

KAMS010024732022



**IN THE COURT OF I ADDITIONAL DISTRICT &
SESSIONS JUDGE AT MYSURU**

Dated this the 5th day of July, 2022

**Present: Smt.Saraswati V. Kosandar, B.Com., LL.M.
I Addl. Dist. & Sessions Judge
Mysuru
: SC/110/2022 :**

Complainant

State by Nanjangud Town police station.

V/s.

Accused :

Rajesh S/o Mahadevaiah, aged about 35 years, R/o Muddahalli Village, Kasaba Hobli, Nanjangud Taluk, Mysuru District.

:: ORDER ON APPLICATION U/S.439 Cr.P.C. ::

The above bail petition is filed under Section 439 of Cr.P.C seeking bail for accused on the ground that he has not committed any offence.

2. In brief, the petition averments reads as under:

That the complainant police have arrested the accused on 14.12.2021 and he was produced before the Court on the same and remanded to J.C. and since then he is in judicial custody. The accused has not committed any offence as alleged by the police. He is innocent and law abiding citizen. The investigation in the case is completed and charge sheet is filed. The complainant police have registered the false case against the accused only due to the pressure exerted by the father-in-law of the accused who is enimical towards accused. There is no motive for the commission of offence. The accused is the sole bread earner of the family. The Mallesha who is cited as CW2 and who is victim and eye-witness has not stated anything about the incident before the Magistrate in his statement recorded U/s.164 of Cr.P.C. which creates doubt. The accused had no intention to kill the victim, there are every chances of victim falling into the river accidentally. The children have lost the love and affection

of their mother, they should not suffer further by losing love of their father. The accused is having strong roots in the family and hence, fleeing away from justice does not arise. He is ready to abide by all the conditions that may be imposed by this Court for releasing him on bail and he is ready to furnish surety to the satisfaction of the Court and accordingly, it is prayed to allow the bail petition.

3. The Learned Public Prosecutor after receipt of copy of the bail application has filed objections narrating complaint averments and contended that the offence committed by the accused U/s.302 of IPC is punishable with death or life imprisonment and hence, at this stage, the bail application is not sustainable. Since the investigation in the case is completed and charge sheet is filed is not a ground to release the accused on bail. As per the decision of Hon'ble Supreme Court of India reported in 2011(3) SCC (Crl.) 765, the Court has to consider the gravity of the offence at the time granting bail to accused if the offences alleged are heinous. If the

accused is released on bail, he may abscond and flee from justice since the offence alleged against him is heinous one and it will give wrong information to the society.

4. The learned Public Prosecutor has noted the decisions of Hon'ble Apex Court and various Hon'ble High Courts reported in 2021(6) Scale 41, 1978(1) SCC 240, CrI.A.No.833/2021 dt:24.08.2021 and SCC (CrI.) 2016(3) 685 and contended that as per the above decisions, the accused is not entitled for bail since the offence alleged against him is heinous in nature. If the accused is released on bail, there is every chance of he threatening and troubling the complainant and witnesses. Accused has not shown any reasonable grounds for his release on bail and accordingly among these and other grounds prayed to reject the bail petition.

5. Heard the arguments on both side.

6. In view of the above, the only point that arise for my consideration is:

Whether the bail petition filed on behalf of accused under Section 439 of Cr.P.C. deserves to be allowed?

7. My finding on the above point is in the **Negative** for the following:

REASONS

8. The above bail petition is filed for release of accused on the ground that he is innocent and has not committed any offence as alleged against him.

9. The Learned Counsel for accused argued that accused has not committed offence as alleged. There is no prima facie material against the accused in relation to commission of offence. There are contradictions and omissions in the statement of witnesses recorded U/s.164 of Cr.PC. Accused is in judicial custody since 14.12.2021. Already charge sheet is filed. He is the only earning member of his family and therefore if he is not released on bail he will be put to much injustice and accordingly he has prayed to allow the petition.

10. Per contra the Learned Public Prosecutor argued that the accused has committed heinous offence which is punishable with death or life imprisonment and triable by Court of Sessions. There is ample material against the accused regarding commission of offence. The statements of eye witnesses are recorded by the Magistrate which shows prima facie material against the accused. The accused has committed the murder of a pregnant woman and attempted to kill his child. The child has survived and therefore if the accused is released on bail, he will again attempt to kill the kid and he will also tried to tamper the prosecution witnesses and accordingly prayed to reject the bail petition.

