

KADK010005122024



Presented on : 01-02-2024
Registered on : 01-02-2024
Decided on : 21-03-2024
Duration : One month, 20 days

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

Present

Smt. Sandhya S., M.A., LL.B.(spl.)

III Additional District & Sessions Judge,
D.K. Mangaluru.

Dated this the 21st day of March, 2024

SC/5/2024

Complainant/ Respondent:	The State of Karnataka, Mulki Police Station, Mangalore. (Rep.by learned Public Prosecutor, D.K., Mangaluru)
Versus	
Accused Nos.1 and 2 :	1. Raghu S. @ Raghavendra, Aged 30 years, S/o. Shivanna S., R/at. 28, Bapuji Badavane, Honnuru, Malashetty village, Davanagere.

	2. Sri. Pramod, Aged about 23 years, Sri. Veeresh S., R/at. 1891/A3, 4th Main, 3rd cross, Vinoba Nagar, Presently residing at J.H. Patil Badavane, Nanoor Road, Shyamanooru, Davanagere Taluk and District.
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(By Adv.: G. Vasudeva Gowda)

Order on bail application under sec.439 of Cr.P.C.

The counsel for **accused No.1 and 2** has filed this successive bail application under section 439 of Cr.P.C, to release them on regular bail, consequent upon their remand to judicial custody in the case registered against them on the complaint of Smt. Vasanthi Shetty, for the offence punishable under section 397 and 395 r/w 34 of Indian Penal Code in Crime No.84/2023 of Mulki Police Station, in the interest of justice.

2. The brief facts of the prosecution case as seen in the prosecution materials are that on 17-09-2023, at about 11-00 a.m.

accused persons came to the complainant's house and asked for empty bottle, in order to fill petrol, the complainant has given him an empty bottle. Further alleged that thereafter, accused person who had taken the bottle, came again and asked for another small bottle. When the complainant opened the door, two accused put knife on the complainant's neck and threatened her and fled along with two other accused persons by pulling the karimani gold chain(Mangal suthra) worth Rs.1,70,000/- weighing about 39.670 gms. Further alleged that Accused No.1 and 2 along with other accused persons forcibly pulled the Karimani chain, causing pain to the complainant's neck and her left ear was bleeding. Thereby, on such complaint, police have investigated the case and laid up charge sheet against accused persons for the offence punishable under section 397 and 395 r/w 34 of Indian Penal Code and this case is committed to this court.

3. The counsel for accused No.1 and 2 have sought regular bail in their favor on the following grounds:

a. That accused are innocent of the offences as alleged in the complaint.

b. That accused are hailed from the respectable family and these accused are prepared to offer surety to release them on bail and there is no question of jumping the bail.

c. That the investigation has already been completed and there is no any question of tempering the witnesses.

d. That accused are working as the labourers and also doing the social service and also helping to the poor people and suppressed people.

e. That they are ready to abide by any conditions to be imposed by this Court.

On such grounds and for other grounds as urged in the bail application, accused No.1 and 2 have prayed to enlarge them on bail.

4. The notice of this bail petition is given to the learned Public Prosecutor and he has filed objection in detail submitting

that the petition is not maintainable in law or on facts of the case. There are sufficient material placed on record to prove the involvement of accused persons in this case. Further that these offences are committed against the society and that too against woman who are staying alone in the house. If they be released on bail, there is likelihood of them committing similar offences. Further that the if petitioners are released on bail, they may abscond and tamper with the prosecution witnesses. Further that bail application filed by accused No.6 in Crl.Mis.case No.1021/2023 was dismissed on 20.12.2023, bail application filed by Dawalsab in Crl. Mis Case No.989/2023 was dismissed on 21.11.2023, again bail application filed by Dawalsab in Crl.Mis case No.19/2024 was dismissed on 23.01.2024. Further bail application filed by accused No.4 in Crl. Mis case No.1106/2023 was dismissed on 04.01.2024 and bail application filed by accused No.6 Manjunath in Crl. Mis case No.125/2024 was dismissed on

22.02.2024. On these grounds, the learned Public Prosecutor has prayed for rejection of the bail application.

5. Heard the arguments on both sides and perused all the materials on record.

6. The following points that arise for consideration of this Court are as under:

1. Whether accused Nos.1 and 2 have made out grounds for their release on bail application 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 **Negative**,

Point No.2: As per final order,
for the following;

REASONS

8. Point No.1: On considering all the papers on record, it is evident to note that, the Mulki police have registered the case against accused persons for the offence punishable under

section 397 and 395 r/w of Indian Penal Code on the complaint of Smt. Vasanthi Shetty alleging that accused persons have committed offence as alleged supra. Hence this bail application is filed by accused persons for their release from judicial custody.

