

KADW010013392025



Presented on : 26-04-2025

Registered on : 26-04-2025

Decided on : 16-05-2025

**IN THE COURT OF III ADDL., DISTRICT &
SESSIONS JUDGE, DHARWAD**

PRESENT

Smt. Zareena.

B.Com., LL.B(Spl.)

III Addl. District & Sessions Judge, Dharwad.
(Spl. Judge for CBI/ACB/KLA Cases)

DATED THIS THE 16th DAY OF MAY 2025.

SC No.24/2025.

COMPLAINANT:

State by Kalaghatagi Police.
Represented by Public Prosecutor,
Dharwad.

// Vs.//

ACCUSED :

1. Mailari @ Mailarappa
S/o. Mallappa @ Mallanagouda Patil,
Age: 45 years, Occ: Agriculture,
2. Basappa @ Basavaraj @ Basanagouda
S/o. Mailari @ Mailarappa Patil,
Age: 21 years, Occ: Agriculture,
Both are residents of:
R/o: Kuruvinakoppa, Tq: Kalaghatagi,
Dist: Dharwad.

(By Sri. G. C. Badiger – Advocate.)

ORDER

1. The accused No.1 and 2 have filed this application under section 483 of B.N.S.S., for seeking regular bail with respect to crime No.315/2024 of Kalaghatagi Police Station, which is registered as SC No.24/2025 for the offences punishable U/s. 351(3), 352, 118(1), 109(1), 103(3) R/w Section 3(5) of B.N.S., 2023.
2. The accused No.1 and 2 has urged in the grounds that, the allegations made in the complaint do not disclose any common intention for commission of offence of murder. The investigation officer did not follow the procedure enumerated under section 36 of B.N.S.S. while arresting the accused No.1 and 2 and it violated the very fundamental rights of the accused No.1 and 2. The investigation officer has already submitted charge sheet, accused No.1 and 2 are not required for further custodial interrogation.
3. Further it is contended that, the investigation officer has not made impartial investigation and he intentionally did not seek finger print report from the FSL, which he recovered

from spot through recovery Panchanama dated: 31.12.2024.

The finger print report would have prima-facie clarified that whether it belonged to accused or not.

4. Further it is contended by the accused persons that, the alleged voluntary statements of accused No.1 and 2, cannot be considered for any purpose. There are no materials to prima-facie to show that there was prior meeting of minds to invoke section 3(5) of BNS-2023.
5. Further it is contended that, the statements of the alleged eye witnesses CW-8 and witnesses CW-9 to 13 are not itself prima-facie materials. Their credibility has to be tested in the litmus test of cross-examination in the full pledged trial and keeping the accused No.1 and 2 in the custody on the alleged statements of CW-8 to 13 is nothing but punishment without trial. Though there are no substantial materials available against the accused No.1 and 2 to make prima-facie case against them.
6. Further it is stated that, the complaint is silent about the persons who have pacified the quarrel. Whereas, it is the

further statement of the complainant dated: 31.12.2024, which discloses about the persons who have pacified the quarrel. It is nothing but after thought and given names of the persons who are favourable to them, in order to substantiate his false allegations made in the complaint. Perhaps, the investigation officer ought to have got recorded the statement of the CW-8 under section 183 of BNSS before the jurisdictional Magistrate in order to give credibility to his statement, as he is alleged to be the sole eye witness.

7. They have further contended that, accused No.1 and 2 are the victims of offence, who sustained serious multiple injuries on their body. The accused No.1 was hospitalized as an indoor patient from 30.12.2024 to 11.01.2025 even accused No.2 also hospitalized on 30.12.2024 to 02.01.2025. Therefore, their family members did not go to police station immediately occurrence of the quarrel and they rushed to hospital.
8. Further they have stated that, by taking the disadvantage of the same, the complainant lodged the false complaint

against the accused No.1 and 2. The I.O. by showing the sympathy towards complainant as he lost his wife, has registered the case, despite receiving of M.L.C. message from KIMS, Hubballi as soon the accused No.1 and 2 were admitted at 06.37 P.M. on 30.12.2024. The accused persons neither involved nor have any role in the alleged commission of the crime. and involvement of the accused No.1 and 2 have to be proved in the full-fledged trial and the trial may take considerable time and keeping the accused persons in the custody is nothing but punishment without trial.

9. It is further contended that, the accused No.1 and 2 are the only bread earning members in the family. If they are continued to be in jail, the whole family of the accused persons will be thrown to the street and have die from starvation.
10. The accused No.1 and 2 have come from respected and dignified family in the society and there are no antecedents against the accused persons and also they are not absconding nature persons. They are having movable and

immovable properties and they are permanent residents of Kuruvinakoppa Village in Kalaghtagi Taluk. As such they will not flee away from justice. They are poor persons and they will not tamper any of the prosecution evidence or witnesses. Hence, they have prayed to allow the bail application.

