

KAKL010006652023



**IN THE COURT OF II ADDITIONAL DISTRICT AND
SESSIONS JUDGE AT KOLAR**

DATED 8th DAY OF JUNE 2023

PRESENT

Sri. H. DEVARAJU, B.A., LL.B.,
II Additional District & Sessions Judge,
Kolar.

Spl. S.C. IPC and SC & ST 6/2023

COMPLAINANT : **State of Karnataka,**
R/by Deputy Superintendent of Police,
Kolar Sub-Division, Kolar.
(Malur Police Station)

(Reptd. by **Smt. Nirmala,**
Public Prosecutor)

V/S

ACCUSED **Smt. Chaithra P. and four others**

A1 - Smt. Chaithra P.
W/o late Anand @ Anil,
Aged about 23 years,
R/at Chambe Village,
Tekal Hobli, Malur Taluk.

(A1 by Sri. Adarsha K.V - Adv.,)

ORDERS ON BAIL APPLICATION OF THE ACCUSED NO.1

Accused No.1 has filed bail application under Section 439 Cr.P.C. through her counsel seeking release her on bail in this case for the offences punishable under Section 302, 201 and 109 read with 149 of IPC and Section 3(2)(V) of SC/ST (POA) Act.

2) The accused No.1 in her bail application has contended that the investigation is completed and charge sheet has been filed and hence she is no more required for the investigation. She is not at all involved in the alleged incident, but the complainant police have implicated her on the basis of alleged statement of accused No.2, but the said statement is created one and there is no evidentiary value in the eye of law. It is further contended that the complainant police without investigating the alleged incident, had arrested her. It is further contended that since 100 days she is in judicial custody. It is further contended that she is having old aged parents and minor children and she is the only bread earner in the family. It is further contended that she is aged about 23 years and she is having great future in the society, if she remains in the custody, her life will be spoiled. It is further contended that she is innocent and she has not at all committed the said offences. It is further contended that she and her deceased husband were leading happy life and out of their wedlock they begotten one male and female child. It is further contended that she is nowhere connected to the alleged offences and she is respectable citizen in

the society and she is having deep roots in the society. If regular bail is not granted, she will be put to hardship and injustice. Further it is contended that, she will be abide by any of the conditions that may be imposed by this court. Accordingly, she has sought to grant regular bail.

3) The learned Public Prosecutor has filed statement of objection by contending that the alleged offences are heinous in nature and they are punishable with death or life imprisonment and with fine. The materials of this case prima facie reveals that the accused No.1 was having illicit relationship with accused No.4 Chalapathi, for which reason there were quarrels between accused No.1 and deceased Anand @ Anil and hence the accused No.1 and 4 hatched a plan to kill the deceased. Therefore, the accused Nos.1 and 4 had paid supari of Rs.1,00,000/- to accused Nos.2 and 3 and thereby they committed the murder of deceased. It is further contended that the Investigating Officer after completion of investigation has filed charge sheet against accused Nos.1 to 5. At this stage, if the accused No.1 is granted regular bail, being politically and financially powerful, there are every chance of her absconding, tampering the prosecution witnesses and threatening the complainant and evading the trial. Thus she has sought for rejection of bail application.

4) In furtherance of relief sought by the accused No.1, the point that arise for my consideration is:-:

Whether the Accused No.1 has made out sufficient grounds for admitting her to bail?

5) I have heard the arguments of defence counsel for accused No.1 and the learned Public Prosecutor.

6) On consideration of the facts and circumstances of this case under available materials and proposition of law, I answered above point in the **Affirmative** for the following:

REASONS

7) POINT NO.1 :- On perusal of the records, it reveals that the criminal law was set into motion on the basis of complaint filed by one Sri. Abhishek on 03.12.2022 by contending that at about 2:00 p.m., on account of 'Hanuman Jayanthi' festival, he was cleaning the premises of Sri. Gundanjaneya temple in his village and at 2:30 p.m., when he went to attend nature call, he saw a dead body floating in the pond water situated behind the temple, which was in decomposed state and most of the face portion was eaten by worms. Immediately he had given the first information statement to the Nandagudii police station informing the said fact and the police have visited the spot and dead body was taken out from the water. It is further contended that the deceased was wearing blue jeans pant and black coloured underwear and a stone was tied to his stomach with drip pipe and tattoo 'Prajwal P Prithse' was found on his left hand, but unable to find out his identity on seeing the face. Therefore the police suspected that somebody might have dumped the dead body in the pond after committing murder with

an intention to screening the evidence. On the basis of this complaint, FIR came to be registered against the unknown persons for the above said offences and after completion of investigation the charge sheet has been filed for the above said offences against accused Nos.1 to 5.

