

KAMS010056562019



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

Dated this, the 27th day of May 2022

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

SPL.C/366/2019

Complainant : State by Udupi Police Station.

(By **Public Prosecutor**)

//Vs//

Accused : Rajendra Kumar S.V. and others.

Accused No.3 Dhanraj V. Kotyan @ Dhanraj Poojari
@ Dhanraj @ Rock
S/o late Virendra Kumar,
Aged about 26 years,
Presently residing at Ashraya Nilaya,
Forest Gate, Near Katapadi,
Yenagudde Village,
Udupi Taluk & District
and also at
Sree Sai House,
Matadhangadi,
Udyavara,
Udupi Taluk & District-574118.

(By Sri.Vinaya B.R., Advocate)

:: ORDERS ON BAIL APPLICATION
FILED BY THE ACCUSED No.3 ::

Accused No.3 filed this bail application seeking an order of bail under Section 439 of Cr.P.C. for the offences punishable under Sections 384, 387, 504, 506, 407, 120(B), 109, 201 r/w Section 34 of I.P.C. and Section 3(1)(ii), 3(2), 3(4), 3(5) of KCOC Act.

2. The accused No.3 contends that, he is suffering with 4th Stage of Cancer. As per the medical records, the chemotherapy is going on and he needs further medical assistance. Since the accused is in judicial custody, he is not providing with proper medical care and attention. If the accused continues to be in judicial custody he will not survive as he could not get proper treatment for life threatening disease called Cancer. The accused requires timely medication as well as nutritious food. Right to live is a fundamental right as far as the accused No.3 is concerned and he has to be survived even for undergoing trial before this court and for that, his release is more essential. Hence, prays to allow the application.
3. The learned Special Public Prosecutor filed objections to the bail application and contends that, the bail application filed by accused No.3 on medical ground cannot be considered, as there are prima-facie evidence to show that, this accused committed heinous offences under I.P.C. and KCOC Act. The accused already approached the Hon'ble High Court of Karnataka by filing Criminal Petition No.3232/2022 under

Section 439 of Cr.P.C. and as such, this petition is not maintainable. Since the offences under the provisions of KCOC Act are alleged under Section 24 of the Act dis-entitles the accused seeking bail irrespective of quantum of sentence prescribed. The prosecution has no objections to provide any medical aid to the accused.

4. Heard the arguments. Perused the records.
5. The points that arise for my consideration are as under:

1. Whether the accused No.3 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 perusal of the application filed by this accused, it is not in dispute that, he is seeking bail on medical ground. The accused contends that, he is suffering with 4th Stage Cancer and he needs regular chemotherapy and other regular treatments. On perusal of the report submitted by the Central Jail, Vijayapura dated 13.01.2022, this accused who is in judicial custody was taken for

treatment at Government District Hospital, Vijayapura on 13.01.2022 and it is found that, he is having Mass lesion (Thymoma) in his chest and referred for higher treatment to Kidwai Hospital, Bengaluru. Accordingly, this accused was transferred from Vijayapura Central Jail to Central Jail, Bengaluru to provide treatment. Subsequently, the Chief Superintendent of Central Prison, Bengaluru, took this accused to Kidwai and Jayadeva Hospitals for treatment. However, the accused refused to undergo surgery at Jayadeva Hospital and returned to the Central Jail as per the report of the Chief Superintendent of Central Prison, Bengaluru dated 24.02.2022.

8. The accused also produced medical records for having taking treatment at Karnataka Institute of Endocrinology and Research, Bengaluru, wherein the Vitreo Retina Evaluation, Foot Evaluation, Diet Counselling were recommended in addition to regular medication. It is also advised to do the blood sugar test coupled with steroids. The certificate issued by Kidwai Cancer Institute shows that, the accused is suffering with Lymphoma 4th Stage. The Hodgkin's lymphoma is described in the medical text as a type of cancer that affects the lymphatic system, which is part of the body's germ-fighting immune system. In Hodgkin's lymphoma, white blood cells called lymphocytes grow out of control, causing swollen lymph nodes and growths throughout the body. It is also described that, the advances in diagnosis and treatment of Hodgkin's lymphoma have helped give people with this

disease the chance for a full recovery. So, even the medical text shows that the disease which the accused is suffering is a type of cancer needs advanced medical treatment. So, the documents produced by the accused as well as the reports from the Central Jail, Vijayapura and Bengaluru shows that, this accused is suffering with Cancer at 4th Stage. The Haematology Report also shows abnormal counts with regard to Haemoglobin, total WBC Count, %NEU, %LYM, %EOS, Platelet Counts etc. Since the accused is suffering with Cancer at 4th stage, certainly he needs a continuous treatment with nutritious food as suggested.

9. Now the accused has relied upon the orders passed 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, wherein the Hon'ble High Court has considered the bail application filed by the accused on medical grounds, wherein the petitioners therein were also suffering with Diabetes, Hyper Tension, first stage of Cancer and Prostate Enlargement and other related diseases. The Hon'ble High Court also observes 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 accused No.3 is suffering with 4th Stage Cancer which needs to be treated in any highly multi-specialized hospitals particularly which are available in Bengaluru. So, as the facts revealed in the above said case law, the Government needs more money to spend 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.

10. 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. Even though, there is a bar under the provisions of KCOC Act to grant an order of bail to an accused committed the offence under the Act, the

principles laid down under Section 24 of the Act relates to the merits of the case only and not to the cases where the bail is sought on medical ground.

11. No doubt, on merits, the accused may not be entitled to seek an order of bail, as there are prima-facie evidence about the commission of the offences under KCOC Act. In the present case the accused is seeking bail not on merits, but on the ground of humanitarian consideration for taking proper treatment for his life danger disease called Cancer that too at 4th Stage. 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.

12. In addition to this, the another ground urged by the Special Public Prosecutor is that, the accused filed one more bail application in Criminal Petition No.3232/2022 which is pending before the Hon'ble High Court of Karnataka. The accused has produced the copy of the orders in Criminal Petition No.3232/2022, wherein the petition was dismissed as withdrawn with a liberty to file a fresh petition under the same cause of action. That means, the liberty so sought was granted and the petition was dismissed as withdrawn. The copy of the order produced by the accused is verified through C.I.S. and it is confirmed that the Criminal Petition No.3232/2022 filed by the accused is already withdrawn. So, there is no bar to this court to consider the bail application of the accused on the same grounds urged in the above Criminal Petition before the Hon'ble High Court. So, considering all these aspects, I proceed to treat point No.1 in the affirmative.

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

ORDER

Bail application filed by the accused No.3 under Section 439 Cr.P.C. is allowed.

Accused No.3 is enlarged on bail on his executing personal bond for Rs.10,00,000/- (Rupees ten lakhs only) with two sureties likesum subject to following conditions:

1. Accused No.3 shall not threaten or tamper the prosecution evidence in any manner.
2. He shall appear before the court till conclusion of the trial.
3. He shall surrender his passport if any.
4. He shall furnish the proof of his present residential address as well as the address while taking treatment.
5. He shall not alienate any of his properties either in his name or his family members without prior permission of the court.
6. He shall co-operate with the prosecution as well as the court in disposing of the case on merits.
7. He shall not involve in any other offences.

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

(Dictated to the Stenographer, transcribed by her on Computer, revised, corrected and then pronounced by me in the open court on this day, the **27th day of May 2022**)

(M.L.RAGHUNATH)

Prl. District & Sessions Judge,
Mysuru.

*JK