

KAMS010033532022



**IN THE COURT OF THE PRINCIPAL DISTRICT AND
SESSIONS JUDGE AT MYSURU**

Dated this, the 2nd day of July 2022

Present: **Sri. M.L.RAGHUNATH**, B.A., LL.M,
Prl.District & Sessions Judge,
Mysuru.

SC/160/2022

Complainant : State by Kavalandde Police Station.

(By **Public Prosecutor**)

//Vs//

Accused : Aruna @ Aruna kumar and others.

Accused No.5 Srinivasa Shetty
S/o Late Mudda Shetty,
Aged 81 years,
R/at Hemmaragala Village,
Nanjangud Taluk.

(By Smt.V.Jayanthi, **Advocate for A.5**)

**:: ORDERS ON BAIL APPLICATION
FILED BY THE ACCUSED No.5 ::**

Accused No.5 filed this bail application seeking an order of bail under Section 439 of Cr.P.C. for the offences punishable under Section 302 r/w Section 34 of I.P.C.

2. The accused No.5 contends that, he is a senior citizen, aged about 82 years and suffering with high blood pressure diabetes and also suffering with kidney problems and has taken treatment at Victoria Hospital while in custody itself. He has also suffered paralysis stroke by taking treatment and as such, the accused No.5 is required to be released on bail to take better and proper treatment. Hence, prays to grant an order of bail.
3. The learned Public Prosecutor filed objections to the bail application and contends that the application is not maintainable. There are prima facie materials to show that this accused involved in heinous crime of murder by performing black magic etc., in the village. The allegations made against the accused is that he and other accused have committed the murder of minor boy and as such, on merits the bail application filed by this accused was already rejected by this Court. Now the accused No.5 has preferred this bail application on the ground of ill-health and even on perusal of the records, the accused No.5 was provided proper treatment even though he is in custody and he was taken to Victoria Hospital and medical reports also shows that the health of the accused is improved and as such, the question of releasing the accused will not arise for consideration.
4. Heard the arguments. Perused the records.
5. The points that arise for my consideration are as under:

1. Whether the accused No.5 has made out sufficient grounds to grant an order of regular bail?

2. What Order?

6. My answer to the above points are as under:

Point No.1: In the affirmative

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

: R E A S O N S :

7. **POINT NO.1:** On the application filed by the accused No.5 under Section 91 of Cr.P.C, the original medical records from Victoria Hospital are also secured. The bail application is filed mainly on the grounds of ill-health of the accused No.5.
8. On perusal of the Medical records, no doubt it is not in dispute that this accused is a Senior citizen aged 81 years, suffering with several age old ailments such as diabetic, hypertension, Acute Kidney problems and also suffering with LEFT LOWER MOJOR NEURON, FACIAL PALSY, TYPE 2 . This accused is treated as inpatient and discharged from Victoria Hospital on 23.5.2022. In the charge sheet summary, it is shown that the patient is discharged with stable condition with advice to continue the same drugs periodically. Anyhow, the prescription and the final suggestions shows that this accused has to be in continuous medications throughout the life for diabetic,

hyper tension and partial stroke on the left side of the face. It is the apprehension of the accused No.5 that had he not given proper treatment and not taken sufficient care, he may not be able to survive. In addition to the medication, he also requires proper nutrition high protein for his survival.

9. Even though the bail application of this accused earlier was rejected on merits. The question of considering the merits of the case at this stage will not arise for consideration as the accused No.5 is not seeking bail on merits, but seeking bail on medical grounds.
10. In Crl.P.No.45/2021 c/w Crl.P.No.43/2021 dated 28.07.2021 by the Hon'ble High Court of Karnataka, Bengaluru, it is observed that, looking into the entire medical documents, the petitioner was found to be in danger due to various ailments and therefore he requires proper treatment in a good hospital and it is not possible to provide proper treatment by the Jail Authorities which requires more expenses, which cannot be borne by the Government. It is also observed that, Government cannot spend tax payers money on these issues. The Hon'ble High Court also considered that, though the offences are heinous in nature involving huge public money, the ground for the purpose of providing medical treatment seeking an order of bail is required to be considered on medical grounds alone and not on merits and thereby proceeded to allow the bail application on medical grounds by leaving the merits of the case. The principles adopted by the Hon'ble High Court in this case are found applicable to the case on hand as the present

- accused No.5 is also suffering age old ailments such as diabetic, hypertension, stroke, Acute Kidney problems. It is also observed that the accused is more than 80 years and a senior citizen and he has to be taken care in multi specialty hospitals. If the accused No.5 is kept in J.C, the Government may spend more money on this accused to provide treatment for which public money collected through the tax payers has to be used, which is not permissible as observed by the Hon'ble High Court of Karnataka.
11. In addition to this, the human right is more than all rights prevailing in the country as right to live is a fundamental right and the right to live is not only a mere right to live, but it is a right to live in dignity means with good health. If an order of bail is not granted, certainly the human right of the accused will be curtailed as he is losing an opportunity to take treatment on his own choice in any specialized hospital and he has to be on mercy under the jail authorities.
12. The law presumes that all are innocents till the offence is proved. Even to prove that, the accused is an innocent and has not committed any offence or to prove that the accused has committed any offences as alleged by the prosecution, the survival of the accused is first required. Had he survived only, the question of facing the trial for any kind of offences will arise for consideration. So, the human rights particularly right to live is the paramount consideration can be taken in this case as a ground to grant an order of bail to the accused without touching the merits of the case. Even the prosecution is at liberty to seek cancellation of bail in future in case the accused is found fully cured of all the

diseases after taking suitable treatment or if he made any attempts to jump out of bail or tamper with the material evidence, witnesses etc., and for violation of any other conditions imposed against him.

13. So considering the bail application filed by this accused No.5 on medical grounds and considering the age and nature of the diseases suffering, I am of the opinion that the apprehension of the prosecution with regard to the petitioner jumping out of bail tampering with the evidence etc., can be met with by imposing suitable conditions. Accordingly, I proceed to treat point No.1 in the affirmative.

14. **POINT NO.2:** In the result, I pass the following:

ORDER

Bail application filed by the accused No.5 under Section 439 Cr.P.C. is allowed.

Accused No.5 is enlarged on bail on his executing personal bond for Rs.1,00,000/- with two sureties for likesum with a direction to deposit the title deeds of the sureties to the court subject to following conditions:

1. Accused No.5 shall not threaten or tamper the prosecution evidence in any manner.
2. He shall not commit any other offences.
3. He shall appear before the court regularly.

Breach of any of these conditions would entail cancellation of bail.

(Dictated to the Stenographer, transcribed by him on Computer, revised, corrected and then pronounced by me in the open court on this day, the **2nd day of July 2022**)

Sd/-

(M.L.RAGHUNATH)

Prl. District & Sessions Judge,
Mysuru.

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