

KACM010028452023



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

**Dated this the 3<sup>rd</sup> day of June, 2025**

**PRESENT**

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

**S C No.144/2023**

|             |                                                                                                                                                                                                                            |
|-------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Complainant | State by Sakharayapatna P.S.,<br>Sakharayapatna.                                                                                                                                                                           |
|             | <b>Vs</b>                                                                                                                                                                                                                  |
| Accused     | 1. Smt.Kantha W/o Manjunatha,<br>Aged about 37 years,<br>House wife,<br>R/at Saganibasavanahalli<br>Village, Emmedoddi Post,<br>Birur Hobli, Kadur Taluk,<br>Chikkamagaluru District.<br><br>(Repted by Sri SCN, Advocate) |

**ORDER**

The learned counsel for accused No.1 has filed bail application under section 439 of Cr.PC., (483 of BNSS) to release her on regular bail.

2. During investigation, the complainant police have arrested the accused No.1 and produced her before the jurisdictional Magistrate on 07.07.2023, wherein she was remanded to judicial custody and since then she is in judicial custody.

3. The contention of accused No.1 is that the allegations made against her are false and fabricated. She is innocent of the offences alleged against her. The accused No.1 is the wife of accused No.2 and they are in judicial custody. They have got two minor children to look after. Already evidence of prosecution side started and the most of witnesses turned hostile and the witnesses have not deposed anything as against the accused No.1. Therefore, the accused No.1 has prayed for allowing this application.

4. The learned Public Prosecutor has filed objection in detail contending that the bail application is not maintainable in law or on facts. Further, she has reiterated the contents of complaint and also contended that the alleged offences are heinous in nature and the investigation has already over. The trial is yet to be completed. At this stage, if the accused No.1 is granted bail, there is chance of tampering the prosecution witnesses and also there is chance of her absconding and for the reasons stated in the objection has prayed for dismissal of the bail application.

5. Heard the argument on both sides and perused the relevant materials on record.

6. The following points are arise for consideration of this court:

*1. Whether the accused No.1 has made out any ground for her release on bail in this case at this stage as sought for?*

*2. What order?*

7. This Court has answered the above points are as under:

*Point No.1: In the Affirmative,*

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

### **REASONS**

8. **Point No.1:** On considering the papers on record, it is evident to note that the complainant police have registered the case against accused Nos.1 to 11 in crime No.125/2023 for the offence punishable under sections 302 R/w section 34 of IPC based on the complaint of Smt.Rangamma and after completion of the investigation the complainant police have submitted charge sheet against the accused Nos.1 and 2 for the offences punishable under sections 120-B, 114 and 302 R/w section 34 of IPC.

9. It is the case of the prosecution that that earlier on 21.12.2022, CW.1, who is the mother of deceased Bharathi, reported complaint to the police regarding missing of said Bharathi and pursuant to said complaint, she was traced by the police on 02.01.2023 and on inquiry, she revealed that she had eloped with the accused No.2 herein, who is the husband of the accused No.1 and having two children and thereby the said missing complaint was closed. One and half month later, Bharathi again left her house and went to the estate in which the accused No.2 was working, forcibly made him to tie tali to her near a temple in the said estate and started leading life with him as his second wife. When the

accused No.1, who is the first wife of accused No.2 came to know about the same, she quarreled with her husband, but later she, accepted Bharathi as the second wife of her husband and then she, accused No.2 and Bharathi started living together. At that point of time, everyday, the accused No.1 used to quarrel with accused No.2 and Bharathi on the premise that she has been neglected by accused No.2. Being upset with the everyday quarrel, the accused Nos.1 and 2 held panchayath with the parents of Bharathi and asked them to take Bharathi with them, but they refused to do so by saying that the accused No.2 had already married her by tying tali. At that point of time, the accused No.1 had indirectly issued threat by saying that they are not responsible if anything happens to Bharathi.

10. It is further alleged by the prosecution that as there was 48 days program in the newly constructed Antharaghattamma temple at Sagani Basavanahalli village on 06.07.2023, the accused No.2 took accused No.1 as well as Bharathi to the village to participate in said festival. On that day, at the invitation of the sister of accused No.1, her relatives had come to her house for festival. At that point of time, the accused Nos.1 and 2 had been to the house of said sister of accused No.1 to invite her relatives for the dinner on that day. At that point of time, said relatives refused to go to the house of accused by saying that they would not come to the house, who have no reputation. Therefore, the accused returned back to their house and had dinner with Bharathi at around 7.30 p.m. Later at 8.30 p.m, Bharathi went to the toilet situated behind the house of

the accused, the accused Nos.1 and 2 followed her by hatching criminal conspiracy to kill her by thinking that they were dejected by their relatives because of her, they have no peace since her entry to their life and their reputation would get further spoiled if they allowed her to stay with them. The accused No.2 kept a watch around by holding his mobile torch on and immediately when Bharathi came out from the toilet, the accused No.1 dragged her to the field situated behind the house by holding her hair, pushed her on the ground and when she was lying in the prone position on the ground, the accused No.1 smothered her by squeezing her neck and killed her.

