

KADK300004832021



**IN THE COURT OF THE V ADDITIONAL DISTRICT &
SESSIONS JUDGE D.K. MANGALURU, SITTING AT
PUTTUR, D.K.**

Present;

Sri Kantharaju S.V. B.A., LL.B.
Addl. District & Sessions Judge,
D.K., Mangaluru, and
C/c V Addl. District & Sessions Judge,
Sitting at Puttur, D.K.

Dated this the 1st day of December 2023

SC/5015/2021

Complainant: - The State
By Circle inspector of Police,
Sullia Circle, Sullia Police Station,
Sullia Taluk. D.K.

(Rep. By learned Public Prosecutor,
D.K.
Mangaluru)

-Versus-

Accused: - Bipin A.S, [A.2]
Aged about 28 years,
S/o. Shridhara Gowda A,
R/at Koolished House,

Kallagundi Sampanje Village,
Sullia Taluk, D.K. District.

(By Sri M.P.K., Advocate)

: ORDERS :

This application is filed under Section 439 of Cr.P.C., on behalf of the accused No.2 – Bipin A.S. for grant of regular bail in this case for the offence punishable u/Sec.341, 448, 324, 109, 302, 120(B) R/W 34 of the Indian Penal Code and Section 3, 25, 27, 30 of Arms Act 1959 pending on the file of this Court in the interest of justice.

2. The learned Public Prosecutor representing the State has seriously opposed the application and has requested to reject it for reasons stated in his written objection and the I.O. Report.

3. Heard arguments from both side. Perused the documents filed by both the sides. The learned counsel for the accused No.2 has relied on following citations:

a). 2020(1)Kar.K.R.87 in the case of Davood Nadad and Another Vs. State of Karnataka on the file of Hon'ble High Court of Karnataka at Dharwad.

b) Criminal Appeal No. 1012/2022, in the case of Javed Shaukat Ali Qureshi, Vs. State of Gujrath, on the file of Hon'ble Supreme Court of India.

c). 2021(2) Acquittal 677 (Raj.) in the case of Bheraram and Another Vs. State of Rajasthan on the file Hon'ble Rajasthan High Court.

4. The point for consideration is:

“Whether the accused No.2 has made out grounds for grant of the bail as sought for?”

5. The above point is answered in the **Negative** for the following:

: REASONS :

6. I have perused the records. This case is registered on the strength of the complaint filed by the complainant namely Sri. K.R. Appakunhi @ Chariyappa. It is the case of the prosecution that on 08/10/2020 at about 7:00 a.m., at Shanthi Nagar, Sullia Kasaba Village, Sullia Taluk, the accused No.1 to 5 with an intention to commit the murder of one Sampath Kumar came in a Qualis Car bearing Reg.No.KA-19-MF-789 driven by accused No.5 and restrained Sampath Kumar while he was proceeding in Hyundai Car bearing Reg.No.KA-21-P-6807, by stopping the car, the accused No.1 fired gun towards the deceased

Sampath Kumar, when he was in his Car, accused No.1 and 3 broken the glasses of the said Car of the deceased with their guns and accused No.2 damaged the Car glasses with sickle and when deceased escaped from the spot, the accused No.1 to 4 chased him, and when deceased took shelter in the house of one Padmanabha, they broken open the door, went inside the house, accused No.1 and 3 assaulted the deceased with body of guns, 2nd accused assaulted the deceased with Balu Katti, and 4th accused stabbed the deceased on his back 2-3 times by knife and committed his murder. Further, when the Cw.3 and 4 caught hold the 1st accused from escaping after the murder, the 2nd accused assaulted CW.4 with Balu Katti and caused him simple injuries. Thus on the basis of the complaint, Sullia police station, Sullia have registered the case against accused No.2 and other accused persons for the aforestated offences.

7. The accused No.2 denied the allegations leveled against him. He is innocent and he has not at all committed any offences as alleged and he is falsely implicated by the respondent police at the instance of complainant. The accused is in judicial custody since 11/10/2020. It is further submitted that, in the FIR the name of this accused is not forth coming. The complaint lodged against unknown persons and FIR also registered against unknown persons.

Later after the arrest of this accused on 11.10.2020 i.e., after 3 days from the date of incident, the accused implicated in the crime only based on his voluntary statement. As such the implication of the accused in the crime is an afterthought of the police, as such the respondent police failed to prove the prima facie case against the accused. The prosecution relied on the statement of CW2 to 6 as eye witnesses but they did not name the accused and stated against unknown persons only. Hence, there is no prima facie material placed by the prosecution against this accused. Accused No.3 to 8 are already enlarged on bail by this Court and since nobody identified this accused, this accused also stands in the similar footing as accused No.3 to 8. Hence, on the ground of parity also this accused is entitled to grant of bail. He is the law abiding citizen residing permanently in the address shown in the application. He is the only bread winner of this family and the whole family is dependent on him. Further he is ready to offer surety and to abide the reasonable conditions that may be imposed by this court. Hence, prays to allow the application.

