

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

Dated this day the 20th April, 2022

P R E S E N T

SRI KRISHNA PRASAD RAO K. B.A., LL.B.

C/c I Addl. District & Sessions Judge &
IV Addl. District & Sessions Judge,
Mandya.

S. C. No.97/2021

Accused : Muthuraju S/o Dasashetty, Aged
about 35 years, R/o Chennegowdanadoddi Village, Mandya
Taluk and District.
[Rep. by Sri R.J.-Adv.]

V/s

Complainant : State by;
Mandya Central Police Station.
[Rep. by Learned Public Prosecutor]

**ORDERS ON THE BAIL APPLICATION FILED BY THE
ACCUSED UNDER SECTION 439 OF Cr.P.C.**

Accused has filed this bail application praying to release
him on bail.

2. The brief facts of the case as per charge-sheet are that:

Accused was making livelihood by picking up empty plastic bottles and other scraps in Mandya City and used to sell them to CW1. Since 6 months deceased Madappa also used to pick up old plastic bottles and scraps and used to sell them to CW1 and making livelihood. Both of them got acquainted with each other, became friends and every day they used to spend money for smoking beedi, cigarette, drinks and both of them used to sleep in the jagali in front of Kissan Paints and Hardware Shop near Idga Maidan, Old M.C.Road, Shankaramata, Mandya City. One week prior to the incident, Madappa under the influence of alcohol, used to pester accused for money and teasing by assaulting from water bottle and torturing accused by not allowing to sleep. So accused decided to commit his murder. That on 27.04.2021 at about 10.30 p.m., when the deceased was sleeping at the said place, accused dropped 10 K.G weighing size stone on the deceased 11 times and murdered him. After committing

the murder, accused took Rs.30/- from the pocket of deceased dishonestly and misappropriated the amount. Prior to this incident, earlier accused along with his friend had killed a person and the complaint was registered in Cr.No.15/2014 of Maddur Police Station.

3. The accused in the bail application has contended that the Complainant police had registered false F.I.R. against accused and after completion of investigation had submitted charge-sheet against accused. Accused had already filed bail application in crime stage and the same was rejected by this Court. Accused is in the Judicial Custody for the last 1 year. The Investigating Officer had failed to collect eye-witnesses to the incident and only on the basis of C.C.T.V. footage, accused has been falsely implicated. The Investigating Officer instead of seizing original C.P.U. and D.V.R. pertaining to C.C.T.V. in front of the shop of Kissan Paints and Hardware Shop had copied the C.C.T.V. footage to pen-drive and C.D. CW30 had appointed CW29 to trace out accused and CW30

had not submitted correct report. In the earlier case against accused in C.C.No.11/15 (Cr.No.15/2014), accused was acquitted by Hon'ble Prl. District and Sessions Judge, Mandya on 01.04.2016. Accused has got aged parents and it is difficult to lead life. The husband of accused's sister died recently and his parents has to look after accused's sister and her children. He is ready to abide by the conditions that may be imposed in the event of his release. If he is not released on bail, himself and his family members will be put to hardship and inconvenience. Hence prays to allow the application.

4. The learned Public Prosecutor appeared before the Court, filed her objections reiterating the complaint averments.

5. Heard the arguments on both sides.

6. The point that arise for my consideration is as follows;

“Whether the accused has made out a ground to be released on bail for the offences punishable under Sections 302, 404 of I.P.C.?”

7. My answer to the above point is in the ‘Negative’ for the following;

REASONS

8. On perusal of complaint, it reveals that Complainant is a third person and nowhere connected with the outcome of Investigation. He is a scrap merchant and he was familiar with the deceased Madappa, as he used to sell empty plastic bottles to him and used to sleep in the jagali and on 28.04.2021 at 6.00 a.m., after opening the shop he went to wake up Madappa and saw that somebody had dropped stone on Madappa and murdered him.

9. As per the P.M.Report, deceased had sustained lacerated wound over right occipital area, contused abrasion over top of right shoulder, contused abrasion over back of

neck and fluid blood oozes out of ears and mouth and cause of death is due to Head injury sustained.

