



**IN THE COURT OF II ADDL. DISTRICT & SESSIONS JUDGE,
AT MANDYA.**

Dated this the 23rd day of August 2023.

PRESENT

Sri Krishna Prasad Rao K. B.A., LL.B.
II Addl. District & Sessions Judge,
Mandya.

S.C. No.101/2023

Complainant : State by K.M. Doddi Police Station.

(By Learned Public Prosecutor, Mandya)

-Vs-

Accused persons : 1. Doddaiiah S/o Naga & others.

2. Devaraju,
S/o Rajanna,
Aged about 28 years.
R/at Chikkamarigowdanadoddi Village,
Chikkarasinakere Hobli
Maddur Taluk, Mandya District.

(A2 By Sri H.D. Ravindranath, Advocate)

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ORDER

This application is filed under Section 439 of Cr.P.C. for the release of accused No.2 on bail, on the ground that on careful perusal of complaint and remand application the overt-acts against the accused is not incriminating in nature and the

allegations adverted against the accused No.2 is completely concocted and false version of the prosecution to rope in the accused into this unfortunate crime. The version of the remand application are false. On perusal of remand application, there is no specific overt-acts against the accused. The allegations does not fall within the embargo of Section 302 of I.P.C. The accused Nos.1 and 3 to 8 are already enlarged on regular bail, who are having similar set of overt-act and the present accused is in better footing to embark upon ground of parity. The principles of ground of parity is applicable to the present accused. The investigation agency has not made efforts to record injured statement. The accused is not at all carrying any animosity with the deceased, there is completely absence of motive by the accused. There is no specific motive attributed in the present case. The present accused is not having any criminal antecedents and he is not involved in any other crime. The accused is arrested and remanded to judicial custody on 25.11.2022 and he is in judicial custody till this day. The investigation agency concluded their investigation proceedings and charge-sheet has been filed against the accused persons and same is pending before this Court for adjudication and custodial interrogation of accused is not at all necessary and continuation of accused in judicial custody is not required. The accused is having considerable roots in the society owning both movable and immovable properties within the jurisdiction of this Court. Accused is ready to offer surety before the concerned Court and further undertakes to abide any condition which may imposed by this Court. On these among other grounds, he has sought to release him on bail.

2. The bail application is opposed by learned Public Prosecutor by filing objections. The alleged offences are made punishable with death or life imprisonment. It is contended that the accused No.2 who is main accused along with other accused conspired to kill deceased assaulted with long and godamatte and killed him. There is a prima-facie case against him. If the accused No.2 is released on bail, there are chances of him giving threat to witnesses, destroying evidence, abscond permanently and thereby cause delay in disposal of the matter. Hence, prayed to reject the application.

3. Heard both sides. Perused the records.

4. The point that arises for my consideration is:

Whether the accused No.2 is entitled for an order of bail as sought for?

5. My finding is in the **Affirmative** for the following stated:

REASONS

6. The case of the prosecution as per charge-sheet averments that on 20.11.2022 the deceased Arunagowda @ Kappe of Doddarasinakere Village within the limits of K.M. Doddi Police Station, Maddur Taluk, Mandya District, after taking alcohol, asked accused No.1 to give Rs.1,00,000/- and abused him in filthy language. Accused No.1 got angry, thereafter accused Nos.1 to 3 made conspiracy by joining and sitting near jagali in front of house of Narayana S/o Thammanna of Doddarasinakere Village, on the instigation of accused No.8, accused Nos.1 to 5 in prosecution of common object, formed

unlawful assembly and were standing, at that time Arunagowda @ Kappe came along with CW-1 and CW3 in a bike, suddenly Arunagowda @ Kappe holding the collar neck of accused No.1 assaulted him, accused No.1 abused Kappe @ Arunagowda in filthy language, from the fist punched on his face, blood oozed out from his face, accused No.4 picked up concrete stone assaulted on the forehead of Arunagowda @ Kappe causing bleeding injury on forehead, he fell down, accused No.1 holding collar neck pulled him up, accused No.3 picked up concrete stone assaulted on forehead of Arunagowda @ Kappe, CW-1 and CW-2 put Arunagowda @ Kappe on the bike accused were carrying him to K.M.Doddi hospital, through Devarahalli route, accused Nos.3 to 5 overtook them in scooter bearing No.KA-42/AB-1403 on Devarahalli-K.M.Doddi road in front of house of CW-7, pulled down injured, accused Nos.1 and 2 along with accused Nos.6 and 7 came in auto bearing No.KA-03/AJ-4405, all 7 accused persons surrounded Arunagowda @ Kappe brought him from the bike, accused No.4 kicked him, he fell down, accused persons pulled him to the field bearing Sy.No.1105/2A1 Devarahalli Village belonging to CW-9, accused Nos.3 to 5 and 7 assaulted him from hands, kicked him, accused No.6 picked up godamatte, assaulted on the head of Arunagowda @ Kappe, accused No.1 from the club assaulted on the head and back of Arunagowda @ Kappe, accused No.2 from the club assaulted on the backside of head of Arunagowda @ Kappe two times forcibly, accused persons thrown the clubs and godamatte went in scooter and auto. Injured Arunagowda @ Kappe sustained severe head injuries lost consciousness, CW-1 and CW-2 took him to G.Madegowda Hospital, K.M.Doddi, for treatment and

thereafter to B.G.S. hospital, Mysuru, he did not respond to treatment and died on 20.11.2022 at 10-30 p.m., accused Nos.1 to 7 have committed offence under Sections 143, 147, 302, 341, 504, 120(B) r/w Section 149 of I.P.C. and accused No.8 committed offence under Section 109 of I.P.C. Hence, the accusation.

