

IN THE COURT OF THE CITY FAST TRACK (SESSIONS)
JUDGE : BANGALORE CITY (F.T.C.No.VI)

PRESENT : Sri.B.Sreerama Reddy, B.Sc.,LL.B.
Presiding Officer, F.T.C.No.VI.

DATED THIS THE 11TH DAY OF MAY 2007.

Cr1.Misc.No.1397/2007.

PETITIONERS

1. Chandpasha,
S/o.Late Samiulla,
49 years.
2. Smt.Jabiulla,
W/o.Chandpasha.
3. Sibgathulla,
S/o.Chandpasha,
18 years.

The petitioner Nos.1 to 3 are
R/of. 6th Cross, Masjid Road,
Devasandra, Bangalore.

4. Nowshad,
S/o.Nazeer Ahamed,
22 years, R/of. 6th Cross,
Masjid Road, Devasandra,
K.R.Puram, Bangalore.

.Vs.

RESPONDENT

State by
K.R.Puram Police,
Bangalore.

ORDER ON BAIL APPLICATION U/S. 439 Cr.P.C.

This petition is filed by the petitioners under Section 439 Cr.P.C., praying the court to release them on bail in Crime No.131/2007 of the respondent police station registered for the offences punishable under Sections 143, 324, 307, 448 and 427 r/w. Section 149 of IPC.

2. Brief facts of the case are as follows :

Sri.Nazeer filed complaint to the K.R.Puram Police Station, Bangalore on 1.5.2007 alleging that on that night at about 8-30 when he went to J.C.Layout situate in Devasandra, in order to eat kabab, there he saw the quarrel being taken place between Noor, the son of his uncle and Shaffie, the son of Chandpasha. On seeing the quarrel, he went there to pacify them. But, Shaffie assaulted the complainant over his lips by his fist causing bleeding injuries and in the meanwhile, Chandpasha asked to finish them. Then, Shaffie ran to his house and brought the chopper and along with him he had also brought Jabiulla (petitioner No.2), Sibgathulla (petitioner No.3) and Noushath (petitioner No.4) and another person by name Ghouse and on seeing Shaffie coming along with the said persons holding the chopper, the complainant got frightened and then, went inside the house of his aunt and closed the door, but all the accused persons, who included the petitioners herein broke open the door by means of

stone and trespassed into the house and Jabiulla, the petitioner No.2 assaulted Noor by means of wicket, the petitioner Nos.3 and 4 kicked him by means of their hands and legs and all of them committed mischief by damaging the house hold articles. Noor, who sustained bleeding injuries was shifted to K.R.Puram Hospital by the complainant and then lodged complaint stating that all the accused committed the said acts with an intention to murder Noor. On the basis of the said complaint, the respondent police registered a case in Crime No.131/2007 for the offences under Sections 143, 324, 307, 448 and 427 r/w. Section 149 of IPC.

During the course of investigation, the petitioners were arrested and produced before the court and the court in turn remanded them to the judicial custody.

3. The petitioners, who are arrayed as accused Nos.2, 3, 4 and 6 respectively, are in judicial custody and have approached this court by filing this petition, praying the court to enlarge them on bail, urging the following grounds.

- (1) They are innocent and have not committed any offences ;
- (2) No prima-facie case is made out against them ;
- (3) They are permanent residents of the addresses shown in the cause title and hail from respectable family ;
- (4) The alleged offences are not punishable with death or imprisonment for life ;
- (5) They are peace loving and law abiding citizens and never indulge in any criminal activities ;

- (6) They are ready and willing to offer solvent surety to the satisfaction of the court.

4. The learned Public Prosecutor filed objections opposing the bail petition. Along with the said objections, the learned Public Prosecutor submitted the case diary. The Investigating Officer submitted his report stating that Noor sustained bleeding injury to his hands when he stretched his hands to avoid hitting of the chopper which was thrown at him by Shaffie and he is undergoing treatment in the hospital as an inpatient. He has expressed his apprehension that if the accused Nos.2, 3, 4 and 6, who in judicial custody are released on bail, they would cause impediment in apprehending the accused Nos.1 and 5 and that apart, they would also destroy the evidence and intimidate the complainant. For all the said reasons, he too has prayed for dismissal of the petition.

5. Heard both sides and proceeded for orders.

6. The points which arise for my consideration are :

1. Whether the petitioners are entitled for bail ?
2. What Order ?

7. My findings on the above points are as under :

POINT No.1 - Affirmative

POINT No.2 - As per final order,

for the following :

REASONS

8. POINT No.1 : Looking at the facts involved in this case, the incident was as a result of the quarrel that had taken place between the children. At that time, there had been no any preparations or motivations or intentions, etc., to commit the murder of any person. Only after provocations aggravated in the said quarrel, Shaffie ran to his house and brought the chopper and brought the petitioner Nos.2, 3 and 4 and on seeing the said persons, Nazeer and others went inside the house of the his aunt and closed the door. The next act committed by the accused is that with an intention to assault them, they broke open the door by means of size stone and after breaking open the door, all of them trespassed into the house. Even at this stage, there appear to be no any motive of murdering anybody except the usual shouts which naturally emanate in such situations and uttering of the words whether amount to an intention to murder somebody is a matter which is yet to be probed by the Investigating Officer, however the materials placed on record prima-facie disclosed that there had been quarrel and in the process of the said quarrel, the door of the house was broke opened and trespassed inside and the petitioner No.2-Smt.Jabiulla assaulted Noor by means of wicket and the petitioner Nos.3 and 4 kicked him by means of hands and legs and then committed mischief by damaging the house hold articles.

