

KACM010024822021



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

Dated this the 23rd day of February, 2024

:PRESENT:

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

S.C.No.165/2021

Complainant : The State by Kadur Police,

(Represented by Public
Prosecutor)

-VS-

Accused : 2. Mahammad Subhan,
S/o. Hussain Sab,
Aged about 53 years,
R/at Ajeez Galli, Market Road,
Chikkamagaluru city.

(Represented by Sri N.D,
Deputy Defence Counsel,
LADCS, Chikkamagaluru)

ORDER

The accused No.2 has filed this application
under section 439 of Cr.P.C., for enlarging him on

bail in the above case registered against him for the offences punishable under sections 120-B, 302, 392 and 201 of IPC r/w. section 34 of IPC.

2. It is contended by the accused No.2 that he had filed bail application before the court at the time of commencement of trial, but said application was rejected and on the basis of changed circumstances in the case, the accused has filed this application for regular bail. The accused has not committed any of the offences alleged against him and he is innocent of the same, but he has been falsely implicated at the instance of complainant.

3. It is also stated by the accused No.2 that he is suffering from old age ailments and as such he intends to take special care in a specialized hospital at Bengaluru. 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 within the jurisdiction of this court and as such there is no chance of his abscondance and he is sole bread earning member in his family. 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 the 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 completed and if at this stage, this accused No.2 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/CW1 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.2 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 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 18.07.2021, the respondent police registered case in Crime No.140/2021 for the offence punishable under section 302 of IPC against unknown person on the basis of complaint lodged by one Smt.Mamatha, who is the wife of deceased Prakash and proceeded with the investigation. In the course of investigation, this accused was arrested and produced before the court on 20.07.2021 and since then he is in judicial custody.

12 After completing investigation, the respondent police submitted charge sheet against the accused Nos.1 and 2 for the offences punishable under sections 120-B, 302, 392 and 201 of IPC r/w 34 of IPC and after the matter being committed to the court of Sessions, the Sessions case has been

registered and the same is made over to this court for disposal.

13. The case of prosecution is that in order to gain money to meet their wrongful needs, the accused Nos.2 went to Kadur on 14.07.2021, hatched a plan to hire an auto in order to go to Nanjappanahalli and to rob the said auto and money from driver of said auto after murdering him and on the same day, at about 8.45 p.m., when the deceased-Prakash i.e. husband of CW.1 was waiting for a hire for his passenger auto bearing No.KA-66/0586 at Basaveshwara Circle opposite to Sree Mart, Kadur town, the accused hired said auto for Rs.350/- to go for Nanjappanahalli and in meanwhile, accused No.1 and deceased purchased alcohol at Ravi bar, got hamlet parceled at Yati Kabab centre, as per the CCTV footage provided by CW.19 and then they got fuel to the auto at M.S Petrol Bunk near old fire office as per CCTV footage provided by CW.22, owner of said bar and on their way to Nanjappanahalli, they parked auto on a road at Karnataka Housing Board sites near G.Thimmapura Gate and therein, the accused made Prakash to drink liquor and then, accused No.1 all of a sudden punched on chest of Prakash and when he fell on the foot rest of auto cabin, the accused No.1 sat on him and with an intention to kill him, he tied his neck tightly with a wire rope, which was lying besides the seat and at that point of time, accused No.2 caught hold the legs of the deceased tightly and as a result, the deceased died at the spot.

14. It is also alleged that after committing murder of said Prakash, the accused took his dead body in the auto of deceased and went upon Hemagiri tank bund, threw the dead body into Hemagiri pond and also threw SIM card and cloths of the deceased into the pond by taking Rs.1,600/- cash, which was kept in the pant of deceased and his touch screen mobile and also robbed passenger auto bearing No.KA-66/0586 belonging to the deceased.

15. It is further alleged by the prosecution that the involvement of the accused in the crime in question is also established by the digital evidence in the form of usage of SIM card in the mobile belonging to the deceased and CCTV footages in which they were seen with deceased. Further, it is also alleged that the accused are habitual offenders as they are involved in several cases on the file of Kadur police station, Sakharayapatna police station, Lakkavalli police station and Town Police station, Chikkamagaluru.

16. It is alleged that this accused along with his son i.e., accused No.2 had committed murder of an innocent by name Prakash, an auto driver by hiring his auto only to gain money to meet their wrongful needs and robbed his auto and cash of Rs.1,600/- and a touch screen mobile, which was kept in the pocket of clothes of deceased.

17. The materials placed on record and the nature of evidence relied by the prosecution make out a prima facie case and reasonable grounds to believe

that the accused had committed the alleged offences. Further, it is seen from the records that PW.1 to PW.7 have been examined by the prosecution and they have supported the case of prosecution. Though this accused has contended that he has been falsely implicated in crime in question, he has not made out any ground to substantiate his contention. Admittedly this accused is a stranger to the complainant, who is the wife of deceased and as such there is no reason for her to implicate him regarding brutal murder of her husband. Further in the cases of this nature, there is no possibility of the victim implicating someone else by leaving the real culprit. 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 his involvement in the crime in question.

18. The learned counsel for accused has vehemently argued that after completing investigation, charge sheet has been laid against this accused and therefore his 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, learned Public Prosecutor has contended that the prosecution has examined 7

witnesses as PW.1 to PW.7 and other material witnesses including eyewitnesses are yet to be examined and if at this stage, this accused is released on bail, he may threaten, influence and intimidate the prosecution witnesses and tamper the evidence.

19. 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....”

20. 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 the accused that he is entitled to be released on bail since charge sheet has been submitted by the investigating agency, is not acceptable.

21. 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 including eyewitness 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.

22. By this application, the accused has sought for releasing him on regular bail mainly on the ground that he is suffering from ill health on account of his old age and therefore, he intends to get treated in any specialized hospital at Bengaluru. In this regard, it is to be noted that nothing has been placed on record by the accused to show that he is suffering from any serious illness, which cannot be treated by keeping him in custody. Hence, the ground urged in the said regard cannot be accepted.

23. Further 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..."*

24. 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.

25. Further having regard to the nature and gravity of accusation made against this accused and its impact on society and also having regard the nature and conduct of this accused 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.

26. **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.2 is hereby rejected.

(Dictated to Stenographer Grade-I directly on computer, script corrected and then signed by me on this the 23rd day of February, 2024)

Sd/-

(BHANUMATHI.B.C)

II Addl. District & Sessions Judge,
Chikkamagaluru