.2 to 4 have been charge sheeted for the offences punishable under sections 323, 504, 114, 109 and 498-A r/w Sec.34 of IPC.

10. It is the case of the prosecution that the complainant had two children by name Santhosh and Meghana and when said Meghana was minor the accused No.1 misbehaved with her and in this regard a complaint was lodged against the accused No.1. The accused No.1 after completion of 18 years to said Meghana married her and started to live with her. Later the accused No.1 used to demand money from her and harassed her. The accused No.1 at the instigation of accused Nos.2 to 4 used to harass her and due to harassment said Meghana went to the house of complainant. At about 9-10 months back prior to the incident at 10.00 p.m. the accused No.1 to 4 abused her in filthy language and demanded money and property and assaulted her on her person and if she brings money and property, then only she can

live with them or else they finished her. Thereafter as she could not tolerate their torture she left the house without informing anybody. Later on, the complainant had lodged a missing complaint of her daughter and at that time, said Meghana came there. As there is life threat to said Meghana, she was living with her parents. On 29.04.2024 at about 11.00 am CW.1, CW.12 to CW.13 along with Meghana went to channel to wash clothes and at about 12.00 noon when they were washing the clothes the accused No.1 came there abused Meghana in filthy language and assaulted near her right ear and on hand with a chopper and pulled her to the channel and ran away from the spot. Said Meghana succumbed to said injuries caused by the accused No.1.

11. The contention of accused Nos.2 to 4 is that they are innocent of the offences alleged and there is absolutely no case made out against them for the alleged offences. But, as pointed out by the learned Public Prosecutor, the complainant police have registered FIR in Crime No.44/2024 against the accused No.1 to 4 for the above said offences and after completion of investigation submitted charge sheet against the accused for the offences punishable under section 323, 504, 498-A, 114, 109 and 302 r/w Sec.34 of IPC of IPC. Therefore, at this stage any of the contentions of accused No.2 to 4 that they are innocent of the alleged offences and they have not committed any offence does not merit consideration on the facts of the case and also in law. It is not desirable on the part of this Court to come to conclusion at this stage that the accused Nos.2 to 4 are innocent of the offences alleged against them.

12. 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 offences punishable under section 323, 504, 498-A, 114, 109 and 302 of IPC r/w Sec.34 of IPC, the offence under section 302 of IPC alleged against the accused No.1 is exclusively triable by this Court and it is punishable with death or life imprisonment. The bail petition is filed by the accused Nos.2 to 4. The allegations made against accused Nos.2 to 4 is punishable only under sections 323, 504, 114, 109 and 498-A of IPC R/w section 34 of IPC only.

13. 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.”

14. 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 Nos.2 to 4 are innocent of the offences alleged against them, until full-fledged trial.

15. The main point that has to be looked is whether the accused Nos.2 to 4 are required to be detained after filing of charge sheet by the complainant police, when there is no claim for custodial interrogation by the complainant police. Further when the accused Nos.2 to 4 are 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 Nos.2 to 4 at trial.

16. 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 Nos.2 to 4 appearing to take them trial and not, they supposed guilt or innocence.

17. In the instant case the complainant police have laid charge sheet and therefore, the presence of accused Nos.2 to 4

in the custody may not be necessary for further custodial interrogation. Moreover the accused Nos.2 to 4 are already in judicial custody and ready to furnish valid surety. The accused Nos.2 to 4 are the permanent residents as shown in the cause title and this fact has not been disputed by the prosecution, as such the presence of accused Nos.2 to 4 can be secured easily, hence, the question of absconding of the accused Nos.2 to 4 does not arise at all.

18. The accused Nos.2 to 4 are in judicial custody since 06.05.2024, 30.04.2024 and 27.06.2024 respectively. Considering the age and occupation of the accused Nos.2 to 4, the question of retaining them in judicial custody without any reason does not arise from the facts and circumstances of this case. The objections raised by the learned Public Prosecutor that the accused Nos.2 to 4 would not be available for the trial and would abscond and tamper the prosecution witness would be met with by imposing stringent conditions on their release. Therefore, the accused Nos.2 to 4 have made out sufficient grounds for their release on bail at this stage as prayed for. Accordingly, I answer point No.1 in the **affirmative**.

19. **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 Nos. 2 to 4 under section 439 of Cr.P.C. is hereby allowed.

The accused Nos.2 to 4 are hereby ordered to be released on bail on their executing personal bond for a sum of Rs.1,00,000/- each with one surety for the like

sum to the satisfaction of this Court subject to the following conditions:-

1.The accused Nos.2 to 4 shall regularly appear before this court as and when directed.

2.They shall not directly or indirectly holdout threats to the prosecution witnesses or lure them in any manner.

3.They shall not tamper with the prosecution witnesses in any manner.

4.They shall not commit similar offences or any offence in future and shall not intimidate the complainant.

5.They shall furnish their residential ID address proof.

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

(Typed to my dictation by the Stenographer directly on Computer, corrected by me and then pronounced in the open Court on this the 23rd **day of August, 2024**)

Sd/-

(Manjunatha)

II Addl. District & Sessions Judge,
Chikkamagaluru.

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