

KAHS010075472023



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

:Dated this the 15th day of March, 2024:

:PRESENT:

S.A.Hidayathulla Shariff, B.A., LL.M.,
C/c Addl.District & Sessions Judge, Hassan.

Spl.C/756/2023

Complainant : State by : Hassan Extension
Police,

(Represented by -
Special Public Prosecutor)

Victim : Dinesha S/o Late Javaraiah,
Aged 36 years,
Mandikeri village,
Kasaba Hobli,
Arakalgud Taluk,
Hassan district.

Vs.

Accused No.1 Venkatesha R @ Dayananda,
S/o Late Ramesha,
Aged 23 years,
Behind RTO office,
Sriramanagara, B. Katihalli,
Kasaba Hobli, Hassan taluk.

(Represented by -
Sri. H.S.M.R., Advocate)

**:ORDERS ON BAIL APPLICATION FILED BY THE
ACCUSED NO.1 UNDER SECTION 439 OF CR.P.C.:**

The accused No.1 has filed this bail application under Section 439 of Cr.P.C. seeking bail in crime No.248/2023, for the offences punishable under Section 302 R/w Section 34 of Indian Penal Code and Sections 3(2)(v) of SC/ST (POA) Amendment Act 2015.

2. In the bail application, accused No.1 has contended that, he is innocent of the offences alleged against him and he has been falsely implicated in the present case. No prima-facie case is made out against him for the offences alleged against him. He is in judicial custody from last 4 months. This court has already granted bail to the accused No.2 to 4. He hails from respectable family and deeply rooted in the society. He was working as a lorry cleaner and hotel helper. He has no criminal antecedents. His father is dead and his mother is suffering from cancer. He is having responsibility of maintaining his mother who is suffering from cancer. The investigation of the case was completed and his presence is not required for the purpose of investigation. He is having permanent residential address and he is ready to offer surety for his release and ready to abide by any conditions that may be imposed on him in the

event of releasing him on bail. On these grounds, accused No.1 has sought for bail.

3. The learned Spl. Public Prosecutor has filed objections by resisting the bail petition. In the objections the learned Spl. Public Prosecutor has contended that, there are prima-facie materials placed on record against the accused No.1 for the offences punishable under Section 302 R/w Section 34 of Indian Penal Code and Sections 3(2)(v) of SC/ST (POA) Amendment Act 2015, which are heinous, non-bailable in nature and punishable with death or life imprisonment. There are eyewitnesses of the crime committed by the accused persons. Accused No.1 has committed brutal murder of deceased Kantharaju who belong to scheduled caste is not entitled for bail. If the accused No.1 is released on bail, he is likely to commit similar offences, likely to threaten, tamper and intimidate the prosecution witnesses and likely to abscond from the jurisdiction of the Court. On these grounds, the Learned Spl. Public Prosecutor has sought for dismissal of the bail petition.

4. Heard the learned defence counsel for the accused No.1 and the learned Spl. Public Prosecutor. Perused the materials placed on record.

5. The points that arise for my consideration are:-

1. Whether the applicant/accused No.1 has shown valid grounds to grant Bail under Section 439 of Cr.P.C.?
2. What Order ?

6. My findings on the above points are as follows:-

POINT NO.1: In the **Negative**,

POINT NO.2: As per final order,
for the following:

:REASONS:

POINT NO.1:-

7. A perusal of the materials on record discloses that, the Dy.S.P., Hassan Sub-division, Hassan has filed charge sheet against the accused No.1 to 4 for the offences punishable under Section 302 R/w Section 34 of Indian Penal Code and Sections 3(2)(v) of SC/ST (POA) Amendment Act 2015. The case of prosecution in brief as stated in the charge sheet is that, deceased Kantharaju was working as a cook and supplayer in a hotel at B. Katihalli koppalu, Hassan. CW-2-Bhagya was a widow who was also working in the said hotel by cleaning utensils. Accused No.1, who was a lorry driver was working as a part time

helper in the said hotel in which deceased Kantharaju and CW-2-Bhagya were working. Deceased Kantharaju belong to scheduled caste and accused persons belongs to upper caste. Accused No.1 had enmity against deceased Kantharaju since deceased had friendship with CW-2-Bhagya. On the night of 17-10-2023 at about 10-30 p.m., by seeing the deceased Kantharaju before the house of CW-2-Bhagya, accused No.1 picked up quarrel with Kantharaju and secured accused No.2 to 4 who are the friends of accused No.1 and on the intervening night of 17-10-2023, accused persons with an intention to commit murder of Kantharaju have assaulted him with banana plant stem, wooden planks and bricks, dragged him on the cement road and footpath, torn his clothes, made him nude and after committing his murder have dumped his bare body before the saloon shop at B. Katihalli koppalu village, On Arasikere-Hassan main road, Hassan.