All these acts prima-facie reflect that they are not of severe gravity warranting for custodial interrogation. The said offences could be termed as grievous having severe gravity only in the event if there is strong material being collected by the investigating agency disclosing the intention to murder Noor by Shaffie and other accused persons, who include the petitioners herein. As per the decision of our Hon'ble Supreme Court in the case of “ M.P.Lohia .Vs. State of West Bengal ” reported in (2005) 2 SCC 686, observed that any expression of opinion on the merits of the case except to the extent of finding out the prima-facie case would not be warranted. The court has to see if there is any prima-facie case which would deprive the right of the petitioners in seeking the bail. In this context only, I have discussed about the merits of the case as reflected in the charge sheet to the limited extent for the limited purpose. In order to find out the prima-facie case, this court has picked up the relevant facts from the complaint and the case diary relating to the petitioners. So far as the unlawful assembly and common object of the said assembly are concerned, prima-facie no material as so far been gathered to disclose that all the accused formed an unlawful assembly with the common object of murdering Noor and in furtherance of the said object, they committed all these said acts. However, it is matter of investigation, which would in due course may disclose that there had been unlawful assembly with the common object of murdering Noor or

there may not be. At this stage, only the available materials are taken into consideration which make clear that the discussion about the said materials by this court for the purpose of disposal of this petition would have no any impact on the investigation, etc., and accordingly proceeded ahead for disposal of this petition. At the later stage of the proceedings, the learned counsel for petitioners produced the discharge summary certificate issued by Sri Ramakrishna Hospital, K.R.Puram, Bangalore disclosing that the injured Noorulla was admitted on 2.5.2007 and discharged on 4.5.2007 advising him to undergo bed rest. Had there been grievous injuries warranting for surgery, etc., he would have either been treated there subjecting him to surgery or would have been referred to some other hospital for further treatment. The said discharge summary has since disclosed pain in the wrist joint and suture was done to his head. It has also disclosed that the patient was brought from the Bowring Hospital and perhaps the suture was being done in the Bowring Hospital itself. Viewed from all these circumstances also and in the light of the aforesaid discussion, it is very much clear that absolutely there has been no any severe gravity with reference to the injuries sustained. To sum up, the aforesaid discussion has clearly disclosed that the Investigating Officer would have no any hassles in the investigation of the case even if the petitioners are release, as this court would impose certain rigid conditions to

protect the interest of the investigation. Further, by releasing the petitioners, there would be no any threats to the lives of the complainant and members of his family, etc., as in order to refrain them from committing the said acts, the court would impose certain conditions. There would also be no any apprehensions of threats being exerted on the prosecution witnesses in order to dissuade them from disclosing the truth which they are expected to disclose to the Investigating Officer. Viewed from all these angles, this court inclines to hold that the petitioners are entitled to be released on bail, subject to imposing certain conditions and accordingly, the Point No.1 which has arised for consideration is answered in the Affirmative.

9. POINT No.2 : In view of my finding on Point No.1 as above, my finding on this point is as per the following :

ORDER

The petition is hereby allowed.

The petitioners are ordered to be released on bail in Crime No.131/2007 of K.R.Puram Police Station, Bangalore, on each of them executing personal bond for Rs.50,000/-, with two solvent sureties for the like sum to the satisfaction of the jurisdictional court.

The bail has been granted, subject to the following conditions.

(1) The petitioners shall mark their attendance before

the S.H.O., of the jurisdictional police station on every Wednesday between 8-00 a.m., and 6-00 p.m., till conclusion of the investigation.

- (2) The petitioners shall also make themselves available to the Investigating Officer, on any other day as and when required, for the purpose of investigation.
- (3) The petitioners shall not tamper the prosecution witnesses in any manner.
- (4) The petitioners shall not leave the jurisdiction of the court without prior permission.
- (5) The petitioners shall not intimidate the complainant and members of his family.
- (6) In the event of breach of any of the terms, the prosecution would be at liberty to seek cancellation of their bail.

Return the case diary to the learned Public Prosecutor.

(Dictated to the Stenographer, transcript thereof is corrected and then pronounced by me in the open court on this the 11th day of May 2007).

(B.SREERAMA REDDY)
PRESIDING OFFICER
FAST TRACK COURT-VI, BANGALORE