9. The argument for counsel for accused No.1 and 2 is that accused are hailing from the respectable family and these accused are prepared to offer surety to release them on bail and there is no question of jumping the bail. Further argued that the investigation is completed and there is no any question of tempering the witnesses. Further argued that accused are working as the labourers and also doing the social service and also helping to the poor people and suppressed people. The learned counsel for accused has produced birth certificates of his children in support of his argument. Hence, bail be granted is the argument of learned counsel for accused.

10. On the other hand the learned Public Prosecutor has argued that, the alleged offences are serious in nature. Further

argued that if accused persons are released on bail, there is likelihood of them committing similar offences and may tamper the prosecution witnesses. Further argued that offences are committed against the society and that too against woman who are staying alone in the house. Hence, bail application filed by accused be rejected, is the argument of the Learned Public Prosecutor.

11. On considering the charge sheet materials, the prosecution papers on record, it clearly go to show that there is prima facie case made out as against this accused person. The offences alleged against accused is exclusively triable by this Court and punishable with imprisonment for life or rigorous imprisonment for 10 years and fine and said offences are heinous offence.

12. In this case, it is not desirable on the part of this Court to come to conclusion at this stage of trial that accused persons are innocent of the alleged offence. As this stage, this Court cannot go into merits of the case and also cannot comment regarding anything, which would arise for consideration during the trial of the case and which would arise during final adjudication of the case. Hence, if they are granted bail at this stage, there is chances of them, tampering with prosecution witnesses and thereby the trial of this case will be hampered. Papers reveals that earlier bail application in Crl.Mis.case No.1027/2023 dated 20-12-2023 for accused Nos.1 and 2 is dismissed by this Court. Therefore, accused have failed to make out any ground for granting bail at this stage.

13. At this stage, what is the quantum of punishment is not much important. But on the other hand, the Court should see and follow guidelines issued by Hon'ble Supreme Court that whether there is any prima-facie case made out by the

prosecution, what is the impact on society if accused are let on bail in these kind of serious offences and also, the Court must see the safety of the society, while disposing this kind of application. There is also reasonable apprehension of tampering with witnesses and threat to witnesses exists, if accused are released on bail. Further this court cannot go into merits of the case and also cannot comment regarding anything, which would arise during final adjudication of the case.

14. Further there are prima facie materials against accused persons and the allegation are of decoity . It is true that they have been in judicial custody from the inception of this case and they are in judicial custody from 17-09-2023 for a period of six months until this day. But the offences alleged are under section 397 and 395 of Indian Penal Code against accused are punishable with imprisonment for life. Hence, mere fact that accused persons have been in judicial custody for a period of six months cannot be a ground to release them on bail at this stage.

Without discussing anything that would arise during the final adjudication in this case, as discussed herein above, there is absolutely no any special ground made out by the accused persons to grant bail in their favour at this stage. Further more, the investigating officer has cited around 40 witnesses and seized articles in this case.

15. As discussed herein above, considering the allegations made against accused persons, it is clear that there is prima facie case against accused for the offence punishable under section 397 and 395 of Indian Penal Code and hence, there is no reason to grant bail in favour of accused persons at this stage. Therefore, on the facts of the case and also in law, accused have failed to make out any sufficient, cogent and acceptable ground for their release on bail at this stage as sought for. Further, the trial has been commenced. Considering all these aspects, any of the contentions put forth by accused in the bail petition does not merit consideration. As discussed herein above, the grounds put

forth by accused cannot be a reason to grant bail to them at this stage. Thus, accused have failed to make out any ground for their release on bail. Hence, this court has answered point No.1 in the **Negative**.

16. Point No.2 : In view of answer on point No.1, the application of accused Nos.1 and 2 deserves to be rejected and this Court proceeds to pass the following:-

ORDER

The bail petition filed by accused Nos.1 and 2 under section 439 of Cr.P.C. is hereby **Dismissed**.

Issue intimation to concerned Jail Authorities regarding the disposal of this bail application filed by accused.

(Dictated to the Stenographer directly on the computer, the transcript corrected by me and then pronounced in open Court, this the **21st day of March, 2024**).

(Sandhya S.)
III Additional District & Sessions Judge,
D.K. Mangaluru.

