

KACM010028032018



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

Dated this the 12th day of December, 2022

:PRESENT:

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

S.C No.133/2018

Complainant : State by Mallanduru
Police, Mallanduru.

(Represented by Public
Prosecutor)

-VS-

Accused : Thirtha S/o Raju
Aged about 29 years
R/o. Keremakki Colony,
Avathi Hobli,
Chikkamagaluru Taluk.

(Represented by Sri J.K.
Somashekar, advocate)

ORDER

The accused 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 498-A and 306 of Indian Penal Code.

2. It is contended by the accused that he has not committed any offence, he is innocent of the same, the offences alleged against him are not punishable with death or imprisonment for life, he is not an influential person, he hails from a respectable family, his entire family is depending upon him and he is permanently residing in Keremakki village, Chikkamagaluru Taluk along with his family and there is no chance of his abscondance if he is let on bail, he was suffering from jaundice and hence he could not appear before the court 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.

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 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. 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.

4. Heard arguments and perused the records.

5. The presence of CW.2/complainant has been secured to hear regarding this application and he opposed granting bail to the accused.

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

POINTS

1. Whether the accused 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 affirmative
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. It is seen from the records that on 26.05.2018, the complainant police registered case in Crime 61/2022 against this petitioner for the offences punishable under sections 307 and 324 of I.P.C on the basis of statement of one Hemalatha, which came to be recorded while she was being treated at Mangala Hospital, Hassan. After completing investigation, the complainant police submitted charge sheet against accused for the punishable under sections 498-A and 306 of IPC.

10. In the charge sheet, it is alleged that about eight years back, the accused contracted love marriage with deceased Hemalatha, they have two children in their wedlock, after the marriage, the

accused used to give mental and physical cruelty to the deceased Hemalatha by consuming alcohol and hence, his wife started residing in her parental house and then accused used to go to her parental house and take back his wife by consoling her and in the year 2017, after Gowri and Ganesha festival, the accused made galata with Hemalatha stating that if she dies by taking poison, then he would be able to reside without any disturbances and in the said regard, said Hemalatha lodged complaint against the accused before Mallandur Police Station and by registering said complaint in NC No.263/2017, the police summoned the accused to their station and advised the accused and his wife to lead marital life with harmony.

11. It is further contended that on 07.05.2018 there was a death ceremony of grandmother of accused, he invited his wife Hemalatha for the said function, but she refused to attend said function, stating that he gave mental and physical cruelty to her by consuming alcohol and when the accused went to said function, being unable to bear the torture given by the accused, Hemalatha consumed rat poison and as a result she died on 03.06.2018 at about 11.45 p.m and the accused herein had abetted her suicide.

12. It is seen from the records that this petitioner, who was in judicial custody was enlarged on bail on 31.10.2018 and it appears that since then he attended the court regularly either personally or

through his counsel till 30.03.2019 and thereafter, he started remaining absent from the court proceedings very frequently and whenever NBW was got issued against him, he used to appear on the subsequent days and got NBW recalled. Similarly, when the accused remained continuously absent during pendency of trial from 20.09.2022 till 24.11.2022 on four hearing dates, NBW was issued against him and on 24.11.2022, the accused present and sought for recalling NBW issued against him by filing application under section 70(2) of Cr.P.C in the casual manner without submitting any material to substantiate his absence before the court. Hence, by rejecting the said application, the accused was again taken to judicial custody on 24.11.2022 since he apparently violated the terms and conditions imposed by the court while admitting him on bail.

13. Subsequently, the accused has come with application to enlarge him on bail. In the application, it is stated by the accused that since he was suffering from jaundice, he could not appear before the court and he claims himself to be the permanent resident of Keremakki village and undertakes to appear before the court on the future hearing dates.

14. The Hon'ble Apex court in the case of **Sanjay Chandra -VS- CBI reported in 2012(1)SCC 49**, has categorically held that bail is not to be withheld as a punishment otherwise also normal

rule is of bail and not jail and the court is required to keep in mind the nature of accusations, nature of evidence in support thereof, severity of the punishment which the conviction will entail, character of accused and the circumstances which are peculiar to the accused involved in that crime.

15. In view of these aspects, this court is of the opinion that at this stage, the prosecution has not made out any compelling grounds to detain the accused further in judicial custody as a punishment. Further, the accused is ready to furnish surety to the satisfaction of the court and to abide by any conditions that may be imposed by this court. Hence, it appears that there is no impediment in securing the presence of the accused before the court for the remaining trial. The apprehension and interest of the prosecution that if the accused is enlarged on bail he may tamper with the remaining prosecution witnesses or flee from justice can be safeguarded and taken care of by imposing suitable conditions and thus it serves the dual purpose in the interest of justice.

16. Thus, by taking into consideration the facts and circumstances of the case and material available on record, without expressing anything on merits or demerits of the case, this court is of the opinion that this is a fit case to exercise discretion to enlarge the accused on bail and accordingly, I answer point No.1 in **affirmative**.

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

ORDER

The application filed under section 439 of Cr.P.C by the accused is hereby allowed and the accused is ordered to be enlarged on bail in the above case on the following conditions.

- 1) The accused shall execute personal bond for a sum of Rs.50,000/-(Rupees fifty thousand only) with one local surety for the like sum.
- 2) He shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of case so as to dissuade him from disclosing such facts to the court or to any police officer.
- 3) He shall attend the court regularly on all the dates of hearing.
- 4) He shall not involve himself in any criminal activity.
- 5) He shall produce any authenticated proof regarding his permanent abode.

6) In case of violation of any of the conditions imposed above, the bail granted in favour of the accused shall stands canceled.

(Dictated to Judgment Writer directly on computer, script corrected and then signed by me on this the 12th day of December, 2022)

Sd/-

(BHANUMATHI.B.C)

II Addl. District & Sessions Judge,
Chikkamagaluru.