

KAMD010042022024



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

Dated this the 17th day of January 2025

PRESENT

Smt.Nirmala.K., B.A., M.L.,
IV Addl. District & Sessions Judge,
Mandya.

S.C.No.123 / 2024

Accused : Mahadeva s/o Dasappa, aged 49
years, r/o Vaddarahalli village,
Athaguru hobli, Maddur taluk,
Mandya district. **(Accused No.7)**

(Rep. by Sri. HB (MA), Adv.)

-Vs-

Complainant : Kesthur Police Station

(Rep. by Public Prosecutor)

**ORDERS ON THE BAIL APPLICATION FILED U/Sec.439 OF
Cr.P.C.**

This is a bail application filed by the accused No.7 under Section 439 of Cr.P.C. in Cr.No.74/2019 registered by respondent-police seeking his release from the custody for the offences punishable under Sections 143, 147, 148, 341, 114, 307, 302 and 120B r/w sec.149 IPC against accused No.7.

2. BRIEF FACTS:

It is the case of prosecution that, on 27-06-2019 evening Deceased Rakesh @ Rakesh and Cw-2, to 4, and 8 were walking near Nidaghatta village and then Cw-2 to 3 and Rakesh @ Rakesh came near Vinay Bar at Nidaghatta and took 3 bottles of beer, After taking cash, the deceased Raky @ Rakesh at 11:10 pm to drop Cw-2 to Waddaradoddi village and While going to village Vaddaradoddi on pulse motor cycle 1532, Cw-10 called Accused No.-2's mobile number: 8095081027 from his mobile No.6361405015 then accused Kindi, who belongs to Kastur police station border, joined a group of four villagers and got together in a group and because of their old enmity with Kariya and Rakiya, they are here on this day in the house of A-1. While flying, he went to the road in front of the house of Cw5 and was waiting at 11-30 pm when Rocky @ Rakesh Enara, was sitting on a motorcycle, while he was taking cw 2, the accused were going towards the hoki code and stopped the motorcycle. At that time A-1 supported Rakesh and called Rakesh and raised a ruckus on them and said that today we will vote for Vigyan Matasam who is coming to stab him. After hitting the neck, mouth, face, etc. with a bang, A-5 pierced Raki's throat, neck, mouth and tongue with a dragon, A-2 assaulted Raki's belly, shoulders with a large stick, A-3 assaulted Raki's head, hands, etc. with an iron rod. Later, Accused No.-4 and 6 assaulted Rocky across the face with their knuckles, killing Rocky shortly after.

Further A-1 and 3 chased away Cw-3 and 4 who came, A-1 assaulted Cw-4 with a lunge on the head. Accused -3 assaulted the legs of Cw-3 with an iron rod and inflicted general bleeding injuries. Hence, the complaint.

3. GROUNDS FOR BAIL:

The accused No.7 submit that, complainant in collusion with those persons who are enimical towards him has filed false case alleging that, accused along with others have murdered his brother, but the entire FIR and charge-sheet materials indicate that, there are no prima facie case against the accused. He is a coolie person in the village and at no point of time, he came to know about filing of the present case. After he came to know about the case, he filed anticipatory bail application, but the same was rejected. When accused was preparing to surrender before the court, he is taken to custody and remanded to JC. Furthermore other accused persons are already on bail in SC No.54/2020. He is innocent and has not committed any offence. He is an agriculturist and only bread earner of the family. The family members are dependent upon him. He has never intended to escape from the arrest. There is no legal impediment to grant the bail. Since there are no reasonable grounds to believe that accused has committed the said offence, he prays for release on accused on bail.

4. OBJECTIONS:

On the other hand, **learned Public Prosecutor** has filed objections reiterating the case of prosecution and further submitted that, because there was sufficient materials available against the accused person, charge-sheet came to be filed. The alleged offence is punishable with death penalty and imprisonment for life. Just because the charge-sheet is filed, he cannot claim bail as a matter of right. This accused was absconding from the beginning and the case was split up against him. SC No.54/2020 is registered against other

accused. Since accused was absconding from the beginning, if bail is granted, there is no guarantee that, he would appear to the court. Therefore, relying upon the decisions reported in **(2011) 3 SCC (cri) 765, 2000 (3) Crimes 466, 2021 (3) Crimes 141 (MP), Crl.Appeal No.1209/2021**, she prays for rejecting the bail petition.

5. Heard **arguments** on both sides and perused the materials on record.

6. From the above facts following **points arise for my consideration.**

1. **Whether the accused No.7 has made out sufficient grounds for grant of bail under Section 439 of Cr.P.C. as prayed for in the application?**

2. **What order?**

7. 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

8. **Point No.1:** Learned counsel for the Accused No.7 submit that, present accused No.7 is innocent and has not committed any such alleged offences. He is not aware of pendency of any case against him. The committal order sheet discloses that, summons and warrant was not at all served on him. She submit that, he is ready to abide by any conditions that would be imposed by this court. On the other hand, learned Public prosecutor submit that,

since from the date of filing of the charge-sheet Accused No.7 is absconding. CC no.1963/2019 is registered against the accused persons. Several times summons and warrant was issued and at last trial court has taken coersive steps in issuing proclamation to the accused. Since he did not appeared before the court, case was split up against him in CC 2542/2019 wherein warrant is issued. Since he is a proclaimed offender, he is not entitled for bail.