8) The contents of the charge sheet is that the name of the deceased was found as Anand @ Anil of Chambe Village, Malur Taluk and he had a wife by name Chaithra i.e., accused No.1. It is further contended that the accused No.1 was having illegal intimacy with one Chalapathi the accused No.4. The deceased was obstructing the relationship of accused Nos.1 and 4 and hence in order to kill the deceased, the accused Nos.1 and 4 had paid supari of Rs.1,00,000/- to accused Nos.2 and 3. It is further contended that near Balaji Talkies, Malur the accused Nos.2 and 3 took deceased in a two wheeler vehicle bearing Reg. No. KA-03/JX-8365 in order to get job to deceased and went towards Masthi - D.N. Doddi Road and had purchased three power cool beer bottles and one imperial blue hot drinks in wine shop and went to the Eucalyptus grove at Kudiyanur belongs to CW-19 where accused Nos.2 and 3 forcible made deceased Anand to consume alcohol and thereafter at about 5.30 p.m. accused Nos.2 and 3 in order to commit murder of deceased, had assaulted on the head of deceased with beer bottles and the accused No.3 stabbed to the neck of deceased with piece of beer bottle and committed murder. It is further contended that accused No.2 had called his relative the accused No.5 to the spot and accordingly the accused No.5

came to the spot with his Bolero Pick Up vehicle bearing Reg. No.KA-53/AA-5026 and then they packed the dead body with gunny bag and thereafter they went near Government Quarry situated in Sy.No.58 at Beemakanahalli Village, behind Gundanjaneya Swamy Temple, Hosakote taluk in the said Bolero Pick Up vehicle and in order to screen the offence they tied the stone to the stomach of dead body with drip pipe and thrown the same to the water. It is further contended that the accused No.2 in order to show the alleged murder to the accused No.1, had clicked the photographs through his mobile.

9) As it is revealed from the charge sheet, on the basis of the credible information of the relatives, parents of the deceased, the accused Nos.1 to 4 were apprehended and subjected them for interrogation. The charge sheet is containing the statement of witnesses, F.I.R. spot mahazar, Notices, rough sketch, inquest report, postmortem report, further statement of complainant and acknowledgment with respect to sending of articles for examination to FSL.

10) During the course of arguments, defence counsel has argued that the entire case is depended upon the circumstantial evidence and there are no eye witnesses and also the circumstantial evidence are weak piece of evidence. Therefore, for the reasons stated in the bail petition the accused No.1 is entitled for bail. Further he has argued that if the bail is not granted, the accused No.1 will be put to great hardship and injustice would be caused to

her. Thus, the defence counsel has argued to grant bail by allowing this application. In support of his arguments, he has relied upon the following decisions:

(i) Order passed in *Criminal Petition No.2306 of 2022, the case of Nethra V/s State of Karnataka*, wherein the Hon'ble High Court of Karnataka has held as follows:

“The petitioner is accused No.1. It is the case of the prosecution that on 07-11-2021 at about 1.30 a.m., the complainant, father of the deceased registers a complaint for offences punishable under Section 302 of the IPC, which becomes a FIR in Crime No.530 of 2021. The complaint was that he had two daughters and a son who are all married and his two daughters are no more. His son Palar Swamy was into real estate business. He had two children from the wedlock. About 6 years ago his son Palar Swamy had married one Nethra, the petitioner herein allegedly without the knowledge of his family and had also a child from the said marriage. His son had set up a house in a different locality to reside with the petitioner and was also visiting the house of the complainant. Three years prior to the incident, the son Palar Swamy had purchased two acres of land and developed the same into sites. He had constructed a house in the said developed sites and was residing there with his alleged second wife – the petitioner. The purchase and decision to reside with the second wife became a subject matter of quarrel between the members of the family. It is the case of the complainant that on 06-11-2021, Palar Swamy came to the house of the complainant and had

enquired about his health and on the same day, the complainant had tried to call Palar Swamy after 11 p.m. after his dinner but Palar Swamy had not answered the calls. Apprehending some problem for his son, the complainant goes to the house of Palar Swamy at about 12.10 (night) and found the door opened and the petitioner who was holding some weapon in her hand ran away seeing him. Later, the complainant finds his son lying dead on the bed in his room and his head was bleeding. This was narrated in the complaint and a case of murder was registered against the petitioner and one Vijay Kumar, son of petitioner's sister. On registration of the crime, the petitioner was taken into judicial custody and is in the custody from 08-11-2021. On getting arrested, the petitioner moved an application for bail under Section 439 of the Cr.P.C. during the pendency of investigation itself. Bail application was not considered. The Police after investigation filed their final report/charge sheet on 25-01-2022. The application for bail was taken up later on 17.02.2022 and dismissed notwithstanding the fact that charge sheet had been filed in the matter on the ground that the offence committed was punishable with death or life imprisonment. Rejection of the application is what drives the petitioner to this Court in the subject petition.

