

KADK010001622014



IN THE COURT OF THE II ADDL. DISTRICT & SESSIONS
JUDGE D.K., MANGALURU

Present

Smt. PREETHI K.P.

B.A., LL.M.

II Addl. District & Sessions Judge,
Dakshina Kannada, Mangaluru

Dated this the 28th day of December 2023

SC/80/2014

(Surathkal P.S. Cr.No.44/2014)

Accused No.1:

Shivaram,
Aged 35 years
S/o. Devi Singh
R/at Kapoora Maluka Dattakabeda,
Bayana Taluk, Bharathpura District
Rajaputh State
Local Address: Fisheries Road,
Uchila, Mangaluru Taluk

(By Sri Rajesh Kumar Amtady, Advocate)

Versus

Respondent:

**The State of Karnataka -through
Police Inspector, Surathkal Police Station,
Mangaluru
(Rep. by learned Public Prosecutor,
D.K., Mangaluru)**

**ORDER ON BAIL APPLICATION FILED UNDER SECTION 439
OF Cr.P.C.**

The learned counsel for the accused No.1 has filed bail application under Section 439 of Cr.P.C.

2. In brief, the case of the prosecution is that about 7 years back, accused No.1 was residing in the room of deceased Smt. Sumathi Prabhu on rent basis. In order to commit the theft of gold ornaments of deceased Smt. Sumathi Prabhu, accused No.1 hatched a conspiracy along with accused No.2 and 3 and accused No.1 shown the house of deceased to accused No.2 and 3 and told them to go to the house of

deceased on the pretext of seeking house on rent. Accordingly on 08.02.2014, accused No.1 sent the accused No.2 and 2 to the house of deceased in his motorcycle and accused No.2 and 3 committed criminal trespass into the house of deceased and committed the theft of gold ornaments of deceased and also committed the murder of Smt. Sumathi Prabhu by stabbing on her neck by knife and thereby accused have committed the offence punishable u/s.449, 392, 302, 120-B r/w Section 34 of IPC.

3. In the bail application, accused No.1 has contended that he has been arrested and produced before the court and remanded to judicial custody. The accused No.1 was regularly attending the court without fail until the corona pandemic hit. He was not able to be present before the court on previous hearing dates as he lost his job due to corona pandemic and he lost his cell phone and sim card and therefore he was unable to contact his advocate. The accused No.1 is innocent and he has been falsely implicated in the present case. The allegations made in the complaint are totally false and no overt act is attributed against the accused No.1 and there are no materials

to connect the accused No.1 with the alleged offences. Accused is ready to abide by the conditions if any imposed and ready to furnish surety to the satisfaction of the court. With other several contentions, it is prayed for allowing the bail application.

4. The learned Public Prosecutor has filed detailed objections contending that after obtaining bail, the present accused remained absent before the court for about 2 years and the reasons assigned by the accused in his bail application are far from truth. The case is of the year 2014 and if bail is granted, the accused may abscond and he may not appear before the court and hence he is not entitled for bail and prayed for dismissal of the bail application.

5. I have heard both sides and perused the materials available on record and therefore, the following points arise for my consideration are:

1. Whether the accused No.1 has made out ground for grant of regular bail under Section 439 of Cr.P.C.?
2. What Order?

6. My findings to the above points are:

Point No.1: In the affirmative

Point No.2: As per final Order
for the following:

REASONS

7. **Point No.1:** The material available on record discloses that Surathkal Police have registered a case in Cr.No.44/2014 against the accused for the offence punishable u/s.449, 392, 302, 120-B r/w Section 34 of IPC and after completion of investigation, the charge was filed before the court as against 3 accused persons showing the present accused as accused No.1. On issuance of NBW, accused was produced before this court on 26.08.2023 remanded to judicial custody.

8. I have carefully examined the FIR, charge-sheet, contents of bail application and objection filed by Public Prosecutor and other materials available on record. The learned counsel appearing for the accused vehemently contended that accused is coolie worker and after out break of covid 19 this accused could not appear before the court but prior to that he

was regularly appearing to the court. Accused lost his mobile hence he could not contact his counsel. The learned Public Prosecutor strongly contended that the offence is heinous in nature and this accused was absconding since 2 years. If he is enlarged on bail he will again abscond and hamper the trial.

9. It is pertinent to note here that by an order dated: 09.10.2014 in Crl.Mis. Case No.817/2014 this accused was enlarged on bail. In compliance of the bail order, this accused No.1 produced surety on 04.03.2015. Hence release intimation was sent to Jail authority on 04.03.2015. From 03.02.2021 till 30.06.2022 he was continuously absent. Therefore NBW was issued against him. Later on proclamation was issued which was duly published against him. On 26.08.2023 he was produced. This accused continuously remained absent, as the accused remained absent who defaulted himself to obey the bail bond executed by him to appear before the court, therefore this court issued NBW to secure his presence. It is needless to mention here that, accused on enlargement of bail released only after executing bail bond for his appearance under Form No.45 provided in Schedule II of Cr.P.C. In Form No.45 he had declared

that, in case of default to appear before the Court in all hearing dates, he binds himself to forfeit the bond amount to the government. Hence once accused committed a default in condition imposed in the bail bond, the bail bond deemed to be forfeited to the State. Therefore his bail bond automatically stands cancelled. Hence, when accused was produced before the court on 26.08.2023 in execution of NBW, therefore for his release a fresh bail application was filed on his behalf by his Counsel.

10. The records reveal that accused was enlarged on bail by order dated: 09.10.2014. The accused is ready to offer surety to the satisfaction of the court and undertakes to appear regularly on all the hearing dates. Though the accused hails from Rajasthan, but he is a coolie worker and police report also shows that he was arrested nearby Gandhinagar bus stand of Manjeshwar, Kerala. From 26.08.2023, the accused is in judicial custody. Further custodial detention is not required. The participation of the accused in the crime has to be ascertained during full-fledged trial. The apprehensions expressed by the prosecution that the accused may abscond or flee from justice

would be met with stringent conditions. This accused has executed a bond for Rs.1,00,000/-. By non-appearance on the several hearing dates, the accused has violated the conditions of bail bond. Having considered this aspect, the bail bond amount is remitted, hence, he is liable to pay the penalty to the tune of Rs.33,000/- (1/3rd of bail bond amount) Having regard to the facts and circumstances of the case, accused No.1 is entitled for regular bail u/s.439 of Cr.P.C. Therefore, I record my answer to point No.1 in the affirmative.

11. **Point No.2:** For the forgoing reasons, I proceed to pass the following:

ORDER

The bail application filed on behalf of accused under Section 439 of Cr.P.C. is hereby allowed.

The accused – Shivaram who is in judicial custody in Cr.No.44/2014 of Surathkal Police station for the offence punishable under Sections 449, 392, 302, 120-B r/w Section 34 of IPPC, is ordered to released on bail subject to the following conditions:

1. The accused shall execute bail bond of Rs.1,00,000/- with three male sureties for the like sum;
2. He shall pay penalty of Rs.33,000/- for breach of bail bond conditions.
3. He shall not tamper with the prosecution witnesses directly or indirectly;
4. He shall not indulge himself in similar offences;
5. He shall regularly appear before the court on all hearing dates.

(Dictated to the Stenographer Grade-I on computer, typed by her, corrected and then pronounced by me in the Open court, on this the 28th day of December 2023)

(Preethi K.P.)
II Addl. District & Sessions Judge,
D.K., Mangaluru