11. I have perused the case papers. According to prosecution, accused married deceased Devika about 8 years ago who is the daughter of CW1 resident of Kasuvinahalli Village. The accused was working in a factory at Muddanahalli. They have two children by name Mallesha, aged 4 years and Amulya aged 1 year 8 months and again the deceased was pregnant. It is the specific

case of the prosecution that accused used to suspect fidelity of his wife deceased Devika. Whenever she used to go outside the house for washing clothes and utensils, he used to harass her by stating that she has an affair with a boy residing in front of their house and used to quarrel and assault her. Deceased Devika had informed the same to her cousin brother Rajendra @ Kencha who in turn had informed it to her parents CW1 and his wife. But they kept quiet, thinking that he will improve his attitude. It is alleged that in the first week of December-2021, the second child of deceased was unwell, therefore, she had gone to her parents' house at Kasuvinahalli along with her children and the accused was going there after finishing his work. On 14.12.2021 at about 9.00 a.m. the accused took the deceased to Nanjangud on the guise of taking her to hospital along with two children from her parents' house. He got scanned her in Nanjangud town scanning center and came near Nanjangud railway station at about 6.45 p.m. Thereafter, he started to quarrel with deceased accusing her that she lost the mobile phone and assaulted her by means of hands. Then he took her

nearby Kabini river via private bus stand road, towards Sri Ayyappaswamy temple along with two children. At about 7.30 p.m. he picked up quarrel with deceased suspecting her chastity and with an intention to kill her, dragged her towards river and drowned her in the river and killed her. Thereafter, accused with an intention to kill his children, thrown away CW2 Mallesh also to the river. However CW19 to 21 saved CW2 from drowning in the river and brought him to the river Bank. The deceased was also brought to the Bank of river, but she was dead and accordingly it is alleged the accused has committed the offences punishable U/s.302 and 307 of IPC.

12. The record shows that based on the complaint lodged by C.W.1 the case was registered against accused at Nanjangud Town Police station and later the Circle Inspector of Police, Nanjangud Circle has taken up investigation and filed charge sheet against accused for the offences punishable U/s.302 and 307 of I.P.C.

13. At this stage on perusal of charge sheet, it is seen that, according to prosecution the accused had picked up quarrel with deceased nearby railway station at Nanjangud and then took her along with his children near Kabini river and committed murder of his wife and attempted committed murder of his child/CW2 by drowning it in the river. As submitted by the learned Public Prosecutor the Investigating Officer, during investigation has produced CW2 and eye witnesses before the Magistrate and their statements are recorded by the Magistrate as contemplated U/s.164 of Cr.PC. At this stage the contention of the learned counsel for accused that there are contradictions and omissions in the their statement cannot be accepted. Further as submitted the learned Public Prosecutor, filing of charge sheet is not a ground to grant the bail.

14. It is settled Law that while dealing with bail petitions the Court has to consider among other circumstances, the nature and gravity of charge, the severity of the punishment in the event of conviction,

danger of the accused absconding or fleeing if released on bail, likelihood of offence being repeated, reasonable apprehension of the witnesses being tampered with and larger interests of public and similar other considerations.

15. In this case, as submitted by learned Public Prosecutor, there are eye-witnesses to the alleged incident. No doubt, the accused is in judicial custody since 14.12.2021. However, the offences alleged against the accused are serious in nature. It is alleged that accused has killed his pregnant wife and also attempted to kill his child CW2 by drowning it in the river and there are eye witnesses to the alleged incident. Under these circumstances, looking to the nature of the allegations made against accused and having regard to the existence of incriminating circumstances, I found substance in the apprehension expressed by the prosecution. Therefore, taking note of the aforesaid facts and circumstances, I am of the opinion it is not a fit case to grant bail to the

accused. In the result I answer point No.1 for consideration in the **Negative**.

16. In view of my findings on the above Point, I proceed to pass the following:

ORDER

The Petition filed on behalf of the accused under Section 439 Cr.P.C is hereby dismissed.

[Dictated to the Stenographer on Computer, corrected and then pronounced by me in the Open Court on this the 5th day of July 2022]

[SARASWATI V KOSANDAR]

I Additional Sessions Judge
Mysuru.