

KAMS010020372021



**IN THE COURT OF THE III ADDL SESSIONS JUDGE,
MYSURU**

Present: Sri.Jerald Rudolph Mendonca, B.A.L., LL.B.,

Dated this the 26th day of October 2021

SC/93/2021

Complainant : State by Narasimharaja Police Station

V/S

Accused : A1 - Vinay @ Parota @ Selvistar S/o
Michel Babu, 27 years, R/at No.155,
2nd Cross, Kurimandi, Kesare, Mysuru
City.

**ORDERS ON THE BAIL APPLICATION U/S 439 OF CRPC
FILED ON BEHALF OF ACCUSED NO.1.**

This is a application filed by the Accused No.1 under
Sec.439 of Cr.P.C., praying to release him on regular bail
in this case.

2. The Prosecution has filed the objections to this
application.

3. Perused the application, objections, case records and heard both the sides.

4. The case is registered on the complaint of Sri.Purshparaj. In this case the charge sheet is already filed against three persons. The Petitioner is the Accused No.1. It is stated that the Accused No.1 to 3 and the deceased are friends. The deceased had assaulted the Accused No.1 previous to the alleged incident. It is also stated that the Accused No.1 had borrowed a sum of Rs.15,000/- from the deceased. The Accused No.1 used to seek time for repayment of the amount. On 12.12.2020 when the deceased came to the house of Accused No.1 and demanded the money. When the Accused No.1 requested for some more time the deceased abused him and left the place. It is stated that the owner of the house had asked the Accused No.1 to vacate the house on the ground that the drunkards visit the house and quarrel near the house. It is also stated that there was another incident on 14.12.2020 when the Accused No.1 was assaulted by the deceased. It is stated that both the Accused No.1 to 3 were together and at that time, the Accused No.1 informed the Accused No.2 and 3 that the deceased has insulted him and therefore he should be taught a lesson and hence, they went to the house of the deceased on 14.12.2020 during night hours and all of them consumed alcohol. The Accused No.1 as per the plan

tried to strangle the deceased with the waist belt and later with the towel. It is stated that the Accused No.2 was holding the legs of the deceased and the Accused No.3 was holding the other end of the towel. It is stated that the Accused No.3 has stabbed to the left leg of the deceased. It is stated that later the Accused No.1 has got clicked the photograph showing him strangulating the deceased with the towel. It is stated that the said photograph is got clicked by the Accused No.3 and the same is forwarded through Whats App to C.W.14. The towel, belt and the knife used for the commission of the offence is recovered from the house of the Accused No.1.

5. The Accused No.1 has stated that he is innocent of the offences alleged against him. The charge sheet is already filed. He has been falsely implicated. He has no criminal antecedents. He has undertaken to abide by the terms and conditions that may be imposed on him. He is the only bread earner in the family and all the members of his family depending on him. Therefore, the Accused No.1 has prayed for grant of bail.

6. The Prosecution has filed objections to this application. In the objections the Prosecution has stated the facts of the case. The offence is punishable with the death or life imprisonment. The materials on record prima-facie show that the commission of the offence by the Accused. The Investigating Officer has filed charge

sheet after completing the investigation. There are chances of the Accused absconding and delaying the trial. The Accused may repeat the similar offence and threaten the Prosecution witnesses. Therefore, the Prosecution has prayed to reject the bail application.

7. Now the point that arises for consideration of this Court is :

“Whether the Accused No.1 is entitled to be released on regular bail as prayed under Sec.439 Cr.P.C?”

8. The answer to the above point is in the **Negative** for the following:-

REASONS

9. The Accused No.1 is in judicial custody since 18.12.2020. The materials show that the Accused and the deceased were friends and used to consume alcohol together. The allegation is against the Accused No.1 that he has strangled the deceased with the belt and the towel. The records prima-facie show that it is at the instigation of the accused No.1 this crime is committed. Therefore, the materials on record prima-facie show that the Accused No.1 has played the active role in the commission of the offence. Therefore, if he released on

bail there are chances of his tampering the evidence and also absconding.

10. The learned counsel for the Accused submitted that the accused No.2 and 3 are already released on bail and therefore, this accused should also be released on bail. As already stated the records prima-facie show that it is the accused No.1 who has played active role in the commission of this crime. Considering the nature of allegations and as the offence alleged is exclusively punishable with death or life imprisonment, the Accused No.1 should not be granted bail.

11. The learned counsel has drawn the attention of this Court to the P.M. report, Forensic report and the injury found on the neck of the deceased. The learned counsel also referred to the width of the belt stated to have been used for the commission of the alleged offence. The learned counsel argued that considering the width of the belt it cannot be believed that the said injury is caused due to the said belt. The learned Public Prosecutor submitted that the deceased was strangled with the towel also and at this stage a finding on the point raised by the learned counsel for the Accused cannot be given. The argument of the learned Public Prosecutor has to be accepted and the argument advanced by the learned counsel for the Accused No.1 cannot be accepted at this

stage. It is a matter of trial. Therefore, at this stage the Accused no.1 is not entitled for bail.

12. Therefore, this Court holds that the Accused No.1 is not entitled for regular bail and hence the above point is answered in the **Negative**.

13. In the result, this Court proceeds to pass the following:-

ORDER

The Petition filed by the Accused
No.1 under Sec.439 Cr.P.C., is
dismissed.

(Dictated to the Stenographer directly on computer, corrected and then pronounced by me in the open court on this the **26th day of October 2021**).

[J.R.Mendonca],
III Addl. District & Sessions Judge,
Mysuru.

Orders pronounced in the open court
(vide separate orders)

ORDER

The Petition filed by the Accused
No.1 under Sec.439 Cr.P.C., is
dismissed.

III AD & SJ, Mysuru.