9. Records reveal that, on 28.06.2019, FIR Was registered against unknown persons for the offences punishable u/sec.302 IPC. After completion of investigation, charge-sheet was filed against Accused No.1 to 7 for the offences punishable u/sec.143, 147, 148, 341, 307, 302, 120B and 114 r/w sec.149 IPC. Since there were sufficient materials available against the accused persons, learned Magistrate has registered CC No.1963/2019. This Accused No.7 was shown as absconding in the charge-sheet. Though all the accused persons appeared before the trial court, this accused was not available for the police. He has also not appeared before committal court inspite of issuance of summons and warrant. Therefore, after taking coersive steps, learned Magistrate has split up case against this Accused No.7 and split up CC No.2542/2019 was registered. With regard to other Accused No.1 to 6, learned Magistrate proceeded in original CC No.1969/2010 and except Accused No.7, other accused were committed to this court and accordingly, SC No.54/2020 was registered. The split up case against Accused No.7 was pending. At that stage, accused No.7 has moved anticipatory bail before this court in Crl.Mis.364/2024 and the bail was rejected.

Subsequently, he was taken to custody and learned Magistrate has committed CC No.2542/2019 to this court. Accordingly split up SC No.123/2024 was registered against Accused No.7. The above proceedings indicate that, since 2019, from the date of registration of the FIR till date, nearly for about 6 years, accused No.7 is absconding.

10. It is further noticed that, all the accused persons are residents of Vaddarahalli village, Maddur taluk. Accused persons are charged for the offence punishable u/sec.120B r/w sec.149 IPC. The police have secured other accused persons, conducted spot mahazar and seizure mahazar in the village. This Accused being one of the accused person must have had notice of this case. When other accused persons are already arrested, it is quite natural that they would give information to police about this accused also. In spite of it, when police could not trace the Accused, it shows that, he is voluntarily absconding. If at all if he was innocent and was available in the village itself, then he would have appeared before the court or he would have been arrested. Moreover this accused has watched the proceedings and first moved for anticipatory bail, since it was rejected, he was taken to custody. This shows that, accused No.7 from the beginning had knowledge of the pendency of the case. Therefore, the submission of learned counsel for the accused that he is unaware of the case cannot be accepted.

11. It is seen that, already Pw1 to Pw3 are examined in original SC No.54/2020 wherein Accused No1 to 6 are facing trial. Now because of the absence of Accused No.7, again the witnesses

has to be recalled. This is nothing but harassing the witnesses to appear to the court repeatedly. This should be avoided as per the directions being issued by higher courts. It is pertinent to note here that, offences punishable u/sec.307 and 302 IPC is involved which are punishable with death and imprisonment for life. So considering the gravity of the offence and the punishment prescribed, I am inclined not to grant bail to the accused. The conduct of accused in remaining absent for nearly 5 years disentitles him for bail. Moreover learned Public prosecutor submit that since proclamation was issued against this accused, he cannot be granted any benefit of bail. Therefore, the submission of learned Public prosecutor that if bail is granted, there is no definiteness that this accused would appear regularly to the court can be accepted. At this juncture, I would like to quote the decision reported in Similarly, in the decision rendered by Hon'ble Supreme court in **2020 (5) SCC pg.1 between Susheela Agarwal v/s State NCT of Delhi**, Hon'ble Supreme court has enunciated the consideration that must govern in granting the anticipatory bail in the following terms:

“92.3 ...while considering an application (for grant of anticipatory bail) the court has to consider the nature of the offence, the role of the person, the likelihood of his influencing the course of investigation, or tampering with evidence (including intimidating witnesses), likelihood of fleeing justice (such as leaving the country), etc.,

92.4. Courts ought to be generally guided by considerations such as the nature and gravity of the offences, the role attributed to the applicant, and the

facts of the case, while considering whether to grant anticipatory bail, or refuse it. Whether to grant or not is a matter of discretion; equally whether and if so, what kind of special conditions are to be imposed (or not imposed) are dependent on facts of the case, and subject to the discretion of the court.”

The guidelines given by Hon’ble Supreme court in the above mentioned decision is clearly applicable to the present case. Almost all the conditions as discussed in the above decisions are available in the present case. Therefore, I am of the opinion that, Accused No.7 is not entitled for bail. Accordingly, **Point No.1 is answered in the Negative.**

11. **Point No.2:-** For the foregoing reasons, I proceed to pass the following :-

ORDER

Petition filed by Accused No.7 under Section 439 of Cr.P.C. is hereby rejected.

(Dictated to the Stenographer, transcribed and computerized by him and transcript corrected by me and then pronounced in open Court on this the 17th day of January 2025)

(Nirmala.K.)

IV Addl. District & Sessions Judge,
Mandya.

Orders pronounced in Open Court (Vide my separate order)

ORDER

The bail application filed by the accused No.7 under Section 439 of Cr.P.C. is hereby rejected.

IV ASJ,
Mandya.