

KAMS010020372021



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

Present: Smt.K.Bhagya, B.COM., LL.B.,

Dated this the 1st day of October 2024

SC/93/2021

Complainant:

State by Narasimharaja Police Station,
reptd. By Public Prosecutor, Mysuru
District, Mysuru.

/vs/

Accused No.1:

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

**Order on bail application filed by the accused No.1 U/s
439 of Cr.P.C.**

It is stated in the bail application that the complainant police have registered a case against this accused along with others for the offence punishable U/s 302 of IPC. As the charge sheet has been filed, the case has been committed to

this Court, it is now numbered before this Court as SC.No.93/2021. The alleged offence is non-bailable in nature.

2. It is further stated that the prosecution case is that the photos of killing the deceased have been sent from the mobile of accused No.1 to the mobile of Jayasurya-C.W.14/P.W.8. The complainant police seized the mobiles and extracted data from the mobiles and sent the CEN Crime police. But, C.W.36 who has been examined as P.W.21 before the Court deposed that there were no photos in the mobile of accused No.1. So, the said photos are created by the police for the purpose of investigation. Further stated that he is innocent and law abiding citizen. He has not committed any offence as alleged by the police. A false case has been registered against him. He has aged parents, he has to look after his family. He is the only earning member of his family. He is the permanent resident of Kerala, presently residing at Kurimandi, Mysuru and also having movable and immovable properties in his name. In this case, the IO has completed the investigation and filed the charge sheet and he is not required for further investigation. He undertakes to appear before the Court on all hearing dates and ready to abide by the conditions imposed by this Court and ready to furnish surety. Hence prayed to allow the application.

3. The PP filed objections by reiterating the complaint averments and contended that there are particular allegations on accused No.1. The accused No.1 filed bail applications 2 times before this Court and the Court rejected the said applications. Now, again he has come up with the same application. In this case, P.W.1 to 23 witnesses have been examined. On perusal of the evidences of said witnesses, it reveal that the accused No.1 was involved in commission of offence. At the time of commission of offence, the other accused have clicked the photos of accused No.1 while committing the offence and the said photos have been sent to C.W.14. On perusal of the case papers it reveal that there is a prima-facie case against this accused. The alleged offence is non-bailable and punishable with death or imprisonment for life along with fine. If this accused is released on bail, he may commit similar offence and may tamper the prosecution witnesses. He is from Kerala State. So, definitely he would abscond. Then, it would hamper the trial of the case. Hence, prayed to reject the bail application.

4. Heard the argument of both side.

5. Now the points that arise for my consideration are:-

1. Whether the accused No.1 has made out grounds to allow the present application?
2. What order?

6. My answers to the above points are as follows:-

Point No.1 : In the Negative

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

REASONS

POINT NO.1:

7. The accused No.1 is in judicial custody since 18/12/2020. The prosecution case is that the material shows that the accused and the deceased were friends and used to consume alcohol together. The allegation against the accused No.1 is that he has strangled the deceased by sitting on his chest with towel and the accused No.3 had clicked the said photo and thereafter the accused No.1 sent the said photo with three messages to C.W.14 through Whatsapp. Later, he had washed the knife used to commit offence and hide the towel, belt and the knife at his house. The allegation against the accused No.3 is that he had also hold the other end of the towel and had stabbed the deceased's leg. Therefore, the materials on record prima-facie show that the accused No.1 has played the active role in the commission of the offence along with accused No.3. Therefore, if he is released on bail, there are chances of his tampering and hamper the prosecution evidence.

8. This court has already rejected the bail application of the accused No.1 on 26/10/2021, again rejected the bail application on 22/03/2022 and on 17/06/2023. Now, again, the advocate for accused No.1 filed the bail application for 4th time. The Hon'ble High Court of Karnataka has also dismissed the bail petition filed by accused No.1 in Crl.Petition.No.775/2022 for non-prosecution.

9. The learned counsel for accused has drawn the attention of this Court towards Sec.479 BNSS and argued that as the present accused No.1 is a first time offender, he shall be released on bail if he has undergone detention for the period extending upto 1/3rd of the maximum period of imprisonment specified for such offence under the law. Thus, the learned counsel for accused relied upon the part of Sec.479 BNSS and the first proviso is as **"Provided that where such person is a first-time offender (who has never been convicted of any offence in the past) he shall be released on bond by the Court, if he has undergone detention for the period extending up to one-third of the maximum period of imprisonment specified for such offence under that law"**. The learned counsel for the accused No.1 by going through the above proviso of Sec.479 BNSS prayed for release of the accused No.1 as the accused has been in JC since 4 years. But, this Court would like to rely upon the same provision of Sec.479 BNSS, which reads as **"(1) Where a person has, during**

the period of investigation, inquiry or trial under this Sanhita of an offence under any law (not being an offence for which the punishment of death or life imprisonment has been specified as one of the punishments under that law) undergone detention for a period extending up to one-half of the maximum period of imprisonment specified for that offence under that law, he shall be released by the Court on bail:

“Provided that where such person is a first-time offender (who has never been convicted of any offence in the past) he shall be released on bond by the Court, if he has undergone detention for the period extending up to one-third of the maximum period of imprisonment specified for such offence under that law”. Thus, the above provision clearly says as **(not being an offence for which the punishment of death or life imprisonment has been specified as one of the punishments under that law)**. Here, in the present case on hand, the offences alleged against this accused No.1 is U/s 302 R/w 34 of IPC. Sec.302 of IPC is punishable with death sentence or imprisonment for life with fine.

10.Further, the learned counsel for accused No.1 has vehemently argued that there are no eye witnesses to the present incident. The IO has filed the charge sheet, the trial

has been commenced. Moreover, C.W.36 deposed that there were no photos in the mobile of accused No.1.

11.Of course, as already observed by this court, there are materials against this accused No.1 regarding the commission of the alleged offence. He has been in judicial custody since the date of arrest. As rightly pointed out by the learned Public Prosecutor, after the commission of alleged offence, this accused No.1 was absconded and he was arrested by the police at Kerala and brought before the court. Further this court has observed keenly that accused No.2 and 3 are on bail. But, they have started to be irregular before the court. Moreover, this accused No.1 is from Kerala. So, if this accused No.1 is released on bail at this juncture, when the trial is going on smoothly, definitely it would hamper the proceedings of the present case. Moreover, the offence alleged against this accused is punishable with death sentence or imprisonment for life with fine. Further, most of the witnesses who have been examined before this Court have supported the prosecution. Hence, in the interest of the present case itself, this court is of the view that at this juncture, definitely the accused No.1 has not made out any grounds to allow the bail Application. Hence, I answer Point No.1 in the **Negative**.

POINT NO.2:

12. In the result, I proceed to pass the following:-

ORDER

The bail application filed by the accused No.1
U/s 439 Cr.P.C., is hereby rejected.

(Dictated to the Stenographer directly on computer and then
pronounced in the open court on this the 1st day of October 2024)

(K.Bhagya)
III Addl.District & Sessions Judge
Mysuru.

(Order pronounced in open Court vide separate Order)

ORDER

The bail application filed by the accused No.1 U/s 439 Cr.P.C., is hereby rejected.

III AD & SJ, Mysuru.