

**IN THE COURT OF THE IV ADDL DISTRICT AND
SESSIONS JUDGE, MYSURU**

:: PRESENT ::

Sri Hosamani Pundalik,
IV Addl. District & Sessions Judge,
Mysuru.

SC.No.110/2017

Dated this the 15th day of December, 2020

Complainant :

State by V.V. Puram Police
Station,

[By learned **Public Prosecutor**]

V/s

Accused No.9 :

Sooraj,
S/o Meravanna,
Aged 30 years,
Working at Yash Developers,
R/at House No.1870,
Bogadi 2nd Stage, Mysuru City.

[By **Sri Umesha S.**, Advocate]

**ORDERS ON APPLICATION FOR REGULAR BAIL
FILED UNDER SEC.439 OF Cr.P.C.**

This is an application filed by the accused No.9 – Sooraj under Section 439 Cr.P.C. seeking regular bail for the offences punishable under Sec.120(B), 109, 302, 201 R/w 34 of IPC.

2. The case of the accused No.9 in brief is as under:

That the accused No.9 is an innocent and law abiding citizen and he hails from respectable family having deep roots in the society. It is further stated that accused No.9 is resident of Bogadi, Mysuru city having movable and immovable properties in his locality. Further it is stated that the accused No.9 is not at all connected with the incident and a false case has been foisted against him only in order to harass him. Further it is stated that the accused No.9 is having aged parents, wife and children. It is stated that the accused is in judicial custody since 14.03.2019 as he was convicted in SC.277/2012. Hence, the accused could not appear before this court in the present case since the accused was in custody. Upon the absence of the accused this court issued body warrant against the accused No.9 and then accused No.9 was produced before this court and taken into custody and remanded to judicial custody, hence this application for enlargement of bail. The accused is ready to furnish the surety and also ready to abide by the terms and conditions that may be imposed by this court, accordingly prayed to allow the petition.

3) Per contra, it is contended by the State represented by Learned Public Prosecutor by filing objection that the petition filed on behalf of the accused No.9 is not maintainable and the accused No.9 is not entitled for bail. It is contended that

as per the investigation and records prima-facie the accused No.9 has committed the offences alleged against him, which are serious in nature. It is contended that the investigation is completed and the accused is already been arrested in the other case, as such he is in judicial custody. Further it is contended that this accused and accused No.1, 7 and 10 are the accused persons in SC.277/2012 and they are convicted. The accused No.9 is also involved in other cases. If the accused is enlarged on bail, he may give threat to the witnesses not to give evidence against him and may abscond and hence prayed to reject the petition.

4) Thereafter, I have heard the arguments advanced by the learned counsel for the accused No.9 and that of the learned Public Prosecutor for the State.

5) The points that would arise for my consideration in this case are as under:

1) Whether the accused No.9 is entitled for regular bail under Sec.439 of Cr.P.C. as sought for?

2) What Order?

6) My findings 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:- It is alleged in the charge sheet that accused No.1 to 12 in pursuance of their enmity against the deceased Krishna alias Paduvarahalli Krishna determined to finish him off. On 23.06.2016, accused No.1 to 5 arrived in a Santro Car with lethal weapons and dashed the Motor Cycle in which the deceased was traveling. On deceased falling down, they assaulted him with the weapons and the deceased expired while on treatment in the hospital. The accused No.9 is said to have connived with the co-accused by funding Rs.30,000/-.

8) The learned counsel for the accused No.9 stated that the accused No.9 is an innocent and law abiding citizen and he hails from respectable family having deep roots in the society. It is further stated that accused No.9 is resident of Bogadi, Mysuru city having movable and immovable properties in his locality. Further it is stated that the accused No.9 is not at all connected with the incident and a false case has been foisted against him only in order to harass him. Further it is stated that the accused No.9 is having aged parents, wife and children. It is stated that the accused is in judicial custody since 14.03.2019 as he was convicted in SC.277/2012. Hence, the accused could not appear before this court in the present case since the accused was in custody. Upon the absence of the accused this court issued

body warrant against the accused No.9 and then accused No.9 was produced before this court and taken into custody and remanded to judicial custody, hence this application for enlargement of bail. The accused is ready to furnish the surety and also ready to abide by the terms and conditions that may be imposed by this court, accordingly prayed to allow the petition.

