

KACM010024822021



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

Dated this the 25th day of July, 2025

PRESENT

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

S.C.No.165/2021

Complainant : The State by Kadur Police,

(Represented by Public
Prosecutor, Chikkamagaluru)

-VS-

Accused Persons : 1. Shabbir S/o Mahamad Subhan,
Aged about 27 years,

2. Mahamad Subhan S/o Husin Sab ,
Aged about 53 years,
Both are R/at: Ajeej Galli,
Market road,
Chikkamagaluru Town,
Chikkamagaluru.

(Represented by Sri.S.K.M., Advocate)

ORDER

The accused No.1 and 2 have filed this application under
section 483 of B.N.S.S., 2023 for enlarging them on bail in the

above case registered against them for the offences punishable under section 120B, 302, 392, 201 r/w 34 of IPC.

2. By denying the allegations made against them, it is contended by the accused No.1 and 2 that they have not committed any of the offences alleged against them and they are innocent of the same. Further it is contended that the I.O. has not done arrest formalities or had given arrest memo to the accused persons as discussed in the judgment of Hon'ble Supreme Court in Vihan Kumar V/s State of Haryana in Special Leave petition (Criminal No.13320 of 2025). Further, it has been held that the same is in violation of the fundamental rights of citizens and hence they are liable to be enlarged on bail as a matter of right. It is also submitted that the accused persons are in J.C. from 4 years and the completion of the trial within a short period is not forthcoming. It is also submitted that the Hon'ble High Court of Karnataka in CrI.Pet.No.9448/2025 Anjaneyappa V/s State by Chikkaballapura Women Police Station, took the matter seriously and enlarged the accused on bail. The accused No.1 and 2 are ready to abide by the terms and conditions that may be imposed by this court and also to furnish surety for release them on bail in the above case to the satisfaction of the court. Therefore, the accused No.1 and 2 sought

for allowing the application.

3. 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 No.1 and 2 and the materials placed on record prima-facie discloses the involvement of this accused persons in the crime in question. The trial is yet to be completed and if at this stage, this accused persons are released on bail, they may flee from justice and thereby they would hamper the trial and they may also threaten and intimidate the prosecution witnesses. Further having regard to the nature and gravity of offences alleged against these accused persons, the Public Prosecutor sought for rejecting the application.

4. Heard arguments and perused the record.

5. The points that arise for the consideration of this court are:-

POINTS

1. Whether the accused No.1 and 2 have made out any grounds to enlarge them on bail in the above case?
2. What order?

6. My findings on the above points are as follows:

Point No.1: In Affirmative

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

REASONS

7. **Point No.1** : It is the case of the prosecution that, on 14.07.2021 the accused persons came to Kadur city from Nanjappanahalli Village, in order to make wrongful gain for their lavish needs, with common intention have hatched a plan to hire an auto in order to go to Nanjappanahalli to rob the said auto and money from the said auto driver after murdering him, at 8.45 p.m., at Electric transformer, opposite to Shri Mart, Basaveshwara Circle, Kadur Town, within the jurisdiction of Kadur Police Station, when the deceased Prakash, husband of CW.1-Mamatha, waiting for hire for his passenger auto bearing No.KA-66/0586, the accused No.1 and 2 hired the said auto for Rs.350/- to go for Nanjapanahalli and went near G.Thimmapura gate, parked in the site of Karnataka Housing Board, made the deceased to drink liquor, at that time, accused No.1 assaulted on the deceased on his chest, made him to fall into foot rest of auto cabin, seated 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 the deceased died at the spot due to assault made by the accused persons. Further, in order to screen the evidence of offence from

legal punishment, after murdering Prakash, took the dead body of the deceased in the above said passenger auto, accused No.1 driven the said auto towards Hemagiri-Kodihalli, went on to Hemagiri tank bund, threw the dead body into Hemagiri pond and also threw SIM and clothes of the deceased into the pond and accused No.1 robbed Rs.1,600/- cash from the pant pocket of the deceased, touch screen mobile and also robbed the passenger auto of the deceased Prakash and also on 17.07.2021, scratched the mobile phone of CW.24 and thereby committed the above said offences. With these allegations, the complainant police submitted charge sheet against the accused persons for the offences punishable under sections 120B, 302, 392, 201 R/w 34 of IPC.

