

KADG010045572023



Presented on : 08-12-2023

Registered on : 08-12-2023

Decided on : --

Duration : --

**IN THE COURT OF
PRINCIPAL DISTRICT AND SESSIONS JUDGE,
AT DAVANAGERE,**

(Presided Over by SMT. RAJESHWARI N HEGDE)

SC/175/2023

Complainant:

State of Karnataka
by PSI, Nyamathi Police Station.

VERSUS

ACCUSED:

Ramesh & others.

A-4 Abhilash @ Jangli
S/o Peeryanaik,
Aged about 22 years,

A-5 Venkatesh
S/o Devendranaik,
Aged about 22 years,

Both are r/o Malavagoppa village,
Shivamogga Taluk & District.

PP for Complainant: By Sri Manjunath.B, PP, Davanagere.

Advocate for Accused 4 & 5: By Sri Sunilkumar M.L., Advocate

O R D E R

1. The accused No.4 & 5 herein have filed bail application u/s.439 of Cr.P.C seeking their release on bail in this case i.e., Cr.No.46/2023 of complainant police station for the offences punishable U/s.143, 147, 148, 324, 326, 302, 307, 120(B), 201, 212 r/w Sec.149 IPC.
2. Learned Public Prosecutor resisted the bail application by filing objection.
3. Heard arguments of both sides.
4. Perused the records.
5. Following point do arise for my consideration:
“Whether the accused No.4 & 5 have made out grounds to enlarge them on bail?”
6. My finding on the above point is in the negative, for the following;

R E A S O N S

7. As per the contents of chargesheet, the brief facts of the prosecution case is that;

The complainant Sri Sureshappa S/o Halappa has filed the complaint against the accused before the complainant police alleging that he is residing in Bhanuvalli village, he had 3 children i.e. two male and one female, his elder son by name Anjaneya is doing agriculture work, he(Anjaneya) and his villager Madhu S/o Narayanappa are the accused in the murder case of Handianni of Shivamogga held in the last year 2022, Anjaneya and Madhu were enlarged on bail about one month back, that on 15.3.2023 said

Anjaneya and Madhu had gone to Shivamogga for attending the court by their motorcycle bearing No.KA-03/JP-1418, on that day at about 4.00 p.m., some unknown persons had informed through phone to his villagers that unknown 6-7 persons were followed the Anjaneya and Madhu by jeep, at about 3.45 p.m., near Hirehalla of Govinakovi village hit the jeep behind the motorcycle of Anjaneya and Madhu, caused them to fall down, assaulted with Long (ಉಂಟ) to Anjaneya and killed him, further, they attempted to commit murder of Madhu by assaulting him with Long on his hands and legs. Soon after receiving the information, the complainant and his villagers had been to the spot, found the dead body of his son Anjaneya near the areca-nut land of Somashekharappa of Govinakovi village, he found injuries on the face and body of his son Anjaneya and Madhu had sustained injuries on his both hands, head and legs and the miscreants were ran away on seeing the people coming in the road who were attempted to commit his murder, further, complainant came to know that injured Madhu was taken to Honnali Hospital for treatment and for higher treatment he was further shifted to McGann Hospital, Shivamogga and the miscreants were escaped from the spot by leaving their vehicle i.e., Scorpio Jeep bearing No.KA-02/MG-0279, this incident had caused on the illwill of they were killed Handianni and hence, he lodged the complaint against the miscreants.

8. After receipt of the complaint, the complainant police have registered the case for the offence punishable U/S. 143, 147, 148, 324, 326, 302, 307, 120(B), 201, 212 r/w Sec.149 IPC in Cr.No.46/2023 and taken up the case for investigation. After completion of the investigation, the

complainant police have filed the chargesheet against the accused for the above said offences.

9. The accused No.4 & 5 contended that they are innocents, they have not committed any of the offences alleged, they are not at all concerned to the present case and they are in judicial custody since 16.3.2023, they have not made any attempt to commit murder of the deceased, their name is not disclosed in the statement recorded U/S.164 Cr.P.C., the offence U/S.302 IPC is not attracted on them, the Investigating Officer has already completed the investigation and filed the chargesheet before the court, and hence, the presence of the accused No.4 & 5 is not required for custodial interrogation, the accused No.7 to 12, 14 to 19 are already released on regular bail by the order of Hon'ble High Court of Karnataka, Bengaluru and hence, they are entitled for bail on parity ground, they are law-abiding citizens having deep roots in the society, the offences alleged are non-bailable offences but they are triable by this court, they are permanent residents of the address as shown in the cause title, they will not abscond and they are ready to abide by all the conditions to be imposed by the court, they are ready to furnish surety to the satisfaction of the court and also ready to appear before the Court on all the dates of hearing and also cooperate for the investigation. Hence, they prayed to grant bail to them.