9) Per contra, it is contended by the Learned Public Prosecutor that the petition filed on behalf of the accused No.9 is not maintainable and the accused No.9 is not entitled for bail. It is contended that as per the investigation and records prima-facie the accused No.9 has committed the offences alleged against him, which are serious in nature. It is contended that the investigation is completed and the accused is already been arrested in the other case, as such he is in judicial custody. Further it is contended that this accused and accused No.1, 7 and 10 are the accused persons in SC.277/2012 and they are convicted. The accused No.9 is also involved in other cases. If the accused is enlarged on bail, he may give threat to the witnesses not to give evidence against him and may abscond and hence prayed to reject the petition.

10) It is well settled law that Bail is not be withheld merely as a punishment, and the requirements as to bail are merely to secure the attendance of the accused at the trial.

The test is to be applied by reference to the following considerations amongst others; (1) the nature of the accusation; (2) the nature of the evidence in support of the accusation; (3) the severity of the punishment which conviction will entail; (4) the character of the sureties, that is to say, whether they are independent or indemnified by the accused; (5) the character and the behaviour of the accused. Any allegation that the accused is tampering or attempting to tamper with witnesses and thereby obstructing the course of justice would be a very cogent ground for refusing bail.

11) The decision reported in the case of State of Uttar Pradesh through CBI Vs Amarmani Tripathi, reported in **(2005) 8 SCC 21**, wherein the Hon'ble Supreme Court held that:

"It is well settled principles of law that matters to be considered in an application for bail are (i) Whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) Nature and gravity of the charge; (iii) Severity of the punishment in the event of conviction; (iv) Danger of the accused absconding or fleeing, if released on bail; (v) Character, behavior, means, position and standing of the accused; (vi) Likelihood of the offence being repeated; (vii) Reasonable apprehension of the witnesses

being tampered with and (viii) Danger, of course, of justice being thwarted by grant of bail".

12) It is well settled law that, at the time of deciding the bail petition, the Court should look at prima-facie material and should not go into merits of the case by appreciation of evidence. It is also well settled principles of law that, Court should avoid elaborate documentation of merits while dealing with an application for bail. While dealing with an application under Section 439 of Cr.P.C, the Court cannot go into details of evidence to find out whether the evidence will be sufficient in establishing the guilt of the accused.

13) It is pertinent to note that the accused No.9 was already granted bail in Criminal Petition No.5992/2017 dated 10.08.2017 by the Hon'ble High Court of Karnataka in the present case and earlier he was on bail. Since the accused No.9 was convicted and sentenced in SC.No.277/2012 and he was in judicial custody in pursuance of the conviction and order of sentence passed by the V Addl. Sessions Judge, Mysuru in SC.No.277/2012. As the accused No.9 was absent before this court and body warrant was issued and taken him into custody in the present case. Since the accused No.9 was already released on bail as per Order passed by the Hon'ble High Court of Karnataka in Crl. Petition No.5992/2017 dated 10.08.2017, I am of the considered

opinion that the accused No.9 is entitled to be released on bail under Sec.439 of Cr.P.C. The accused No.9 submitted that he is ready to abide by the conditions. He is ready to furnish surety and also undertakes to abide by the conditions that may be imposed by this court. The apprehension of the prosecution may be dispensed with by imposing suitable conditions with a direction to furnish one surety. In view of the facts and circumstance of the case, I am of the view that, the accused No.9 has made out reasonable and sufficient grounds which warrant this court to enlarge him on regular bail at this stage. Hence, the bail petition deserves to be allowed. Accordingly, I answered the point No.1 for consideration in the **Affirmative**.

14) Point No.2: In view of my finding on the above point, I proceed to pass the following:

O R D E R

The application filed by the accused No.9 under Sec.439 of Cr.P.C. is allowed.

The accused No.9 is released on bail on execution of personal bond of Rs.1,00,000/- with one surety for the likesum with the following conditions:

- 1) The accused No.9 shall not tamper the witnesses by threats, inducement or otherwise.

- 2) The accused No.9 shall appear before Court regularly without fail.
- 3) The accused No.9 shall not commit similar offences and shall not involve in any other offences.
- 4) The accused No.9 shall keep the jurisdictional court informed in writing under acknowledgement about change in his addresses, if any.

[Dictated to the Stenographer directly on computer, corrected and signed by me, then order pronounced in the Open Court, on this the **15th day of December, 2020**].

[HOSAMANI PUNDALIK]
IV Addl. District & Sessions Judge,
Mysuru.