

KACM010019632022



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

Dated this the 13th day of October 2022

:PRESENT:

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

S.C.No.88/2022

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

Victim: Goutham B.L.,
S/o Lokappa Gowda,
Aged about 29 years,
Residing at Kumbaramane,
Bannur village, Balehonnur
Hobli, N.R.Pura Taluk,
Chikkamagalur District.

(Represented by Sri H.S.R. advocate)

-VS-

Accused : 1. Nandith K.C.,
S/o Chandre Gowda K.P.,

Aged 37 years, Agriculturist,
R/a Carbylu village,
Makonahalli post,
Mudigere Taluk,
Chikkamagalur District.

(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 and others for the offences punishable under sections 498-A, 304-B, 306, 201 r/w. Section 34 of IPC and section 3 and 4 of Dowry Prohibition Act, 1961.

2. It is contended by the accused that he is innocent and not committed any of the offences alleged against him and as per the charge sheet and other prosecution papers, the accused is responsible for the death of the deceased, but medical reports at the earliest point of time and MLC extracts clearly reveals that the deceased had accidentally used rat poison for brushing her teeth and after the death of the deceased, this case has been projected and focused against him. It is further contended that there is a serious inconsistency between complaint averments, further statement recorded by the police and the statement recorded under section 164 Cr.P.C. and statements of other witnesses including father of the deceased. Initially complaint indicates that

this accused along with two others committed the murder of the deceased, but charge sheet allegations are entirely contrary to the earliest version which indicates that the accused is innocent of the offences alleged against him.

3. It is also contended that in this case, accused No.2 and 3 are already on bail and this accused is also entitled for bail on the ground of parity. It is also stated by the accused No.1 that he is in judicial custody from the date of his arrest, presently complainant police have submitted charge sheet by completing investigation and as such, his presence is not required for further investigation. There is no prima facie material to show that he has committed the offence alleged against him, he has no criminal antecedents, he is permanently residing at Carbylu village, Makonahalli post, Mudigere Taluk and as such there is no chance of his abscondance and he hails from respectable family and from agricultural background. Hence, the accused has come up with this application. The accused 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 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 this accused 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 and if at this stage, this accused is released on bail, he may involve himself in the commission of similar offences and he may threaten and intimidate the prosecution witnesses as he is economically and politically powerful. He may also flee from justice and thereby he 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 complainant i.e., Goutham B.L, who is the brother of deceased has been secured to hear regarding this application and he submitted that bail should not be granted to the accused. He has been represented by the counsel of his choice. He has resisted the bail application by filing the statement of objection by reiterating the objections raised by the Public Prosecutor.

6. Heard arguments and perused the records.

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 him 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 entitle 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 records that initially on 01.04.2022, one Goutham B.L, who is the brother of deceased lodged a complaint before the complainant police and it came to be registered in Crime No. 55/2022 for the offences punishable under sections 304-B, 506, 498-A and 302 of IPC r/w section 149 of IPC against five accused persons.

12. In the course of investigation, the accused Nos.1 and 3 were arrested on 02.04.2022 and accused No.2 was arrested on 06.04.2022 and subsequently accused No.2 and 3 were released on bail and accused No.1 is in judicial custody.

13. After completing investigation, the complainant police submitted charge sheet against accused Nos.1 to 3 for the punishable under sections 304-B, 306, 201 and 498-A of IPC r/w section 34 of IPC and sections 3 and 4 of Dowry Prohibition Act, 1961.

14. In the charge sheet, it is alleged that the deceased Ganavi was given in marriage to accused No.1 on 21.02.2021, accused Nos.2 and 3 are the mother and father of accused No.1, at the time of marriage, accused persons demanded 150 grams of gold and cash of Rs.2,00,000/- as dowry, the parents of Ganavi have fulfilled the demands of accused and performed the marriage by spending a sum of Rs.10,00,000/- and after the marriage, accused No.1 and her sister Ganavi were living happily for three months, later accused No.1 started demanding a sum of Rs.5,00,000/- from Ganavi and when Ganavi refused to fulfill his demand, the accused persons started harassing her and forced her to do agricultural work along with household work and the said fact was informed by Ganavi to her parents and they advised her to adapt with the accused persons.

15. It is further contended that again accused persons started harassing Ganavi and she informed said fact to her father i.e. CW.10 over

phone, CW.10 came along with CW.19 to the house of accused and took Ganavi to his house and kept her for 2-3 months in his house and later the accused persons came to the house of CW.1 and assured them that they would look after Ganavi well and took her to their house and again the accused persons started harassing her both physically and mentally and on 26.03.2022 the accused No.1 called father of deceased i.e. CW.10 over phone and told that the health condition of Ganavi is not well and she was admitted to Government Hospital, Chikkamagaluru and immediately CW.10 had gone to said Hospital and therein Ganavi told that being unable to bear the harassment given by the accused persons, she had consumed rat poison and later CW.10 had shifted Ganavi to KMC hospital, Manipal, wherein she died on 01.04.2022 at about 3.00 p.m.

16. As per the records, the deceased was given in marriage to accused No.1 on 20.02.2021 and it is alleged by the prosecution that at the time of marriage, the parents of deceased had given dowry in the form of gold and cash on the demand of accused persons. It is also alleged that though initially deceased was taken care nicely by the accused, later she is alleged to have been subjected to physical and mental cruelty by the accused to meet their demands for giving further dowry. Though initially section 302 of IPC has been invoked by the police, after completing investigation by deleting said offence, they have invoked the offence punishable under section 306

of IPC. Admittedly, the deceased had not left any death note and even her statement could not be recorded by the police as she was struggling for life at hospital. However, it is not in dispute that when deceased allegedly consumed poison, she was residing in her matrimonial house with this accused, who is her husband and his parents and she had died an unnatural death.

17. As alleged by the prosecution, the marriage of deceased was solemnized with this accused on 21.02.2021 and her death took place on 01.04.2022 otherwise than under normal circumstances within seven years from her marriage that too within one and half year and the complainant parties have alleged that the deceased was subjected to physical and mental cruelty by this accused, who is her husband and his parents in connection with demand for dowry. In view of these aspects, there is no reason to doubt the case of prosecution at this stage and the materials placed on record prima facie makes out a case against the accused herein.

18. The learned counsel for accused vehemently contended that the complainant police have submitted charge sheet by completing investigation and therefore his presence is not required. 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 he is entitled to be released on bail since charge sheet has been submitted by the investigating agency, is not acceptable.

20. 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 the evidence cannot be ruled out.

21. 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..."*

22. In view of the aforesaid position of law, the court cannot and is not supposed 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.

23. 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 himself 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**.

24. **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 Judgment Writer directly on computer, script corrected and then signed by me on this the 13th day of October, 2022)

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