8. The learned counsel for accused persons has vehemently argued that after completing investigation, charge sheet has been laid against this accused and therefore their presence is no more required for further investigation and there is no hope of trial getting completed in the near future. The accused persons by relying on the decision of the Hon'ble Supreme Court of India in Vihan Kumar V/s State of Haryana in Special Leave Petition (Criminal No.13320 of 2025), has contended that the IO has not mentioned grounds of arrest and it amounts to violation of

fundamental rights as per Article 21 of Constitution of India. Per contra, as noted above, the learned Public Prosecutor has contended that the trial is yet to be completed and if they are let on bail, they may flee from justice and hamper the trial.

9. 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 above said alleged offences, the offences under section 302, 120B of IPC is punishable with death or imprisonment for life and fine and triable by Sessions Court, section 201 of IPC is punishable with imprisonment for 7 years and triable by Sessions Court, section 392 of IPC is punishable with rigorous imprisonment for 10 years and fine and triable by Magistrate Court.

10. Further as per the decision relied on by the petitioner in **Hon'ble Supreme Court in 2025(2) KCCR SN 52 SC between Vihaan Kumar V/s The State of Haryana and another dated:07.02.2025**, it is held that:

“ F. CONSTITUTION OF INDIA – Article 22(1) – Duty of the court – Held: (Per Abhay S. Oka,J): When a violation of article 22(1) is established, it is the duty of the court to forthwith order the release of the accused - That will be a ground to grant bail even if statutory restrictions on the grant of bail exist - The statutory

restrictions do not affect the power of the Court to grant bail when the violation of Articles 21 and 22 of the Constitution is established”.

11. On perusal of the record, the accused No.1 and 2 were arrested and produced before the jurisdictional Magistrate on 20.07.2021 with a remand application and procedure followed by the investigating officer after arrest of the accused persons. However, grounds of arrest as discussed in the above referred decision has not been complied except the formalities that the arrest of accused persons were informed to their relatives and accused persons were subjected to medical examination. The accused No.1 and 2 are in judicial custody since from the date of their arrest and almost 4 years have been passed.

12. Relying on the above decision of the Hon’ble Supreme Court, the learned counsel for accused persons has argued that in this case the complainant Police have not complied with the requirements of Article 22(1) of the Constitution and there is clear violation of Article 22(1) of the Constitution and hence, accused No.1 and 2 are entitled to be released on bail on this ground alone.

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 trial 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 persons 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 No.1 and 2 are required to be detained after filing of

charge sheet by the complainant police and that too 8 witnesses are already examined and documents and material objects have also been marked, when there is no claim for custodial interrogation by the complainant police. Considering all these facts, this court is of the opinion that the accused No.1 and 2 are entitled to be granted bail.

16. Further when the accused persons 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 persons at trial.

17. 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 persons appearing to take their trial and not, they supposed guilt or innocence.

18. In the instant case the complainant police have laid charge sheet and therefore, the presence of accused persons in the custody may not be necessary for further custodial interrogation. The accused persons 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 persons can be secured easily and hence, the question of absconding of the accused persons does not arise at all.

19. The objections raised by the learned Public Prosecutor that the accused persons would not be available for the trial and would abscond and tamper the prosecution witnesses would be met with by imposing stringent conditions on their release. Therefore, the accused persons 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**.

20. **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 No.1 and 2 under section 483 of B.N.S.S., is hereby allowed.

The accused No.1 and 2 are hereby ordered to be released on bail on them executing personal bond for a sum of Rs.2,00,000/- with two sureties for the like sum to the satisfaction of this Court subject to the following conditions:-

1. The accused No.1 and 2 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.

(Dictated to Stenographer Grade-III directly on computer, script corrected and then signed by me on this the 25th day of July, 2025)

Sd/-
(Manjunatha)
II Addl. District & Sessions Judge
Chikkamagaluru.