7. The learned counsel for petitioner argued that deceased Arunagowda @ Kappe was rowdy sheeter and it is undisputed fact that there are so many cases registered against him, the deceased after taking drinks, demanded Rs.1,00,000/- loan, abused CW-1 the deceased holding the collar patti of CW-1 assaulted him, the deceased is aggressor, the overt-act of accused persons is not specifically mentioned in F.I.R., the club, stones are not recovered from the spot, accused No.2 is in judicial custody for 8 months, accused Nos.1 and 3 to 8 are already enlarged on bail, there is overt-acts of accused Nos.1, 3, 4 and 6, accused No.2 stands on same footing, on grounds of parity, accused No.2 is entitled for bail, investigation is completed and charge-sheet is filed, there is no criminal antecedents against accused No.2, accused had common object has to be proved at the time of trial, further judicial custody of accused No.2 is not necessary, no previous animosity, Joint Mahazar is prepared, pretrial detention is bad in law and prayed to enlarge accused No.2 on bail.

8. On the other hand learned P.P. argued that Complainant is eye-witness to the incident, accused persons had assaulted deceased so many times as per their wish, complaint

was lodged on the same day at 6-30 p.m., eye-witness Raghu had corroborated the facts, the first offence is captured in C.C. TV footage, assault by accused is captured, accused No.8 instigated others to commit offences, accused took deceased to field and again assaulted the deceased, accused No.8 phoned and did not allow Arunagowda @ Kappe to be taken to hospital for treatment, eye witnesses have supported the case, the assault is recorded and prayed to reject the bail application.

9. Admittedly, deceased is a rowdy sheeter and 4 cases are registered against him, as per column No.17 of charge sheet deceased demanded Rs.1,00,000/- from accused No.1, abused him in filthy language, holding the collar patti assaulted him, the deceased was aggressor, in the P.M. Report it is mentioned that deceased consumed alcohol at the time of death.

10. The allegations made against the accused persons are that they made conspiracy to kill deceased assaulted with long and godamatte, concrete stone and killed him. It is pertinent to note that the Complainant police completed the investigation and had already filed charge-sheet against the accused persons. The nature of the allegations made against the accused No.2 have to be proved during full-fledged trial. There are no allegations of accused No.2 having criminal antecedents, 55 witnesses are cited in the charge-sheet and trial will take considerable time to conclude and also considering the fact that there is no criminal antecedents against accused No.2, this Court is of the opinion that accused No.2 is entitled to be enlarged on bail. Accused No.2 was taken to police custody from

25.11.2022 to 28.11.2022. Nothing is required to be recovered from accused No.2. The overt-acts alleged against accused have to be proved at the time of trial. Accused No.2 is in judicial custody in this case since from 25.11.2022. Custodial interrogation of the accused No.2 is not required for further investigation. Accused Nos.1 and 3 to 8 are already released on bail. On grounds of parity also accused No.2 is entitled to be released on bail. The liberty of accused No.2 shall not be curtailed unless there are compelling circumstances. Considering the facts and circumstances of the case, I am of the view that further detention of accused No.2 in judicial custody is not necessary. Accused No.2 has undertaken to abide by any terms and conditions and ready to offer surety. Apprehension of prosecution can be taken care of by imposing stringent conditions and by obtaining sufficient sureties to the satisfaction of the Court. Accordingly, point under consideration is answered in the **Affirmative**.

11. In the result, I proceed to pass the following;

ORDER

The bail application filed by accused No.2 under Section 439 of Cr.P.C. is hereby allowed.

Consequently, the accused No.2 is ordered to be released on bail, on his executing personal bond for a sum of Rs.2,00,000/- with two sureties for likesum to the satisfaction of this Court subject to the conditions that:

- 1) The accused No.2 shall not tamper with the prosecution witnesses in any manner.
- 2) He shall appear before this Court regularly on all dates of hearing unless prevented by genuine cause.
- 3) He shall not commit similar offences in future.

If the accused No.2 violates any one of the conditions, the prosecution is at liberty to seek cancellation of bail.

(Typed to my dictation by Stenographer directly on Computer, corrected by me and then pronounced in the open Court on this the **23rd Day of August 2023**)

(Krishna Prasad Rao K.)
II Addl. District & Sessions Judge,
Mandya.