11. The learned Public Prosecutor, apart from reiterating the Case of the Complainant/Prosecution as more fully stated in his common objections to the Bail application filed by the accused No.1 and 2 has contended in detail regarding the investigation conducted by the IO till levy of the Charge Sheet. Further contended that, Prima-facie there are substantial materials against the accused No.1 and 2 regarding the commission of alleged offence. Earlier, the bail application filed by the accused No.1 was rejected. There are no changed circumstances to consider the present application. The nature of offence is grave and heinous, the said offence is non-bailable and punishable with death or imprisonment for life. There are no valid grounds to grant

Bail to this accused No.1 and 2. If these accused persons are released on Bail, they may likely to threaten prosecution witnesses, abscond from jurisdiction of court, and they may commit similar type of offences again. On all these grounds the learned Public Prosecutor has prayed for rejection of the Bail application of the accused No.1 and 2.

12. The following points are arisen for my consideration for decision on bail application as under;

1. **Whether accused No.1 and 2 have made out any sufficient grounds to exercise discretion under section 483 of B.N.S.S., to enlarge them on Bail ?**

2. **What order ?**

13. Perused bail application, objection, the entire file and the Charge-sheet placed on record. Heard the Arguments of the learned Counsel for the accused No.1 and 2 and the learned P.P.

14. The learned Counsel for the accused No.1 and 2 has relied upon the following decisions:

1) (2024) 8 SCC 254 between Prabir Purkayastha Vs. State (NCT of Delhi).

**2) (2023) 16 SCC 510 between Ramanand @
Nandlal Bharati Vs. State of Uttar Pradesh.**

15. My answers to above points are as under;

Point No.1 : In the **Negative**,
Point No.2 : As per final order
for following,

: R E A S O N S :

16. **POINT NO.1:** I have perused the averments made in the Bail application, FIR, Complaint, charge sheet, objections filed by the Learned Public Prosecutor and the materials on record.

17. It is the case of the prosecution that, one Manjunath S/o. Dyamanagouda Patil has filed complaint against the accused persons and alleged against the accused persons that, he was cultivating his uncle Shri Virupakshappa's land bearing R.S.No.41 of Kuruvinakoppa Village on 'Crop Sharing' basis. His uncle's son by name Sachin S/o. Virupakshappa Patil was watering to the crop through bore-well. At that time, the accused No.1 and 2 started quarrel with said Sachin stating that, the water would come to the road and they are not able to move the crop loaded vehicles. With this

background, the accused No.1 had assaulted Sachin Patil with an intention to kill him with wooden log. At that time, the complainant and his wife rushed to pacify the quarrel, meanwhile the accused No.2 took out knife and stabbed in the chest of Smt. Anusuya, who is wife of the complainant, with an intention to kill her. Due to this act, she had severely bleeding and succumbed on the spot. Hence, a complaint was lodged by the complainant against the accused No.1 and 2.

18. On the basis of the Complaint, a Crime No.315/2024 is registered in Kalaghatagi P.S. for the offences punishable U/s. 351, 352, 118(1), 109(1), 103(1) and 3(5) of B.N.S., 2023. After completion of the investigation, the Investigation Officer has submitted the charge sheet on 12.03.2025 for the offences punishable under section 351, 352, 118(1), 109(1), 103(1) R/w. Section 3(5) of B.N.S., 2023. Now the case is being committed to this Sessions Court and the case is pending before this Court as SC No.24/2025

19. Further, it is stated that, there is a counter case registered against the complainant and Sachin S/o. Virupakshappa Patil in Kalaghatagi P.S. Crime No.317/2024 by the accused No.2 on 31.12.2024 for the offences under Section 109(1), 118(1), 352 and 351 R/w. 3(5) of BNS, 2023.
20. On apprehending the accused No.1 and 2, the Investigating Officer has recorded their Voluntary Statements, on the basis of which, he has discovered the Knife used by the accused No.1 and 2 for stabbing Smt Anusuya. Knife was recovered and the Mahazar was drawn. So also, the Investigating Officer has recorded the Statements of C.W-1, C.W-8 and C.W-9, who are the Eye Witnesses to the event of stabbing. On the basis of the said materials and on completion of the Investigation, Charge-sheet is submitted against the accused No.1 and 2 for the offences punishable U/Secs. 351(3), 352, 118(1), 109(1), 103(1) R/w. Section 3(5) of B.N.S., 2023. After committal of the case to this Court, it is numbered as S.C.No.24/2025.