4. Learned senior counsel Sri Hashmath Pasha appearing for the petitioner would vehemently argue and contend that the petitioner notwithstanding the accusation being the one punishable under Section 302 of the IPC, she being a woman is statutorily entitled to be considered for release on bail, that too in a case where the charge sheet is already filed in

the matter. He would also submit that the learned Sessions Judge by his order dated 13-04-2022 has granted bail to accused No.2, who is also alleged of the same offence and of criminal conspiracy under Section 120B of the IPC. The learned senior counsel taking this Court to charge sheet and statement of witnesses submits that it is a case of circumstantial evidence as there are no eye witnesses to the incident or alleged crime.

4. In the above facts and circumstances of the case, proviso to Section 432 Cr.P.C. would come to the help of the petitioner herein. Even at this stage, if the court comes to the conclusion that, a strong prima facie case is made out against a woman, still the court can exercise its discretion and it may enlarge a lady on bail with conditions. Though the petition is filed under Section 439 of Cr.P.C., the proviso to Section 437 can be equally made use of. The said proviso says that, even if there appears reasonable grounds for believing that the accused is guilty of the offences punishable with death or imprisonment for life, provided the Court may direct that the person referred to in Clause (i) or Clause (ii), be released on bail, if such person is under the age of sixteen years or is a woman or is sick or infirm. Therefore, in the above circumstances, in my opinion, as the petitioner/accused has been in jail since 5-01-2019 and the charge sheet has already been filed, she is entitled to be enlarged on bail during the trial, with certain condition.....

5. Having perused the complaint and other materials, it can be said that since other accused has been released on bail, this petitioner being woman can also be released on bail. That apart, this case rests on circumstantial evidence. Burden is on the prosecution to prove every link in the chain of circumstances. Since charge sheet has been filed and that the petitioner has been in custody for quite a long time, she can be admitted to bail.....”

(Emphasis supplied) All the afore-quoted judgments rendered by the coordinate Benches of this Court, were considering the purport of Section 437 of the Cr.P.C. and were cases where accused No.1 therein were women and all of them alleged of offence punishable under Section 302 of the IPC for commission of murder. It is also a matter of record that the alleged accomplice in the act of murder one Vijay Kumar is granted bail on 13-04-2022 by the learned Sessions Judge. For the aforesaid facts, the statute i.e., Section 437 of the Cr.P.C. and its application in the judgments of three coordinate Benches all would enure to the benefit of the petitioner to be enlarged on bail notwithstanding the fact that the offence alleged is under Section 302 of the IPC. It is not the law that bail should always be denied in a case where the offence punishable is of death or life imprisonment. In exceptional cases, if the statute permits and the facts not being so gory and grave criminal antecedents shrouding the culprit, the consideration in such cases would be different.

9. In my considered view, the facts in the case at hand are not those that would not entitle consideration of the case under Section 437 of the Cr.P.C. particularly, looking at the conduct of the petitioner for having surrendered before the Police on commission of the alleged murder. The petitioner has no criminal antecedents except the present sword hanging on the head, and on release would not be a threat to society, coupled with the fact that the police have completed the investigation and have filed the charge sheet at the case on hand. Wherefore, the following:

ORDER The criminal petition is allowed. The petitioner/accused No.1 Nethra shall be released on bail in connection with Crime No.530 of 2021 of Madanayakanahalli Police Station and pending before the Additional Civil Judge (Junior Division) and JMFC Court, Nelamangala, Bangalore Rural District subject to the following conditions:

(I) The petitioner shall execute a personal bond for a sum of Rs.2,00,000/- (Rupees two lakhs only) with one surety for the like sum to the satisfaction of the jurisdictional Court.

(ii) The petitioner shall not indulge in tampering the prosecution witnesses.

(iii) The petitioner shall appear before the jurisdictional Court on all future hearing dates unless exempted by the Court for any genuine cause.

