

KADW010011472022



Presented on : 20-04-2022

Registered on : 21-04-2022

Decided on : 24-06-2022

Duration : 00 years 02 months 03 days

**IN THE COURT OF THE IV ADDITIONAL DISTRICT
AND SESSIONS JUDGE, AT: DHARWAD.**

Present:

**SMT.HIREMATH SHOBHARANI BABAYYA,
B.Com.LL.B.(Spl).
IV ADDITIONAL DISTRICT AND SESSIONS JUDGE,
DHARWAD.**

SESSIONS CASE No.27/2022.

DATED THIS THE 24th DAY OF JUNE, 2022.

COMPLAINANT: The State.

**(By Public Prosecutor,
Dharwad.)**

Vs.

ACCUSED : Shivashankar S/o. Dyamanna
Garag,
Age: 30 years, Occ: Painter,
R/o. Havripeth, KantiGalli,
Dharwad,
Tq&Dt: Dharwad.
Aadhaar Card No.2554 0935 4314.

(By Shri Iqbal Shaikh and
Shri J.T.Mullooli, Advocates,
Dharwad.)

ORDER

The accused has filed this bail application under section 439 of Criminal Procedure Code for seeking regular bail in Crime No.27/2022 of Dharwad Town Police Station (C.C.No.557/2022) for the offences punishable under Sections 452, 323, 307, 504 and 506 of Indian Penal Code.

2. The brief facts of the case:

It is contended in the petition that, the complainant has alleged that, the accused has committed offences punishable under sections 452, 323, 324, 307, 504 and 506 of I.P.C.. To this effect, a case has been registered against the accused at Dharwad Town police station Crime

No.27/2022 on 21.02.2022. The accused has been arrested on 22.02.2022 and since then he is in judicial custody.

3. It is further contended in the petition that, it is alleged by the complainant by name Tanuja D/o. Parashuram Sunagar that, on 21.02.2022 at 11-30 a.m., while she was alone at home, the accused forcefully entered the home and abused her saying why she is not marrying him and also slapped her and further he caused injuries to her on her left thigh using a knife and threatened her to kill and ran away.

4. Further, after receipt of complaint, Dharwad Town police have registered the complaint at their P.S.Crime No.27/2022 for the offences punishable under Section 452, 323, 324, 307, 504 and 506 of IPC against the accused and arrested the accused on 22.02.2022.

5. It is further contended in the petition that, in the above case the Investigating Officer has completed the

investigation and filed the Charge sheet before the Hon'ble II Additional Civil Judge and CJM and JMFC Court, Dharwad and the Hon'ble court has registered the case as C.C.No.557/2022 for the alleged offences punishable under Section 452, 323, 307, 504 and 506 of IPC against the accused and committed the said case to the Hon'ble IV Additional District and Sessions Judge, Dharwad and same is registered as S.C.No.27/2022.

6. Now, the accused has filed the present bail application before this Hon'ble court for grant of Regular Bail on following grounds.

7. That the accused has not at all committed any of the offences as alleged in the complaint. He is an innocent and law abiding citizen of India. The accused is no way concerned nor connected to the alleged crime in question. That, the accused has been falsely concerned to the alleged offences in question even though there is no substantial material or direct evidence to connect the present accused to the alleged offences in question. Even

there are no circumstances to connect the accused to the alleged crime in question. That, in connection with the above alleged complaint, the Dharwad Town police, with an instigation of ill-wishers of the accused, falsely impleaded the accused and arrested him. It is contended that, with a malafide intention to harass the innocent accused arrested him and now it is more than three months that the accused is in judicial custody. Further, it is contended that, the concerned Police have completed the investigation and filed the charge sheet before the Hon'ble II Additional Civil Judge, CJM (Jr.Dn) & JMFC, Dharwad. Hence, the accused is no more required for investigation. For further trial, the presence of the accused can be ensured by imposing certain conditions. The accused is in judicial custody since the date of his arrest. His personnel have been curtailed due to such detention. There are some serious allegations which are leveled against the accused, he will be deprived of preparing his defence if he is further detained in custody. That, there is every

apprehension that, the accused will face pre-trial conviction as there is absolutely no material to connect the accused to the alleged offences. It is further contended that, the accused is having old age parents and the accused is only bread earning member of his family. The family members of the accused are totally depending upon the earnings of the accused. Due to arrest and detention of the accused, the accused and his entire family members are being deprived of their livelihood. That, the accused is a permanent resident of above said address and very much ready and willing to give an adequate security and surety for his enlargement on bail. That, the accused undertakes to appear before the Hon'ble court on all the dates of hearing without fail and he will not tamper or hamper the prosecution witnesses in any manner. He also undertakes to abide by any of the conditions likely to be imposed by this Hon'ble court. Hence, on these grounds, the accused prayed to enlarge him on bail in connection with S.C.No.27/2022, which is pending before this Hon'ble

court, for the offences punishable under Sections 452, 323, 307, 504 and 506 of IPC.