8. A perusal of the materials on record discloses that, there are eyewitnesses of the brutal murder of deceased Kantharaju by the accused persons. As per the contents of charge sheet, the brutal murder of Kantharaju committed by the accused persons was also recorded in CCTV footages. The present petitioner is accused No.1, who is prime

accused. After commission of alleged offence, accused No.1 was absconding and he was arrested on 19-10-2023 and on the basis of his alleged disclosure statement the weapons of offence were recovered. During the course of investigation, the DVR containing CCTV footage pertaining to the alleged assault committed on the deceased was also recovered by the police.

9. A perusal of the post postmortem report of deceased Kantharaju discloses that there were total 20 external injuries found on the body of the deceased in the nature of laceration, contusion and abrasions. The opinion as to cause of death is shown as multiple blunt injuries sustained.

10. In the present case, petitioner/accused No.1 is the prime accused. There are eyewitnesses of the alleged brutal murder of the deceased Kantharaju by accused No.1 and other accused persons. The prosecution alleges that alleged brutal attack on the deceased Kantharaju was recorded in CCTV footages which is produced along with the charge sheet. The offences alleged to be committed by the accused No.1 are heinous, non bailable and punishable with death or life imprisonment. Considering the fact that accused No.1 is

a prime accused of the brutal murder of deceased Kantharaju who belong to scheduled caste, this court is of the opinion that accused No.1 is not entitle for bail.

11. The learned counsel for the accused No.1 has argued that since the investigation agency has already filed charge sheet against the accused No.1, he is entitle for bail. However, it is pertinent to note that the Apex Court of the land in a decision reported between Virupakshappa Gouda and another Vs. State of Karnataka reported in AIR 2017 SC 1685 has held that filing of Charge Sheet does not in any manner lessen the allegations made by the prosecution. On the contrary, filing of the Charge Sheet establishes that after due investigation the investigation agency, having found materials has placed the charge sheet for trial of accused persons.

12. In view of the ratio of the above cited decision the argument of the learned counsel for the accused No.1 that police have already filed charge sheet against accused No.1 and hence, he is entitle for bail cannot be accepted.

13. The learned counsel for the accused No.1 has further argued that other accused persons were granted bail

by this court and hence on the ground of parity accused No.1 is also entitle for bail. However, it is pertinent to note that accused No.1 is the prime accused of the case. In the charge sheet, it is specifically stated that accused No.1 is the master mind of murder of the deceased Kantharaju. Hence, on the ground of parity, accused No.1 is not entitle for bail.

14. By considering the nature and seriousness of the offence, the character of evidence, circumstance peculiar to the accused, a reasonable possibility of presence of the accused not being secured at the trial, reasonable apprehension of witnesses being tampered with, this court is of the opinion that, accused No.1 has not shown valid grounds to release him on bail U/s 439 of Cr.P.C. With these observations, I answer point No.1 in the '**Negative**'.

POINT NO.2:-

15. In view of my findings on point No.1 in the 'Negative' and the reasons assigned thereon, I proceed to pass the following:

:ORDER:

The bail petition filed by the applicant/accused No.1 under Section 439 of Cr.P.C. is hereby dismissed.

(Dictated to the Stenographer, transcribed by her, corrected, signed and then pronounced by me in the open Court on this the 15th day of March, 2024.)

(S.A.Hidayathulla Shariff)
C/C Addl.District & Sessions Judge,
Hassan.

(Order portion on Spl. Case pronounced in the open court
vide separate order)

ORDER

The bail petition filed by the accused No.1
under Section 439 of Cr.P.C. is hereby dismissed.

C/c Additional District & Sessions Judge,
Hassan.