

**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 27th day of December 2019

S.C.No.145/2019

Complainant: State by Mallandur Police.
(Represented by Public Prosecutor)

-V/s-

Accused: Lingaraju @ Ningaraju
@ Lingaraja Echalakatti
S/o. Megharaj,
Aged about 26 years,
Police Constable,
CAR Bengaluru.
R/o. Alaboora Village,
Kogali Hobli, Kottur Taluk,
Bellary District.

(Represented by Sri. B.M. Laxman
Gowda, Advocate)

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

The accused has filed this petition under section 439 of Cr.P.C.
for grant of regular bail in connection with Cr.No.43/2019
[S.C.145/2019] of Mallandur Police Station registered against him for
the offences punishable under sections 328 and 302 of IPC.

2. The brief facts of the prosecution case are that the accused has been having illicit relationship with C.W.7-Smt.Reshma since 3 years and both have begotten a baby girl by name Amisha aged about 2 years from said relationship. That C.W.7 used to torture the accused and used to demand money by threatening to inform their illicit relationship to public and family of the accused. Hence, accused thought that if he had finished daughter of C.W.7 i.e. said Amisha, then C.W.7 would not blackmail him. Thereafter, on 03.08.2019 at about 12.00 p.m., in the night the accused with intention to commit the murder of said child, had drunk with C.W.7 in her house and while C.W.7 had been to attend nature call at that time, accused forcibly pressed the mouth of the said Amisha by his hand and thereby killed her. Based on this complaint the respondent police have filed charge-sheet against the accused for the aforesaid offences. Since the date of his arrest the accused is in judicial custody. Hence, this petition.

3. The counsel for the Accused contended that the complainant police have registered the above case against the accused person alleging the offence punishable under section 302 of IPC. Now after completion of investigation, charge sheet has been submitted before this Hon'ble Court, since the date of arrest, the accused is in Judicial

Custody. It is submitted that the accused has not committed any offence alleged against him and he is innocent of the same. He has been falsely implicated in this case at the instance of the persons who are inimical towards the accused. The accused is having deep rooted the society and he is a law abiding citizen and he hails from respectable family. There are no antecedents to show that he has been involved earlier in any case. The accused is the permanent resident of Alaboru Village, Kogali Hobli, Kottur Taluk, Bellary District. He is having both movable and immovable properties and he is only earning member in his family. He has to look after his family members. The accused is in Judicial Custody since the date of his arrest. If he is continued in J.C, he will be put to untold hardship and inconvenience. The accused offers surety for his release on bail and he will abide by any reasonable conditions that may be imposed by this Hon'ble Court. Hence, it is prayed to grant the bail to this accused also on the ground of parity.

4. The learned Public Prosecutor has filed his objections. He argued that the offences alleged against the petitioner are non-bailable and punishable with death penalty or life imprisonment. There is specific allegation against this accused that he had strangled the

deceased with help of motor bike clutch wire. Therefore, there is prima-facie material against the accused. If the accused is released on bail, he may abscond from the jurisdiction of the court and may tamper or hamper with the prosecution witnesses. Hence, the learned Public Prosecutor has sought for rejection of bail.

5. Heard both the sides. Perused the entire records.

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

1. Whether the accused has made out sufficient grounds for grant of bail u/s.439 of Cr.P.C ?

2. What order?

7. 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

8. **Point No.1:-** I have gone through the grounds urged in the bail petition and perused the entire charge sheet materials.

9. Looking to the charge-sheet filed against the accused, it indicates that there are sufficient materials to show that the accused has committed the murder of two year old girl baby which is stated to be born out of the illicit relationship of accused and C.W.7. The

statement of C.W.7 and voluntary statement of accused disclose a specific overt act committed by the accused. Moreover, at instance of this accused the investigating officer has conducted the mahazar of scene of crime and recovered some blank papers containing signatures of mother of deceased child which were kept in his Kadur police quarters. Therefore, the prosecution materials collected during the investigation clearly show that a *prima-facie* case against this accused for having committed the murder of innocent two years old girl.

10. 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.”

In the case on hand, the prosecution papers reflect that there is a prima facie case against the accused. When the above laid principles of the Hon'ble Supreme Court are applied, the prima facie case against the accused and the severity of the crime and the punishment prescribed for the same over-weighs his prayer for seeking bail.

11. 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 is 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.

12. In my opinion, there is prima-facie material to show that the direct involvement of the accused in the alleged offence. Therefore,

having regard to the seriousness of the offence charged against this accused, this is not fit case for grant of bail to petitioner. Hence, I answered the point No.1 in the *Negative*.

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

ORDER

The petition filed by the accused under sections 439 of Cr.P.C is hereby dismissed.

(Dictated to the Typist, typed by her on computer, corrected and pronounced by me in open court on this the 27th day of December 2019)

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

*Mk/-