

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

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

Dated this 24th day of February 2022

S.C. No.165/2021

Complainant: State by Kadur Police,
Kadur.

[Represented by Public Prosecutor,
Chikkamagaluru]

Vs.

Accused: 1. Shabbir S/o Mohammed Subhan,
Aged about 27 years, Lorry Driver,
R/o Ajeez Galli, Market Road,
Chikkamagaluru City.

2. Mahammed Subhan S/o Hussain Sab.
Aged about 53 years, Electrician,
R/o Ajeez Galli, Market Road,
Chikkamagaluru City.

[Smt. Manjula Karlekar, Advocate for Accused]

Order on the bail petition under section 439 of Cr.P.C.

This petition is filed by accused No.1 & 2 under section 439 of
Cr.P.C., for the benefit of regular bail in connection with

Cr.No.140/2021 [S.C No.165/2021] of Tarikere Police Station registered against them and charge sheet has been filed for the offences punishable under sections 120-B, 302, 392 and 201 R/w section 34 of IPC.

2. The brief facts of the case are that on 14.07.2021 the accused No.1 and 2 in order to gain money for their wrongful needs went to Kadur, hatched a plan to hire an auto in order to go to Nanjappanahalli; and to rob the said auto and money from the said auto driver after murdering him. That on the same day, at about 8.45 p.m., when the deceased-Prakash i.e. husband of CW.1 waiting for hire for his passenger auto bearing No.KA-66/0586 in Basaveshwara Circle, opposite to Sri Mart Kadur town, and at that time, the accused hired the said auto for Rs.350/- to go for Nanjappanahalli and went near G.Thimmapura Gate, parked in the site of Karnataka Housing Board; accused made the deceased to drink liquor, at that time, accused No.1 assaulted on the deceased-Prakash on his chest, made him to fall into

foot rest of auto cabin, sit on him and tied the neck of the deceased with the help of rope, at that time, accused No.2 caught hold the legs of the deceased tightly; and due to assault made by the accused, the deceased died at the spot. That after murdering the deceased, the accused took the dead body in the auto of deceased, went on Hemagiri Kere bund, threw the dead body into Hemagiri pond and also threw SIM and cloths of the deceased into the pond. Further, after murdering the deceased-Prakash, accused No.1 robbed Rs.1,600/- cash from the pant of the deceased, one touch screen mobile and also robbed the passenger auto bearing No.KA-66/0586 belonging to the deceased. Therefore, the wife of deceased lodged a complaint, in this regard and on the basis of said complaint, the complainant police registered a case against the unknown persons initially, for the offence punishable under section 302 of IPC and after investigation, the Investigating Officer has submitted the charge sheet against accused No.1 and 2 for the offences punishable under sections 120-B, 302, 392 and 201 R/w section 34 of IPC. Subsequently, accused No.1 and 2 have been arrested by the

respondent police. The accused No.1 & 2 are in judicial custody since the date of their arrest. Hence, this petition.

3. The counsel for accused No.1 & 2 has contended the accused persons are innocent and they have not committed any offences as alleged by the police. That the offences are not punishable either with death sentence or imprisonment. That the complainant police have falsely registered the above case against them. That there is no any iota of evidence regarding the involvement of the accused in the alleged offences. That the accused persons deeply rooted in the society and they are law abiding citizens. That accused No.1 and 2 offers surety for their release on bail and also they undertake to appear either before the complainant police or before the Court and hence, it is prayed to allow the petition and grant the bail to the accused no.1 and 2.

4. The learned in charge Public Prosecutor has filed her objections denying the petition averments. She contended that the charge sheet materials disclose that both the accused have committed the alleged offences and the charge sheet materials make a specific case

against the accused that they have murdered the husband of the complainant-Mamatha. That the statements of prosecution witnesses disclose the very over act of accused No.1 and 2 in committing the murder of husband of the complainant. That the alleged offence against the accused is punishable with death or life imprisonment. That the trial in the case is yet to begun therefore, at this stage, if the accused No.1 & 2 are released on bail; there is every possibility of the accused absconding and possibilities of the accused tampering the case of the prosecution. Therefore, at this stage, there are no valid grounds so as to release the accused on bail and accordingly, the learned Public Prosecutor prayed this court to reject the bail petition.

5. Heard the arguments of both the side. Perused the entire records.

6. For disposal of the bail petition, the following points arise for my consideration.

1. Whether accused No.1 & 2 have made out sufficient grounds to grant bail under section 439 of Cr.P.C ?

2. What order ?

7. Having heard the arguments of both side and on perusal of the material on records, my findings on the above points are as under:

Point No.1: In the Negative,

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

REASONS

8. **Point No.1:-** I have perused the entire charge sheet materials and also took note of the grounds urged in the bail petition. It is pertinent to note here that the offences alleged against the accused are punishable under sections 120-B, 302, 392 and 201 R/w section 34 of IPC; out of which, the offence P/U/S.302 of IPC is punishable with death penalty or life imprisonment.

9. Looking to the charge-sheet filed against the accused persons, at this stage, prima facie materials show that the accused have murdered the deceased and robbed Money, Mobile and his Auto, for

wrongful gain; thus, there are sufficient materials to show that the accused have committed the offences alleged against them. The Post Mortem report of deceased discloses that ***the deceased has sustained as many as 14 external injuries on, all most all, parts of his body.*** Thus, manner in which the accused have assaulted deceased-Prakash mercilessly speaks the gravity of the act committed by the accused. Whatever contentions raised by the accused side at this stage, would be considered the same after full-fledged trial. Therefore, at this stage, the prosecution materials collected during the investigation clearly show that there is a *prima-facie* case against this accused and the charge sheet materials clearly set out a prima-facie case against accused.

10. So far as the submission of learned counsel for the accused that the charge-sheet has been already filed, therefore, the accused need not be continued in custody is concerned, the **Hon'ble Apex Court in Virupakshappa Gouda and Another vs The State of Karnataka and another, reported in (2017) 5 SCC 406** was pleased to held that :

“13. On a perusal of the order passed by the learned Trial Judge, we find that he has been swayed by the factum that when a charge-sheet is filed it amounts to change of 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.”

Therefore, merely because charge-sheet is filed, accused are not automatically entitled for bail. On the other hand, as held by the Hon'ble Supreme Court, filing of the charge-sheet does not in any manner lessen the allegations made by the prosecution but establishes the contrary.

11. Further, the Hon'ble Apex Court was pleased to hold in **Prasanta Kumar Sarkar vs. Ashis Chatterjee and another [(2010) 14 SCC 496]**, that 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.”*

Going by the above laid principles, in the case on hand also, there is a clear prima-faice case against accused having committed the offences as stated in the charge sheet.

12. Thus, in my opinion, there are prima-facie materials to show that the direct involvement of the accused in the alleged offence.

Therefore, having regard to the seriousness of the offence charged against the accused and taking into consideration of the gravity of the offence, nature of the offence and circumstances under which alleged offence has taken place, this is not fit case to exercise the discretion under section 439 of Cr.P.C. Hence, this Court is of the view that accused have failed to make out valid grounds for grant of bail. Accordingly, I answered the Point No.1 in the *Negative*.

13. **Point No.2:** For the foregoing reasons, I proceed to pass the following:

ORDER

The petition filed by the Accused No.1 and 2 U/S.

439 of Cr.P.C is hereby dismissed.

[Dictated to the Judgment Writer, typed by him, corrected and then pronounced by me in the open court on this the 24th day of February 2022].

Sd/-

[Manjunath Sangreshi]

**II Addl. District & Sessions Judge
Chikkamagaluru**