21. The learned Counsel for the accused No.1 and 2 would contended that, the accused No.1 and 2 are in J.C. There is no direct evidence to connect the accused to the crime. The investigation officer did not follow the procedure enumerated under section 36 of B.N.S.S. while arresting the accused No.1 and 2 and it violated the very fundamental rights of the accused No.1 and 2. The accused persons have been connected to the crime on the basis of their voluntary Statements, which is required to be proved during the course of trial. Unless and until, the same is proved, the accused are cannot be connected to the said crime. Merely on the basis of circumstantial evidence, the accused persons cannot be detained during pre-trial period. The accused No.1 and 2 are the only earning hands in their family. If they are detained further, their detention will amount to pre-trial detention, which is not permissible under law.
22. Percontra, the learned P.P. would contend that, the Investigation is completed and Charge-sheet is filed in the case and already it is committed to this Court and it is

numbered as S.C. No.24/2025, prima-facie Prosecution papers suggest the involvement of the accused in commission of murder of the deceased Anusuya. He would further contend that, on the basis of Post Morem Report, the death of deceased is caused due to stab injury caused with a Knife, which is recovered from the spot by drawing panchanama. It is also opined by the Medical Expert that, death of deceased is a Homicidal. Prima-facie on the basis of the records, the prosecution can prove the involvement of the accused No.1 and 2 in committing the crime. If the accused No.1 and 2 are admitted on bail, there are every chances of he threatening and alluring the prosecution witnesses, may flee from justice, thereby leading to protraction of trial. Hence prayed to reject the Bail application.

23. As per the decision of the Hon'ble Apex Court, in the case of **State of Maharashtra V/s Sitaram Popat Vetel & Another**, reported in **(2004) 7 SCC 521**, wherein it is held that;

“Reasons for grant or rejection of bail must be recorded particularly where an Accused is charged with a serious offences, without discussing the merits of evidence. Conclusive findings, as regards the points urged by the parties not expected of the Court considering the bail”.

24. On the basis of the materials placed by the prosecution, on record, more specifically, the Post Mortem Report, wherein the Doctor conducting the Post Mortem Report has shown, the external injuries on the body of the deceased as “Chest Stab Injury deep major vessels/veins of left side are severed”. The said Injury is on the vital part of the human body.
25. Thus, the Injury inflicted and the Knife said to have been discovered and recovered, finds a link. Further on perusal of the said injuries, it is seen that, there is a Stab Injury on the Left side chest of the deceased, which is on the vital part. Thus, prima-facie it can be said that, life of a person has been taken away brutally, by inflicting Stab Injury that too on the chest of the deceased.

26. Further opinion of the doctor conducting Post Mortem has kept pending awaiting RFSL Report.
27. The Investigating Officer has taken-up the statements of various witnesses, the voluntary statements of the accused No.1 and 2. As per the Statements of C.W-16, C.W-17 and C.W-18, they have clearly stated that they have seen the accused No.2 stabbing the deceased and, accused No.1 was also present along with the accused No.2. Thus, the Prosecution has prima-facie placed certain materials to connect the accused No.1 and 2 with the crime.
28. The offences alleged by the prosecution against the accused No.1 and 2 are punishable U/Secs 351(3), 352, 118(1), 109(1), 103(1) and Section 3(5) of B.N.S., 2023. The offence punishable U/Sec 109(1) and 103(1) of B.N.S. are non-bailable in nature, and the offences alleged by the prosecution against the accused No.1 and 2 are punishable U/Sec 103(1) of B.N.S. is punishable with death, or imprisonment for life.

29. Interest of the society is of utmost importance, than that of the interest of an individual i.e., the accused No.1 and 2. The materials produced by the prosecution, prima-facie create a deter in the society, as to commission of the act, for taking away the life, by inflicting Stab Injury, that to on the chest of the deceased. It is a deterrent act.
30. Further, the anxiety of the prosecution that, the accused No.1 and 2, if admitted on bail, may tamper and allure the prosecution witnesses and materials, that the accused may flee from justice, cannot be ruled away. So also, yet the prosecution has to receive the R.F.S.L. Report, which is awaited.
31. Considering the gravity and nature of the accusation against the accused No.1 and 2, the anxiety posed by the prosecution, regarding the act of commission of the offence, and other anxieties as discussed above, coupled with the medical records like Post Mortem Report, placed by the prosecution, which make the accused No.1 and 2, dis-entitle

for grant of Regular Bail, at this stage. Therefore, I answer the point No.1 **in the Negative.**

32. **POINT NO.2:** In view of the discussions made supra, this court proceeds to pass the following:

ORDER

The bail application filed by the accused No.1 and 2 Under section 483 of B.N.S.S., is hereby dismissed.

(Dictated to Stenographer directly on computer, typed by her, print out, corrected and signed by me and then pronounced in open court on this the **16th day of May, 2025**)

**(SMT. ZAREENA),
III ADDL. DISTRICT & SESSIONS JUDGE,
(SPL. JUDGE FOR CBI/ACB/KLA CASES)
DHARWAD.**