

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

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

Dated this 30th day of July 2021

S.C.105/2019

Complainant: State by Ajjampura Police
[Represented by the Public
Prosecutor, Chikkamagaluru].

-V/s-

Accused No.1: Dharmaraj, S/o. Basavarajappa,
aged about 23 years, Driver,
R/o. Bukkambudi Village,
Ajjampura Taluk,
Chikkamagaluru.
[Represented by
Sri. B.M. Laxman Gowda
Advocate]

ORDER ON BAIL PETITION U/S. 439 OF Cr.P.C.

This is the petition under section 439 of Cr.P.C. filed by the accused No.1 seeking the benefit of regular bail in connection with Crime No.90/2019 [S.C.No.105/2019] of the Ajjampura Police. In this case, the complainant police have filed charge sheet against him and accused no.2 to 4 for the offences punishable under sections 302, 304-B, 498-A r/w 34 of IPC.

2. The brief facts of the prosecution case, as per charge sheet materials, are that 5 to 6 months prior to the death of deceased Latha, the accused no.1 to 4 together had taken the deceased Latha to Kallattagiri Temple and performed her marriage with accused no.1 and this fact has not been informed to the parents of deceased Latha and her relatives. Few days after the marriage, the accused no.1 to 4 started harassment to the deceased and have administered poison to her and kept her at Gangagondanahalli Temple. Further, accused no.1 tortured the deceased forcing her to bring Rs.50,000/- from her parents in order to purchase an Auto and for staying in Tumkur. Thereafter, on 19.04.2019 at 7-30 P.M. the deceased-Latha requested her Doddamma i.e., Rathamma of Udeva village to bring a sum of Rs.50,000/-. Thereafter, accused no.1, i.e. husband of Latha, after assaulting Latha, hanged her with a plastic rope. Since it was torn, she was further tied with a veil and thereafter, hanged her and thus, they have committed the offence between the night of 19.04.2019 and morning of 20.04.2019. Based on the complaint, the accused have been arrested and sent to judicial custody by the jurisdictional court. After the investigation the police have filed the charge sheet against the accused

for the aforesaid offences. In this case accused no.2 to 4 have been released on bail. But this accused No.1 has been in judicial custody since his arrest. Hence, this petition.

3. The learned counsel for the accused no.1 submitted that the complainant police have registered the above case against the accused alleging the offence punishable under section 302, 304-B, 498-A r/w 34 of IPC. Now, after completion of investigation, the police have submitted charge sheet to this Hon'ble Court. Since the date of arrest, the accused no.1 is in judicial custody. The accused no.1 is innocent and he has not committed the offences alleged against him. He has been falsely implicated at the instance of the complainant and other persons who are inimical towards the accused persons. That the offence under section 302 of IPC, does not attract against the accused No.1, at the most, it may come within the category of S.306 of IPC, but the same is not punishable with imprisonment for life or with death penalty. Since the challan has been filed before this court and in view of Covid-19, the accused is entitled for bail. That the accused No.1 the only care taker of his family, hence he may be released on bail. The accused no.1 is the permanent resident of Bukkambudi Village, Ajjampura Taluk, having

both movable and immovable properties and there are no chances of his absconding and tampering with the prosecution witnesses. The accused no.1 will abide by any of the reasonable conditions that may be imposed by this Hon'ble Court for his release on bail. That the accused further offers surety for his release. Hence, it is prayed to allow the petition and grant the bail.

4. The learned public prosecutor has filed her objections denying the averments of the accused no.1. That there is a prima-facie case against the accused, the I.O. has submitted the charge sheet against accused for the offences punishable under sections 498-A, 302 and 304-B r/w 34 of IPC and the charge sheet materials disclose that this accused has committed the murder of deceased-Latha and thereafter, hanged her by her veil. Therefore, there is direct allegation against accused no.1 for having committed the alleged offence. Thus, bail should not be granted to him as accused no.1 committed heinous offence. Further, there are possibility of the accused no.1 damaging the case of the prosecution, if he is granted the benefit of bail. There are also possibilities of the accused absconding and accordingly, she has sought for rejection of the bail petition.