(iv) The petitioner shall not leave the jurisdiction of the trial Court without prior permission of the

Court till the case registered against her is disposed of. ”

(ii) Order passed in *Criminal Petition No.2509 of 2019, the case of Kavitha V/s State of Karnataka, wherein the Hon’ble High Court of Karnataka* has held as follows:

“4. In the above facts and circumstances of the case, proviso to Section 437 Cr.PC. would come to the help of the petitioner herein. Even at this stage, if the court comes to the conclusion that, a strong prima facie case is made-out against a woman, still the court can exercise its discretion and it may enlarge a lady on bail with conditions. Though the petition is filed under Section 439 of Cr.PC, the proviso to Section 437 can be equally made use of. The said proviso says that, even if there appears reasonable grounds for believing that the accused is guilty of the offences punishable with death or imprisonment for life, provided the Court may direct that the person referred to in Clause (i) or Clause (ii), be released on bail, if such person is under the age of sixteen years or is a woman or is sick or infirm. Therefore, in the above circumstances, in my opinion, as the petitioner/accused has been in jail since 05.01.2019 and the charge sheet has already been filed, she is entitled to be enlarged on bail during the trial, ”

11) Per contra the learned Public Prosecutor has opposed the arguments of defence counsel as untenable to consider at this stage. Further she has argued that there are prima facie materials to constitute the offence punishable under Section 302, 201 and

109 read with Section 149 of I.P.C and also for an offence punishable under Section 3(2)(V) of SC/ST (POA) Act against the accused and it is the brutal murder involved in this case. There are ample witnesses to the incident among other circumstantial witnesses and the trial is due for recording of the complainant and all other witnesses. Therefore, if the bail is granted there are every chances of tampering the prosecution witnesses. Further she has argued that the material evidence collected by the Investigating Officer prima facie shows that it is the accused persons who committed the murder of deceased. Thus she has opposed to grant bail to the accused and with a prayer to dismiss the same.

12) Having heard the arguments of both sides, I have gone through the materials on hand, wherein the entire case of the prosecution is involving the main offence under Section 302 of I.P.C. in addition to the story of screening, offering of supari to accused Nos.2 and 3. Except the offence under Section 302 of IPC all other offences are not punishable with death or life imprisonment. By this time the charge sheet has already been filed which indicates the completion of the investigation and there is no requirement on the part of the I.O. for custodial interrogation of the accused No.1. Moreover in order to ascertain the offence under Section 302 of I.P.C. it is more important on the prosecution to prove the strong criminal intention of the accused No.1 to commit murder and said facts are to be ascertained only in the full dressed trial. Therefore, by this time the Court cannot infer the

guilt of the accused No.1 only on the basis of the allegations in the charge sheet. The defence counsel has argued that the accused No.1 being lady having kid and except her no one to look after her small kid. Under these circumstances looking to the proceedings of this case the accused No.1 made an application to the Superintendent of Jail to admit the minor child to stay with her under her care. In turn the Jail Superintendent submitted the said letter No.ಜಿ.ಕಾ.ಕೋ/ನ್ಯಾಯಿ/479/2022-23, dated 28.02.2023, wherein this Court considered the said prayer and permission was granted for admission of three years old female child to be stayed with the accused No.1 in the jail as contemplated under Section 135 of Karnataka Prisons Rules, 1974.

13) Taking consideration of this circumstances and the accused No.1 being a woman having a minor child is privileged to obtain bail as contemplated under Section 437(1) & (2) of Cr.P.C. Under this proposition of law looking to the facts of this case the entire charge sheet is not containing the eye witnesses to the incident, but based upon the voluntary statement of accused Nos.1 to 4 and recovery mahazars and all the evidence available are circumstantial evidence which is to be proved by the prosecution in the full fledged trial. Under all these circumstances as it is clearly observed in the above stated decisions the arguments addressed by the learned Public Prosecutor opposing the bail holds no good. Consequently it is found fit and proper to grant the regular bail to the accused No.1 as sought in this bail application.

14) So far as the prayer sought in this bail application is concerned, the main apprehension of the prosecution such as tampering the witnesses and threatening the complainant and hampering the trial could be taken care by imposing stringent conditions. Therefore, I am of the opinion that it is a fit case to grant regular bail to the accused No.1 rather languishing in judicial custody for uncertain period. Accordingly this point for consideration is answered in the **Affirmative**.

15) POINT NO.2 :- For the reasons discussed and the conclusion arrived at point No.1, I proceed to pass the following:-

ORDER

The bail application filed by the accused No.1 under Section 439 Cr.P.C., is allowed.

The accused No.1 is granted bail subject to execution of her personal bond to the tune of Rs.2,00,000/- (rupees two lakh only) with one (1) solvent surety for the like sum to the satisfaction of this court, subject to following conditions: -

1) The accused No.1 shall not threaten the prosecution witnesses and shall not tamper the prosecution witnesses in any manner.

2) She shall not indulge in any criminal activities.

(Dictated to the stenographer on computer, typed by him, revised, corrected and then pronounced by me in the open Court on this the **8th day of June 2023.**)

Sd/-

(H. DEVARAJU)

II Addl. District & Sessions Judge,
Kolar.