8. The learned Public Prosecutor resisted the bail application by filing his objections. He has stated the facts of the case in brief and stated that, on perusal of the FIR, complainant's evidence and other materials prima facie the accused has committed the offence as alleged. It is further contended that, the investigation of this case has been completed and contended the Charge sheet before the Court. It is further contended that, the injured of this case has taken treatment in the hospital and the Doctor opined that the injuries are caused due to use of sharp weapon and the accused has assaulted with the knife and thereby it is clear that he has tried to kill. Further, the accused has given his voluntary statement before the Investigating Officer and as per the said statement, the knife, which has been used for committing the offence, has been seized and in that connection seizure panchanama and photograph of panchanama have been produced

before the Court and during the investigation the statement of the eye witness/C.W.10 has been recorded and there are clear evidence regarding the offence committed by the accused and thereby the accused is not entitled for bail. It is contended that, If the accused is enlarged on bail, he may tamper the prosecution witnesses and influencing on them by destroying the evidence. If the accused is released on bail, he may commit similar offence and abscond from the process of the court. Hence the accused is not entitled for bail and prayed to dismiss the application.

9. Heard the arguments from both side and perused the materials.

10. Now the points that would arise for my consideration are as under:

- 1. Whether the accused has made out sufficient grounds to enlarge him on regular bail under section 439 of Cr.P.C.?**
- 2. What order ?**

11. My findings to the above points are as follows:

Point No.1: In the affirmative.

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

REASONS

12. **Point No.1:** The brief facts of the prosecution are that, the complainant was loving the petitioner and both were loving each other. In her house, parents did not agree for their relation. Due to the said reason, the complainant left the house along with the petitioner and both the complainant and the petitioner lived together for one year and in between, the accused was not looking after her properly and he used to not to bring household things and she left the house of the accused and from three months she is residing in her parents' house.

13. That, on 21.02.2022 at about 11-30 a.m., when the complainant was alone at home, at that time the accused forcefully entered the house and abused her in

filthy language saying that why she is not marrying him and also slapped her and also caused injury on her left thigh by using knife and also threatened her to kill and one Ambika came and pacified the dispute and thereafter he ran away.

14. It is submitted on behalf of the accused that, the investigation has already been completed and the Police having filed the charge sheet and case is committed to this Court and same is numbered as S.C.No.27/2022. So, the continuation of the judicial custody of the accused is not necessary as his presence is not required for custodial interrogation. It is the contention of the learned counsel for the accused that, the allegations levelled against the present accused in the F.I.R. is to the effect that, he assaulted the complainant and caused injury to her left thigh by using knife. The injuries are simple in nature. In this regard, perused the wound certificate issued by the District Hospital, Dharwad produced along with the charge sheet. In the wound certificate of the

complainant, the injuries shown as simple in nature. The learned Public Prosecutor has submitted that, the complainant has taken only Out Patient treatment and she has not been treated as an inpatient. Considering the above said aspect, I am of the opinion that, the question of motive or intention on the part of the present accused to take away the life of the complainant could be ascertained only at the conclusion of the trial. The accused has contended that, he is ready to abide by the conditions that would be imposed by this Hon'ble Court and he is ready to offer surety in the event of his enlargement on bail. In the present case, the investigation is completed and the presence of the accused is not necessary for investigation at present. The court has to look into whether the presence of the accused can be secured at the time of trial. Further, the accused is the resident of Dharwad. So, his presence can be secured easily at the time of trial. The accused is in Judicial Custody from 22.02.2022. If stringent conditions are imposed, it would meet the

objections raised by the learned Public Prosecutor. As such, I am of the opinion that, the petitioner has made out reasonable grounds to grant bail. Accordingly, point No.1 is answered in the affirmative.

15. **Point No.2:** In view of the above discussion and reasons and finding, I proceed to pass the following,

ORDER

The petition filed under section 439 of Criminal Procedure Code by the accused is hereby allowed.

The accused is released on bail on his executing personal bond for a sum of ₹1,00,000/- with two sureties for likesum, subject to the following conditions:

CONDITIONS

1. The accused shall not cause any threat or inducement to the complainant or her family members.

- 2. He shall attend the court on all the hearing dates except under exceptional circumstances.**

(Dictated to the stenographer, transcribed and typed by him, corrected, print out signed and then pronounced by me in open court on this **24th day of June, 2022.**)

**(SMT.HIREMATH SHOBHARANI BABAYYA)
IV ADDITIONAL DISTRICT & SESSIONS JUDGE,
DHARWAD.**