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

1. Whether the accused no.1 has made out sufficient grounds for grant of bail under section 439 of Cr.P.C.?

2. What order?

6. Having heard the arguments on both sides, 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

7. **Point No.1**:- I have perused the complaint and entire charge sheet materials and also took note of the grounds urged in the bail petition.

8. Looking to the charge-sheet materials, it would indicate that there are sufficient materials to show that the accused no.1 has committed the offences alleged against him, along with accused No.2 to 4. The charge-sheet materials categorically speak about the overt act committed by the accused no.1. There is prima facie case against accused no.1 that after assaulting the deceased-Latha initially, he

hanged her with a plastic rope, since it was torn, she was further tied with a veil, thereafter hanged her and thereby this accused no.1 murdered the deceased by strangulating her neck. Therefore, the manner in which the accused no.1 has murdered the deceased mercilessly speaks about the gravity of the act.

9. It is the contention of counsel for the accused No.1 that accused no.1 is innocent, he has not committed the offences alleged against him but deceased herself hanged by her veil and it is supported by the medical records and final opinion of the Doctor that that the death of deceased is due to ASPHYXIA as a result of ante-mortem HANGING. Therefore, he submitted that the accused no.1 has not committed the murder of deceased by hanging her.

10. It is true that the final opinion of the Doctor shows that ***death of deceased is due to ASPHYXIA as a result of ante-mortem HANGING.*** However, on looking to the Photographs of hanging position of deceased, prima facie it appears that the deceased has not hanged herself. The said Photographs disclose that the feet of deceased are very close to floor. Therefore, it cannot be said that the deceased herself hanged, at this stage, without holding the full-fledged trial.

Even the case of the prosecution is also that the accused no.1, i.e. husband of deceased, after assaulting her, hanged her with a plastic rope since it was torn, she was further tied with a veil and thereafter, the accused hanged her. Merely that the medical records suggest that death of deceased is due to ASPHYXIA as a result of ante-mortem HANGING, that does not mean that deceased herself hanged. It is not the stage to come to the conclusion that there is no role of accused in the commission of alleged offences. There are prima facie materials to show that accused have hanged deceased, but on the other hand, there is no any materials to show that there are circumstances which led the deceased to commit suicide by hanging. Therefore, the accused No.1 has not made valid grounds so at release him on bail on changed circumstances.

11. It is well established law that while granting bail, there are several factors which are to be considered. The Hon'ble Supreme Court in decision reported in **(2017) 5 SCC 406 between Virupakshaappa Gouda and Another vs The State of Karnataka and another** has held that :

“16. The court has to keep in mind what has been stated in **Chaman Lal vs. State of U.P.** and another. The requisite factors are: (i) the nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence; (ii) reasonable apprehension of tampering with the witness or apprehension of threat to the complainant; and (iii) prima facie satisfaction of the court in support of the charge. In **Prasanta Kumar Sarkar vs. Ashis Chatterjee and another**, it has been opined that while exercising the power for grant of bail, the court has to keep in mind certain circumstances and factors. We may usefully reproduce the said passage:-

“9....among other circumstances, 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.”

When the above laid principles are applied, the prima facie case against the accused no.1 over-weighs his prayer for seeking bail. Therefore, at this stage, it is to be held that the accused no.1 has failed to make out sufficient grounds to be enlarged him on bail. Accordingly, I answered the point No.1 in the *Negative*.

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

ORDER

**The petition filed by the Accused no.1-
Dharmaraj under section 439 of Cr.P.C is hereby
dismissed.**

(Dictated to the Typist, on computer, typed by her, corrected and pronounced by me in open court on this the 30th day of July 2021)

**Sd/-
[Manjunath Sangreshi]
II Addl. District & Sessions Judge
Chikkamagaluru.**