

KACM010016092017



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

Dated this the 15th day of January, 2023

:PRESENT:

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

S.C No.76/2017

Complainant : State by Panchanahalli
Police.

(Represented by Public
Prosecutor)

-VS-

Accused : 1. Munavar Pasha @
Munna, S/o. Chand Pasha,
Aged about 19 years,
R/o. D.No.2263, 4th Cross,
L.B Shashtri Nagar,
HAL, Bengaluru.

(Represented by
Sri H.E.A.K, 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 another for the offences punishable under sections 504, 323, 324, 506, 114, 109 and 307 of Indian Penal Code r/w section 34 of the said Code.

2. It is contended by the accused No.1 that the accused was on bail in the above case, but due to ill health he could not appear before the court from 24.01.2020 and thereafter, by issuing notice to the surety on 19.02.2022, the case was ordered to be split up in SC No.10/2022 and in the said case, pursuant to NBW issued against this accused, he was apprehended and produced before this court on 2.08.2022, on which he was taken to judicial custody and subsequently by closing the case in SC No.10/2022, the accused No.1 was directed to appear and face trial in this case, which is pending trial against accused No.2.

3. It is further contended by accused No.1 that in the above case, CW.1 to CW.3 are the alleged eyewitnesses, CW.1 has been examined as PW.1, CW.2 has been examined in chief and for last two hearings, he is not appearing for cross examination and CW.3 reported to be dead. The case has been posted to 20.02.2023 and there are many witnesses to be examined and trial may not be completed in near future. The accused is suffering from different ailments and he has a wife and 3 female children

and aged parents and since the accused is in judicial custody for a long time, his family is suffering which is a punishment for them and since the alleged eyewitnesses have been examined by the prosecution, there are no chances of tampering the prosecution witnesses and he undertakes to abide by the terms and conditions that may be imposed by the court for granting bail to him. Inter-alia on these grounds, the accused sought for allowing the petition.

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 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 is released on bail, he may involve himself in the commission of similar offences and he may threaten and intimidate the prosecution witnesses. The accused may also flee from justice again 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. Heard arguments and perused the records.

6. 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?

7. 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.)

8. **Point No.1** : 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 and moreover, this accused was already enlarged on bail on merits. Hence, 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.

9. In this case, the accused herein and accused No.2 have been charge sheeted for the offences punishable under sections 504, 323, 324, 506, 114, 109 and 307 of IPC r/w. section 34 of IPC with the allegations that on 01.11.2015 at about 11.30 a.m at Panchanahalli village, Kadur Taluk, when CW.1 was in his shop, accused No.1 at the instigation of accused No.2 and in his presence, picked up quarrel with CW.1, abused him in filthy language and assaulted with hands on his body and with an intention to kill CW.1, the accused No.1 assaulted him with a chopper on his head and caused bleeding injuries and also issued threat to take away his life if the case registered against accused No.2 is not withdrawn.

10. It is seen from the records that during the course of investigation, this accused was arrested and produced before the court on 02.11.2015 and subsequently, he was released on bail on 05.12.2015. Since the accused was already released on bail on merits, this court is not supposed to look into the merits or demerits of the case. Hence, I proceed to consider whether this accused, who remained absent from the court proceedings and whose presence has been secured under NBW, has made out any ground to once again enlarge him on bail.

11. It is seen from the records that upon committal, the case against accused Nos.1 and 2 was registered in S.C No.76/2017 and the same is

made over to this court for disposal. Pursuant to summons issued by this court, the accused Nos.1 and 2 who were on bail entered appearance on 29.08.2017 and they were represented by counsel of their choice. Thereafter, the accused No.1 remained absent on 08.07.2017, when the matter was set down for HBC and on 16.08.2018, when the matter was set down for framing of charge and on subsequent dates, he appeared and got recalled NBW issued against him.

12. Further, it is seen from the records that when the matter was set down for FDT, the accused No.1 again remained absent on 05.07.2019 and later got recalled NBW issued against him on 30.08.2019. Subsequently, when the matter was set down for evidence of CW.1 to CW.3 on 23.01.2020, the accused No.1 again remained absent and thereby CW.1, who was present on that day was bound over. Thereafter, the accused No.1 continuously remained absent and his presence could not be secured by the police despite issuing warrants on several occasions and ultimately, the case against accused No.1 was ordered to be split up on 21.10.2021. Accordingly, the split up case against this accused was registered in SC No.10/2022 and in the said case, pursuant to NBW, this accused was apprehended and produced before this court on 02.08.2022 and on that day, he was taken to judicial custody since apparently he violated the terms and conditions imposed on him by the court while letting him on bail and subsequently, by

closing the case in SC No.10/2022, this accused has been directed to face trial in this main case along with accused No.2. Thereafter, the accused No.1 come with this application to let him on bail.

13. As stated above, this accused was earlier enlarged on bail on merits and subsequently, when he remained absent for almost two years, the case against him was ordered to be split up and it came to be registered in SC No.10/2022 and in the said case his presence was secured under NBW and he was again taken to judicial custody. It is to be noted that while accepting the committal bail, this accused was directed to keep himself present regularly on all the dates of hearing and he shall not delay the trial. But as noted in the preceding paragraphs that immediately after obtaining committal bail, this accused remained absent at the stage of hearing before charge, framing of charge and subsequently during evidence. In the present application filed by the accused, it is only stated that due to his illness, he was not able to appear before the court from 24.01.2020 onwards. But no document has been produced by the accused to show that in fact, he was actually prevented from appearing before the court by any disease, beyond his control. Hence, it appears that the absence of accused in the proceedings is deliberate. Further, it is seen from the records that this accused is shown to be a resident of Bengaluru. Having regard to these aspects, if at this stage, the accused is let on bail, the possibility

of he again fleeing from justice and hampering the trial cannot be ruled out.

14. It is pertinent to note that even in the interregnum period, this accused remained absent on several occasions and later appeared and got recalled NBW issued against him. In the present application, the accused has not made out any ground to explain his continuous and frequent absence from the court proceedings by violating the terms and conditions imposed on him by the court while admitting him on bail.

15. The danger of accused fleeing from justice is one of the important factor to be kept in mind at the time of considering the bail application. It is to be noted that if an accused person obtains an anticipatory bail or regular bail, it is obligatory on his part to make himself available for investigation and later for trial and he having obtained the benefit of bail, cannot make himself scarce by remaining absconding. Further in the case on hand, when the accused is very much aware of the pendency of case and terms and conditions stipulated by this court at the time of granting bail to him coupled with the fact that the accused has not assigned any reason for his absence, this court is of the humble opinion that in facts situation, the accused loses his right to seek bail since he violated the terms and conditions granted earlier by this court by making himself unavailable from the court proceedings.

16. In addition to this, it is to be noted that this matter is of the year 2017 and the matter is still pending trial and if at this stage, the accused is again let on bail, the possibility of he again fleeing from justice and causing hindrance for the disposal of the matter cannot be ruled out. Having regard to these aspects and further having to regard to previous conduct of this accused after he was admitted on bail, this court is of the humble opinion that this accused has not made out any ground to enlarge him on bail. Accordingly, I answer Point No.1 in negative.

17. **Point No.2:** In view of the above findings on point No.1, I proceed to pass the following:

ORDER

The application filed by the accused No.1 under Section 439 of Cr.P.C. is hereby rejected.

(Dictated to Judgment Writer directly on computer, script corrected and then signed by me on this the 15th day of February, 2023)

Sd/-

(BHANUMATHI.B.C)

II Addl. District & Sessions Judge,
Chikkamagaluru.