

KAMD010042022024



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

Dated this the 23rd day of April 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 OF THE CASE IS AS FOLLOWS:

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, he is innocent and has not committed any such alleged offence. He is nothing to do with the death of deceased in the above case. On perusal of complaint, FIR and the charge-sheet, no prima facie case is made out as against this accused. He was working as coolie on daily wages basis and permanent resident of given address. He is coming from respectable family and law abiding citizen. Since the date of his arrest, he is in custody. All other accused persons are already released in SC No.54/2020. Now the marriage of daughter of Accused is held on 24.04.2025. There are nobody to assist the family members in the auspicious occasion. For want of financial assistance, the presence of accused is very much essential. There are no criminal antecedents and he is the only bread earner of the family. Earlier anticipatory bail came to be rejected on technical grounds since he was absconding. Keeping in view that, main case is pending for trial, it may take some more time and early disposal of the case is not possible. He is always ready and willing to abide by any conditions that would be imposed by this court. Since other accused are released on bail in SC No.54/2020, this petitioner is also entitled for bail on the grounds of parity.

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. Since the accused is an absconding accused and proclaimed offender, he is not entitled for bail. Earlier bail application was rejected and therefore, successive bail application is not maintainable. On these grounds and on relying upon the decisions reported in **(2011) 3 SCC (cri) 765, 2000 (3) Crimes 466, 2021 (3) Crimes 141 (MP), Cri.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 **Affirmative**

Point No.2 : As per final order,
for the following;

REASONS

8. **Point No.1:** Learned counsel for the Accused No.7 submit that, Accused No.1 is innocent and has not committed any alleged offence. The charges leveled against him are not punishable with imprisonment for life or death penalty. Main accused are already

released on bail in main case and this accused is also entitled for bail on the grounds of parity. Apart from this, on 24.04.2025, marriage of the daughter of Accused No.7 is scheduled and the presence of accused is necessary both for financial and moral support. Moreover all the material witnesses have turned hostile in the main case. Since there are nearly 52 charge-sheet witnesses yet to be examined. By the time case is disposed off, it may consume some time. From the date of arrest, accused is in JC. Hence, he prays for release of accused on bail. On the other hand, learned Public prosecutor submit that, he is an absconding accused. He has violated the bail conditions. Therefore, split up case was registered against this accused. Earlier bail application filed by accused came to be rejected. Under such circumstances, the successive bail application is not maintainable and liable to be rejected.

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 CrI.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 seen that, out of 52 charge-sheet witnesses, Pw1 to 5 are examined in main split up case SC 54/2020. Almost all the witnesses including complainant has turned hostile. This accused No.7 was split up from main case. Now the stage of present case is to frame charge. After framing charges, this accused can be taken to main case to face trial or the trial of both cases can be conducted simultaneously. The overt act in respect of the present accused is that, he has participated in the conspiracy and abetted to kill deceased Rakesh @ Raki. Except Sec.307 of IPC which is not attracted to the present accused, all other offences are not punishable with imprisonment for life or death penalty. So no serious allegations are found in the charge-sheet in respect of the present accused.

11. Earlier bail application of this accused came to be rejected on the ground that, he was absconding for about 6 years. So the bail application was rejected on technical grounds. Now accused undertakes to abide by any conditions that would be imposed by this court and he is ready to appear on all hearing dates. Learned Public prosecutor objects for ground of bail on the ground that, if bail is granted, he may again abscond and this will hamper the trial. As far as the said apprehension is concerned, he may be imposed stringent conditions. Apart from this, as said earlier, totally 52 charge-sheet witnesses are mentioned. By the time, the case is disposed off, it may take considerably long period of time, until then if accused is detained in custody, it may amount to pre-trial conviction. Time and again Hon'ble Supreme court has held that, 'Bail should not be denied as a means of punishment. Right of personal liberty should be paramount consideration of the courts. Right to speedy and timely justice is one of the legal right enshrined under constitution.' In this regard, it is relevant to mention about the recent decisions rendered by Hon'ble Supreme court of India reported in **Union of India v/s K.A.Najeeb case rendered in Crl.Appeal 4022/2024 wherein it is observed that,**

Whereas at commencement of proceedings, the courts are expected to appreciate the legislative polity against grant of bail but the rigours of such provisions will melt down where there is no likelihood of trial being completed within a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed

sentence. Such an approach would safeguard against the possibility of provisions like Section 43-D (5) of the UAPA being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial.

