

KADK010005122024



**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 9th day of July, 2024

SC/5/2024

Complainant/ Respondent:	The State of Karnataka, Mulki police Station, Mangalore. (Rep.by learned Public Prosecutor, D.K., Mangaluru)
Versus	
Accused No.5 :	Mr. Davalsab H., S/o. Mr. Hussainsab, Aged 25 years, R/at: P.B. Layout, Near Gowri Industries,

	Avaragere Post, Davanagere District – 577033. (By Adv.: G. Vasudeva Gowda)
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Order on bail application under sec.439 of Cr.P.C.

The counsel for **accused No.5** has filed this successive bail application under section 439 of Cr.P.C, to release him on regular bail, consequent upon his remand to judicial custody in the case registered against him 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 No.5 along with 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 persons 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.5 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.5 has sought regular bail in his favour on the following grounds:

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

b. That there are absolutely no reasonable grounds to believe that the alleged offences have been taken place.

c. That accused is aged 26 years and keeping him further in jail will put him and his family in great difficulty.

d. That there are no criminal antecedents attached to accused and if he is detained in custody indefinitely his entire future will be ruined. That the custodial interrogation for the purpose of investigation will not be required as no

recoveries have to be affected at the instance of accused and hence bail should not be denied at this stage.

e. That he will appear before this court on hearing dates and he will not flee away from justice.

f. That he is 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.5 has prayed to enlarge him 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 No.5 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 he be released on bail, there is likelihood of him committing similar offences. Further that the if accused No.3 is released on bail, he may abscond and tamper with the prosecution witnesses. Further that bail application filed by accused No.5 in Crl.Mis.case No.989/2023 was dismissed on 21.11.2023. 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 No.5 has made out grounds for his 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 No.5 and other 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 this

accused along with other accused persons have committed offence as alleged supra. Hence this bail application is filed by accused No.5 for his release from judicial custody.

9. The argument for counsel for accused No.5 is that there are absolutely no reasonable grounds to believe that the alleged offences have been taken place. Further argued that accused is aged 26 years and keeping him further in jail will put him and his family in great difficulty. Further argued that there are no criminal antecedents attached to accused and if he is detained in custody indefinitely his entire future will be ruined. That the custodial interrogation for the purpose of investigation will not be required as no recoveries have to be affected at the instance of accused and hence bail should not be denied at this stage. During the trial, of the above case the identification done is doubtful by the witnesses and there is no case made out as against accused No.5. Further argued that major portion of evidence is already completed. 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 No.5 is released on bail, there is likelihood of him 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 No.5 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. At 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 he is granted bail at this stage, there is chances of him, tampering with prosecution witnesses and thereby the trial of this case will be hampered.

Further this court has examined nine witnesses along with the complainant who has deposed in favour of the prosecution. Further it can be seen in the bail order for accused No.6 wherein accused No.6 is granted bail by Hon'ble Hon'ble High Court of Karnataka in Criminal Petition 4133/2024 dated 13.06.2024 wherein it is mentioned in the order of Hon'ble High Court of Karnataka that the petitioner/accused No.6 has received stolen gold ornaments and offence is committed under section 411 of I.P.C and no other cases pending against him and Hon'ble High Court of Karnataka has granted him bail. But this bail application is filed by accused No.5 and trial has commenced. The parity at this juncture, cannot be accorded to accused No.5 and further this court at this juncture, cannot discuss anything that would arise during the final disposal of this case and further there are no change of circumstances to entertain this successive regular bail application. Therefore, accused No.5 has failed to make out any ground for granting bail at this stage.

13. Further, 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 is 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 No.5 is released on bail. Further this court at this stage, 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 No.5 and the allegation are of decoity . It is true that he has been in judicial custody from the inception of this case and he is in judicial custody from 17-09-2023 for a period of nine months until this day. But the offences alleged are under section 397 and 395 of Indian Penal Code against accused is punishable with imprisonment for life. Hence, mere fact that accused No.5 has been in judicial custody for a period of nine 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 No.3 to grant bail in his 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 No.5, 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 No.5 at this stage. Therefore, on the facts of the case and also in law, accused No.5 has failed to make out any sufficient, cogent and acceptable ground for his 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 him at this stage. Thus, accused No.5 has failed to make out any ground for his 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 No.5 is deserves to be rejected and this Court proceeds to pass the following:-

ORDER

The successive bail petition filed by accused No.5 and 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 No.5.

(Dictated to the Stenographer directly on the computer, the transcript corrected by me and then pronounced in open Court, this the **9th day of July, 2024**).

(Sandhya S.)

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