11. The contention of accused No.1 is that she is innocent of the offences alleged and there is absolutely no case made out against her for the alleged offences. To prove the case the prosecution examined PW.1 to PW.6, remaining witnesses are yet to be examined and most of all witnesses partly turned hostile. The prosecution witnesses have not deposed anything as against the accused No.1. But, as pointed out by the learned Public Prosecutor, the complainant police have registered FIR and after completion of investigation submitted charge sheet against the accused for the above said offences. The trial is yet to be completed. Therefore, at this stage any of the contentions of accused No.1 that she is innocent of the alleged offences and she has not committed any offence does not merit consideration on the facts of the case and also in law. It is not desirable on the part of this Court to come to

conclusion at this stage that the accused No.1 is innocent of the offences alleged against him.

12. 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 offences, the offence under section 302 of IPC alleged against the accused is exclusively triable by this Court and it is punishable with death or imprisonment for life. It is seen from the record that the daughter of accused No.1 now passed II PUC and she intend pursue further education. On that ground also the accused No.1 seeking bail to admit her to further education.

13. Further the learned counsel for the petitioner has relied upon the judgment of **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**, wherein 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”.**

14. On perusal of the record, the accused No.1 was arrested and produced before the jurisdictional Magistrate on 07.07.2023 with a remand application and procedure followed by the investigating officer after arrest of the accused. However,

grounds of arrest as discussed in the above referred decision has not been complied except the formalities that the arrest of accused was informed to her relatives and accused was subjected to medical examination. The accused No.1 is in judicial custody since from the date of her arrest.

15. Relying on the above decision of the Hon'ble Supreme Court, the learned counsel for accused 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 is entitled to be released on bail on this ground alone.

16. 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.”***

17. 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 No.1 is innocent of the offences alleged against her, until full-fledged trial.

18. The main point that has to be looked is whether the accused No.1 is required to be detained after filing of charge sheet by the complainant police and 06 witnesses are already examined, when there is no claim for custodial interrogation by the complainant police. Moreover, the husband of accused No.1 who is accused No.2 in this case, is already been enlarged on bail by this Court. Hence, on the ground of parity also, this accused No.1 is entitled for bail. Further when the accused No.1 is 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 No.1 at trial.

19. 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 No.1 appearing to take her trial and not, she supposed guilt or innocence.

20. In the instant case the complainant police have laid charge sheet and therefore, the presence of accused No.1 in the custody may not be necessary for further custodial interrogation. The accused No.1 is the permanent resident as shown in the cause title and this fact has not been disputed by the prosecution, as such the presence of accused No.1 can be secured easily and hence, the question of absconding of the accused No.1 does not arise at all.

21. The accused No.1 is in judicial custody since 07.07.2023. Considering the age and occupation of the accused No.1, the question of retaining her in judicial custody without any reason does not arise from the facts and circumstances of this case. The objections raised by the learned Public Prosecutor that the accused No.1 would not be available for the trial and would abscond and tamper the prosecution witness would be met with by imposing stringent conditions on her release. Therefore, the accused No.1 has made out sufficient grounds for her release on bail at this stage as prayed for. Accordingly, I answer point No.1 in the **affirmative**.

22. **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 under section 439 of Cr.PC (483 of BNSS) is hereby allowed.

The accused No.1 is hereby ordered to be released on bail on her executing personal bond for a sum of Rs.1,00,000/- with one surety for the like sum to the satisfaction of this Court subject to the following conditions:-

1. The accused No.1 shall regularly appear before this court as and when directed.
2. She shall not directly or indirectly holdout threats to the prosecution witnesses or lure them in any manner.
3. She shall not tamper with the prosecution witnesses in any manner.
4. She shall not commit similar offences or any offence in future and shall not intimidate the complainant.
5. She shall furnish her residential ID address proof.
6. In the event of violation of any of the above conditions, the above bail shall stand automatically canceled.

(Typed to my dictation by the Stenographer Grade-III directly on computer, corrected by me and then pronounced in the open Court on this the 03<sup>rd</sup> day of June, 2025)

Sd/-

(Manjunatha)  
II Addl. District & Sessions Judge  
Chikkamagaluru