8. Whereas the learned Public Prosecutor has contended this accused approached Hon'ble High Court in CrI.P.No. 9017/2022 which was withdrawn as not pressed by order dated 21.03.2023, the accused no.1 approached Hon'ble

High Court of Karnataka in Cr.P.No.3012/2023 which came to be dismissed on 24.08.2023 in the said order Hon'ble High Court observed regarding specific overt act against accused No.2. This accused approached this Court in Crl.Misc.No. 5019/2021 which came to be dismissed on 03.03.2021. The accused No.2 intentionally and deliberately suppressed the orders passed by the Hon'ble High Court as well as this Court in order to mislead this Court and to take an order in his favor, thus committed the act of suppression of material facts. The CW.2 and 5 have identified accused no.1 in the test identification parade. Prima facie there is overt act against the accused No.2. Seizure was based on the voluntary statement of accused No.2. Further, accused No.3 was released on bail by this Court and the same was challenged before the Hon'ble High Court to cancel the bail in Crl.P.No.4872/2023 which is pending for disposal. Accused No.4 and others have granted bail on the ground that witnesses did not identify them during Test Identification Parade. Whereas this accused No.2 is identified by the witnesses at the time of test identification parade. The grounds urged in the present petition were considered and rejected by this court on earlier occasions, thus there are no change of circumstances. If this accused is released on bail, there are every chances of threatening the witnesses and repeating to commit similar offences.

Accused No.2 is a part of gangsters which bent upon threatening innocent people.

9. The contentions of either side is placed on record. I have carefully perused the allegations made against the Accused No.2 in the F.I.R, charge-sheet, the statement of objection filed by the prosecution, and the contentions raised by the Accused No.2 in this petition. In this case, the accused has been in judicial custody since 11.10.2020. The prosecution case is that, on the said date, time and place, the accused persons with their common intention, came in a Qualis Car bearing Reg.No.KA-19-MF-789 and restrained Hyundai Car bearing Reg.No.KA-21-P-6807 of deceased Sampath Kumar, the accused No.1 fired gun towards the Sampath Kumar, when he was in his Car, accused No.1 and 3 broken the glasses of the said Car of the deceased with their guns and accused No.2 damaged the Car glasses with sickle and when deceased escaped from the spot, the accused No.1 to 4 chased him, and when deceased took shelter in the house of one Padmanabha, they broken open the door, went inside the house, accused No.1 and 3 assaulted the deceased with body of guns, 2nd accused assaulted the deceased with Balu Katti, and 4th accused stabbed the deceased on his back 2-3 times by knife and committed his murder. Further, when the CW.3 and 4 caught hold the 1st accused from escaping after the murder,

the 2nd accused assaulted CW.4 with Balu Katti and caused him simple injuries.

10. In the instant case, on perusal of the charge-sheet it reveals that, prima facie the accused No.2 has committed the alleged offence which is heinous and grave in nature. Further, the evidence of complainant and other witnesses is not yet commenced. Though this Court granted bail to the accused No.3 as contended by the learned counsel for the accused, the said order is challenged before the Hon'ble High Court of Karnataka in CrI.P.No.4872/2023 and sought for cancellation of bail of accused no.3. However, the learned public prosecutor noticed that, CW.2 and 5 have identified this accused during Test Identification Parade and further Cw.2 to 6 in their statement under Section 161 of Cr.P.C before the Investigation Officer stated that, the accused no.2 assaulted the deceased on his head and his other parts of the body with a balu katti. Hence, in the light of the above, looking to the surrounding circumstances, facts of the case, I feel this is not a fit case to exercise discretion to grant regular bail. Accordingly, the bail application filed by the accused No.2 not at all deserves to be allowed. Hence, I hold that the accused No.2 is not entitled for regular bail at this stage and proceed to pass the following :

ORDER

The application under Sec.439 of Cr.P.C. filed on behalf of the accused No.2- Bipin A.S is hereby dismissed.

(Dictated to the Stenographer directly on computer, typed by him, corrected by me and then pronounced by me in the open Court on this the 1st day of December 2023)

(Kantharaju S.V.)

C/c V Additional District And Sessions Judge,
D.K., Mangaluru, sitting at Puttur D.K.