10. During the course of Investigation, CW30 CPI had appointed CW29 PSI to trace out accused and CW29 had submitted the report on 28.04.2021 stating that “ದಿನಾಂಕ 28.04.2021 ರಂದು ನನಗೆ ಸೆಂಟ್ರಲ್ ಪೊಲೀಸ್ ಠಾಣೆಯ ಮೊ.ನಂ.37/2021 ಕಲಂ 302 ಐಪಿಸಿ ಕೇಸಿನ ಆರೋಪಿಗಳನ್ನು ಪತ್ತೆ ಮಾಡಿ ಹಾಜರ್ ಪಡಿಸುವಂತೆ ನನಗೆ ಜ್ಞಾಪನ ನೀಡಿರುವುದನ್ನು ಓದಿ ತಿಳಿದುಕೊಂಡಿರುತ್ತೇನೆ.” "ಅಷ್ಟರಲ್ಲಿ ಮಾನ್ಯ ಸಿಪಿಐ ಸಾಹೇಬರು ಮಾದಪ್ಪನನ್ನು ಕೊಲೆಮಾಡಿರುವ ಸ್ಥಳದಲ್ಲಿ ಸಿ.ಸಿ.ಟಿ.ವಿ ಕ್ಯಾಮರಾಗಳಿದ್ದು ಸದರಿ ಅಂಗಡಿ ಮಾಲೀಕರಾದ ಆಸಪ್ ಪಾಷ ಬಿನ್ ಅಮೀರ್ ಜಾನ್ ರವರಿಗೆ ವಿಷಯ ತಿಳಿಸಿ ಅಂಗಡಿಯನ್ನು ತೆಗೆಸಿ ಅಲ್ಲಿದ್ದ ಸಿ.ಸಿ.ಟಿ.ವಿಯಲ್ಲಿನ ದೃಶ್ಯಾವಳಿಗಳನ್ನು ಪರಿಶೀಲಿಸಿದಾಗ ಒಬ್ಬ ವ್ಯಕ್ತಿ ಮಲಗಿದ್ದ ಮಾದಪ್ಪನ ತಲೆಯ ಮೇಲೆ ಕಲ್ಲನ್ನು ಎತ್ತಿ ಹಾಕಿ ಕೊಲೆ ಮಾಡಿರುವುದು ಕಂಡು ಬಂದಿದ್ದು ಹಾಗೂ ಸದರಿ ಆಸಾಮಿಯ ಹೆಸರು ಮುತ್ತುರಾಜು ಎಂದು ಗೊತ್ತಾಗಿದ್ದು ". As per the averments in column 17 of charge-sheet and complaint, there is no other person on the spot at night on the date of alleged incident. It is not the case of accused that somebody else had committed murder of deceased Madappa. From the available materials, it is seen

that the death of deceased Madappa links only with accused Muthuraju. During the course of investigation, properties were also seized under Mahazar.

11. The learned counsel for accused had filed Memo with the copy of order passed in bail application No.700/2011 and judgment passed in S.C.No.11/2015 and argued that the prosecution had deliberately suppressed the acquittal of accused in S.C.No.11/2015 and deliberately inserted on the charge-sheet that accused was involved in Cr.No.15/2014 under Section 302 of I.P.C. and that accused is not a habitual offender.

12. On the other hand learned Public Prosecutor argued that accused was acquitted in S.C.No.11/2015 due lack of evidence and in the said case after murder, accused had handed over stove to CW15 of that case and in this case also, accused had seized Rs.30/- from the pocket of deceased Madappa and both of them tally with each other and there is

criminal antecedents against accused and if he is released on bail, there is chance of committing such heinous offences again by accused and the character of accused has to be considered. Only there is 6 years gap between both the incidents and if he is released, he will continue his old habits and it will send wrong message to society.