10. On the contrary, the learned Public Prosecutor has filed detailed objection by reiterating the facts of the complaint, further stated that the bail application filed by

the accused is not maintainable in law, he denied the grounds narrated in the bail application, the offences alleged are heinous offences, the injuries sustained by the injured are grievous in nature, the Investigation Officer yet to collect material evidence and documents in the present case and yet to file additional chargesheet and the presence of accused is required for the Investigation Officer, if accused are released on bail, there is every chance of they tampering and threatening the prosecution witnesses and also chances of their abscondance and they would make them to hostile and they may remain absent before the court and also repeat the same offences. If the accused are released on bail, it would send wrong message to the society. Hence, prays for dismissal of bail application.

11. Further, the learned PP has relied upon the order passed by the Hon'ble High Court of Karnataka, Bengaluru in Criminal Petition No.11041/2023 dated 20.12.2023 wherein it is observed that accused is not entitle for bail on parity ground and prayed to dismiss the bail application.

12. Learned counsel for the accused argued that on going through the statement of the witnesses recorded by the Investigating Officer, and the statement of the injured CW-45, he has not stated the names of these accused No.4 & 5. Further, it is argued that even in the complaint averments and the other materials collected by the Investigating Officer during the investigation, there is no whisper against these two accused stating that they have committed the murder and as against these accused it is only stated that

they have caused injuries on the victim CW-45. Therefore, learned counsel argued that absolutely, there are no materials against this accused No.4 & 5 to say that they involved in the commission of the murder of the deceased.

13. Further, learned counsel for the accused argued that in this crime number, other co-accused 7 to 12, 14 to 19 are already enlarged on bail and on the ground of parity and further as these accused are in judicial custody since 16.3.2023 and hence, argued that they may be enlarged on bail.

14. Per contra, learned PP argued that in this crime there are 21 accused persons involved, accused No.13 who is a rowdy element, his attendance could not secure and he has been absconded since the date of crime. Though, learned counsel argued that these accused not involved in the murder of the deceased, all these accused hatched up plan to kill the deceased and earlier attempt made by them was failed and again they hatched up plan and on reading of column No.17 of charge sheet, it reveals that these accused No.4 & 5 actively participated in the commission of the offence. Further, learned PP argued that in this case, Sec.149 of IPC also invoked which says that every member of the assembly are guilty of the offence. Further, he argued that though it is true that other accused are enlarged on bail, this is not a ground to enlarge these accused No.4 & 5. In that regard learned PP has relied upon the order

passed by the Hon'ble High Court of Karnataka, Bengaluru in Crl.Petition No.11041/2023 dated 20.12.2023 and based on the said order it is submitted that "if the co-accused are released on bail, the present accused would not get a right to get themselves enlarged on bail" and prayed to dismiss the petition.

15. On going through the records it reveals that, in the alleged incident the accused have committed murder of one Anjaneya who was proceeding in the motorcycle along with one injured Madhu (CW-45) to give evidence in Shivamogga court. In the incident the accused have used deadly weapon like Iron Long for commission of murder of Anjaneya and with the same weapon they have also attempted to commit murder of injured Madhu. Hence, prima-facie there is material to show that the accused have involved in commission of heinous offence punishable U/S.302, 307 and 326 IPC which are non-bailable in nature and also to be imposed capital punishment.

16. On perusal of the order passed by the Hon'ble High Court of Karnataka, Bengaluru in Crl.Petition No.11176/2023 dated 27.11.2023 wherein it is clearly noted in page No.4 at para No.6 that "On perusal of the charge sheet, it is seen that the allegation of assault on the deceased and injured-Madhu with deadly weapons is principally on accused No.1 to 6". Taking into consideration of the said fact, there is prima-facie material against the accused No.4 & 5 in commission of the alleged offences.

17. In the facts and circumstances of the case and the materials available on record, it is clear that at this stage, if the accused No.4 & 5 are released on bail, there may be chances of absconding. Having regard to the gravity of the commission of offence, manner in which they hatched up plan to commit the murder of the deceased, nature of the injuries sustained by the injured CW-45, the punishment involved is capital punishment, these accused are not entitled for bail. Accordingly, the above point is answered in the negative, and I proceed to pass the following;

O R D E R

The bail application dated 9.1.2014 filed by the accused No.4 & 5 U/S.439 of Cr.P.C., is rejected.

(Typed to my dictation by Stenographer Grade-I directly on Computer, after his typing, corrected, signed and then pronounced by me in the Open Court on this the 30th day of January, 2024).

(RAJESHWARI N. HEGDE)
Principal District & Sessions Judge,
Davanagere.