12. In the case of Manish Sisodia v/s Directorate of Enforcement, in paragraphs No.49 to 57, this court held thus:

As observed by this court, the right to speedy trial and the right to liberty are sacrosanct rights. On denial of these rights, the trial court as well as the High court ought to have given due weightage to this factor.

Inordinate delay in conclusion of the trial and the higher threshold for the grant of bail cannot go together. It is a well settled principle of our criminal jurisprudence that “bail is the rule, and jail is the exception.” These stringent provisions regarding the grant of bail, such as Section 45(1) (iii) of the PMLA, cannot become a tool which can be used to incarcerate the accused without trial for an unreasonably long time.

Some day, the courts especially the Constitutional Courts, will have to take a call on a peculiar situation that arises in our justice delivery system. There are cases where clean acquittal is granted by the criminal courts to the accused after very long incarceration as an undertrial. When we say clean acquittal, we are excluding the cases where the witnesses have turned hostile or there is a bonafide defective investigation. In such cases of clean acquittal, crucial years in the life of

the accused are lost. In a given case, it may amount to violation of rights of the accused under Article 21 of the Constitution which may give rise to a claim for compensation.

Therefore, considering the facts & circumstances of the case and that, accused is in JC and there are no chances of early disposal in the near future, I am of the opinion that, accused is entitled for bail in the interest of equity and justice. **Accordingly, Point No.1 is answered in the Affirmative.**

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

ORDER

Petition filed by petitioner /accused No.7 under Section 439 of Cr.P.C is hereby allowed.

Consequently, the petitioner/accused No.7 is ordered to be released on bail in Crime No.74/2019, on he executing personal bond for a sum of Rs.1,00,000/- with two sureties for like sum to the satisfaction of the this Court subject to the following conditions:

1. The petitioner shall appear before this court within 15 days from the date of this order and in that event Officer to take bond and to release him.

2. He shall appear before the court regularly and shall not abscond.

3. He shall not either directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade in from disclosing such facts to the court or to any police officer or tamper with the evidence.

4. He are strictly directed to co-operate with the trial in disposal of the case.

5. He shall not indulge in similar offences in any manner.

In case, petitioner violates any breach of the bail conditions, prosecution is at liberty to apply for cancellation of bail.

(Dictated to the Stenographer, transcribed and computerized by him and transcript corrected by me and then pronounced in open Court on this the 23rd day of April 2025)

(Nirmala.K.)

IV Addl. District & Sessions Judge,
Mandya.

Orders pronounced in Open Court (Vide my separate order)

ORDER

Petition filed by petitioner /accused No.7 under Section 439 of Cr.P.C is hereby allowed.

Consequently, the petitioner/accused No.7 is ordered to be released on bail in Crime No.74/2019, on he executing personal bond for a sum of Rs.1,00,000/- with two sureties for like sum to the satisfaction of the this Court subject to the following conditions:

- 1. The petitioner shall appear before this court within 15 days from the date of this order and in that event Officer to take bond and to release him.**
- 2. He shall appear before the court regularly and shall not abscond.**
- 3. He shall not either directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade in from disclosing such facts to the court or to any police officer or tamper with the evidence.**
- 4. He are strictly directed to co-operate with the trial in disposal of the case.**
- 5. He shall not indulge in similar offences in any manner.**

In case, petitioner violates any breach of the bail conditions, prosecution is at liberty to apply for cancellation of bail.

IV ASJ,
Mandya.