13. The judgment of the **Hon'ble Supreme Court in Prasanta Kumar Sarkar Vs. Ashis Chatterjee & another reported in (2011) 3 SCC (Cri) 765**, wherein the Hon'ble Supreme Court has held that the courts while granting bail should consider whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; nature and gravity of the accusation and severity of the punishment in the event of conviction.

14. The Hon'ble Supreme Court in **Siddharam Satlingappa Mhetre Vs. State of Maharashtra reported in**

(2011) 1 SCC (Cri) 694, has held that society has a vital interest in grant or refusal of bail because every criminal offence is an offence against the State. The order granting or refusing bail must reflect perfect balance between conflicting interests, namely, sanctity of individual liberty and interest of society. Furthermore, the Hon'ble Supreme Court in **Chandrakeshwar Prasad Vs. State of Bihar reported in (2016) 9 SCC 443**, has held that while granting bail the discretion must be applied in a judicious manner and not as a matter of course, balance has to be struck between right to individual liberty and interest of society.

15. Materials on record shows that there is a prima facie case against the accused and he is involved in the crime. The Hon'ble High Court in **State of Karnataka Vs. B.D.Sandeep reported in ILR 2016 KAR 1516** has held that mere fact that the accused has been in custody and the police have filed charge-sheet is not sufficient to grant bail, the

Court has to consider whether there is any prima-facie or reasonable ground to believe that the accused had committed the offence, nature and gravity of the accusation, severity of the punishment in the event of conviction, danger of the accused absconding or fleeing, if released on bail, character, behaviour, means, position and standing of the accused, likelihood of the offence being repeated, reasonable apprehension of the witnesses being influenced and, danger, or course, of justice being thwarted by grant of bail.

16. Further, in **Chandrakeshwar Prasad Vs. State of Bihar reported in (2016) 9 SCC 443, the Hon'ble Supreme Court** has held that while granting bail the discretion must be applied in a judicious manner and not as a matter of course, balance has to be struck between right to individual liberty and interest of society. Filing of final report doesn't entitle the accused for bail. The evidence of the prosecution is yet to commence. There is a prima-facie case against the accused.

17. It is pertinent to note here the decisions laid down by the Hon'ble Apex Court in Prasanthkumar Sarkar V/s Ashish Chattergee (2010) 25 SCC 996 and in the case of Ram Govind Upadhyay V/s Sudarshan (2002) 3 SCC 598, in these decisions, the Hon'ble Apex Court has indicated the following factors to be kept in mind while considering the bail application relating to the serious offences:

1. Nature and gravity of accusation.
2. Severity of the punishment in the event of conviction.
3. Danger of the accused absconding or fleeing if released on bail.
4. Behaviour means position and standing of the accused.
5. Likelihood of the offences being repeated.
6. Reasonable apprehension of the witnesses being influence and;
7. Danger, of course of justice being thwarted by grant of bail.

18. Relying on the ratio laid down in the above decisions, considering the gravity of the offences, the brutality in which the accused person has assaulted the deceased and the injuries sustained by the deceased i.e., on perusal of the PM report of the deceased body which goes to show the brutality of the incident and also considering that the offences alleged against the accused persons are heinous and are punishable with imprisonment for life or death. There are sufficient materials placed against accused at this stage to show his involvement in the alleged crime and at this stage if the accused is released on bail, there is every chance of accused pressurising the prosecution witnesses or abscond from trial. Hence accused has not made out any grounds to enlarge him on bail. Therefore, I answer the above point in the Negative.

19. In the result, I proceed to pass the following:

ORDER

**The bail application filed by Accused
under Section 439 of Cr.PC is hereby
rejected.**

[Directly dictated to the Stenographer on computer.
Corrected and then pronounced by me in the open Court
dated this day the 20th April, 2022.]

[KRISHNA PRASAD RAO K.]
C/c I Addl. Dist. & Sessions Judge &
IV Addl. Dist. & Sessions Judge,
Mandya.

Order pronounced in open court
(Vide separate order)

ORDER

The bail application filed by Accused under
Section 439 of Cr.PC is hereby rejected.

C/c I ASJ &
IV ASJ, Mandya.

