

KAMS010026442022



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

Dated this the 30th day of June, 2023

:: PRESENT ::

Sri Mallanagouda, B.Com., LL.M.,
IV Addl. District & Sessions Judge,
Mysuru.

SC/119/2022

Complainant :

The State by Mysuru
South Police Station,
Mysuru.

(By **Public Prosecutor**)

Vs

Accused :

Sri.Sagar,
S/o N.S.Shivaprakash,
Aged about 31 years,
R/at No.2513/2B, CH.,
New Kantharaje Urs Road,
I Main, I Cross,
K.G.Koppalu, Mysuru
(By Sri J.Srinivas. Adv.,)

:: ORDERS ON APPLCIATION FILED
U/Sec.439 of Cr.P.C::

The Accused has filed present bail application U/Sec. 439 of Cr.P.C. seeking to release him on bail in Cr.No.310/2021 of Mysuru South Police Station registered for the offences punishable U/Sec.302, 326 and 324 of I.P.C.

2. In his application the accused has contended that Police have filed charge against him for the offences punishable U/Sec.302, 326 and 324 of I.P.C. He is innocent, he has not involved in the offences as alleged by the Police and he hails from reputed family. He has maintained good relationship with relatives and the friends. He is permanent residents of K.G.Koppal, Mysuru. Hence, there is no possibility of absconding. He is the only earning member of the family. He has got old aged mother and she is suffering from ill-health, even grand-mother is aged about 80 years and she is also suffering from old age diseases. The wife of the accused is unable to maintain those two persons, there are two children to the accused aged about 6 years and 3 years and they are also depending upon the accused and his wife is unable to maintain all these persons. The family members of the accused have no means of their own, they are all depending upon the income of the accused. Now due to retaining of the accused in custody they are struggling hard for leading life. The accused is ready to

abide by the conditions that may be imposed by the Court and ready to furnish sufficient surety. He undertakes not to tamper prosecution evidence.

3. On the other hand the learned Public Prosecutor has filed objection in which she contended that there is prima-facie material to show that the accused has committed the offences U/Sec. 302, 326 and 324 of IPC., in case if the accused is released on bail there is every possibility of threatening the complainant and witnesses. Reasons stated in the application are not valid reasons for granting the bail. The offences alleged against the accused is sensitive offences and in such a case bail shall not be granted. Hence, bail application of the accused is liable to be rejected.

4. The learned Public Prosecutor has referred many judgments of Hon'ble Supreme Courts and Hon'ble High Court of Karnataka, Bengaluru in which the Hon'ble Supreme Courts and Hon'ble High Court of Karnataka, Bengaluru has laid down law for granting the bail.

5. Heard. Perused the entire record and the decisions.

6. On the basis of the above discussion the point that arises for my consideration is;

(1) Whether the Accused has made out sufficient grounds for grant of bail?

(2) What Order?

7. My findings on the above points are as hereunder;

Point No.1: **In the Negative**

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

REASONS

8. **POINT No.1:-** At the time of arguments, learned Counsel for the accused has submitted that as dependents of the accused are struggling hard to lead their life and the wife of the accused is unable to maintain her children without the presence of the accused and already charges are framed, it is proper and necessary to release the accused on bail. The learned Counsel for the accused has argued and referred to the variation in the statements given by CW2 before the Investigating Officer and before the learned Magistrate Court and he has submitted more about the presence of the aged parents and dependent family members. The Learned Counsel for the accused has relied upon the following judgments :-

2023 Cr.R.461(Karnataka) between Mallikarjun @ Mallugouda @ Mallu Vs. State of Karnataka wherein in it held that :-

“Criminal Procedure Code, 1973-Section 439-Bail petition-Prosecution for offences punishable under Sections 14,147,148,109, 120(B), 212, 324, 326, 307 and 302 read with Section 149 of IPC and Sections 3, 5 and 7 read with 25 (1) (a) (1B) (a) (6) (7) of Indian Arms (Amendment) Act, 2019-Even though, there are specific allegations made out against Petitioner, however, FIR was registered against accused No. 1 and 2 and 23- others - Thereafter, petitioner and others have been implicated – Petitioner is entitled to be enlarged on bail by imposing suitable conditions that would satisfy apprehension of prosecution- Bail granted against stern conditions.”

2) 2022 CRR of Karnataka wherein in it is held that:

“ Criminal Procedure Code, 1973-Section 439-Bail-Crime Case registered for offences punishable under section 302, 364, 342, 109, 120(B),328, 504, 506 read

with 34 of IPC and Sections 3(2)(v), 3(1)(r), 3/(1)(s), 3(2)(va) of SC/ST (POA) Act, 1989- Charge-sheet has been filed and appellant / accused is not required for any custodial interrogation – He is not having criminal antecedents – There are valid grounds for setting aside impugned order and granting bail to appellant/ accused subject to terms and conditions- Bail granted.”

3) 2018(2) Crimes 376(SC) between Seema Singh vs Central Bureau of Investigation and Anr. wherein it is held that:-

“Code of Criminal Procedure, 1973-Section 439- Respondent 2 charged with murder of his wife- respondent 2 asserting it was an accident – High Court granting bail – Seriousness of crime-No ground to refuse bail-High Court taking relevant factors into account while granting bail by a speaking order and with many conditions-Complainant and other family members of deceased arriving after incident- Nobody nurturing a suspicious – High Court order not perverse.

9. The learned Public Prosecutor has argued that there is no change in circumstances and previous

application is rejected and the present application is not maintainable. Further she contented that in case of releasing the accused on bail there is every possibility of accused threatening the prosecution witnesses.

10. On perusal of the material on record it appears that Investigating Officer has filed charge-sheet against the accused for the offences punishable U/Sec.302, 326 and 3024 of IPC contending that the accused has murdered his father and another lady and caused injuries to CW2-Nagarjuna and on earlier occasion the accused had filed bail application U/Sec. 439 of Cr.P.C and after hearing on merits this Court has rejected the bail application vide order dated 18.07.2022. Now, when matter is posted for fixing date for trial the accused has once again filed present application. Therefore, question arise is that when already another application filed by the same accused U/Sec. 439 of Cr.P.C has been rejected by this court whether another application is maintainable. In my view, when there is no change in circumstances, the bail application is not maintainable. Here in the present case after rejecting of the previous bail application only charges are framed and now the matter is posted for FDT. Hence there is no any changes in the circumstances, hence present application itself is not maintainable.

11. Further more, as now the matter is posted for FDT and CW-1 is the complainant and CW2 is the

injured, if in case accused is released on bail there is every chances of threatening the prosecution witnesses. Therefore, unless the material witnesses are examined it is not proper to release accused on bail. Hence it is decided to reject the bail application. Accordingly, I answer the Point No.1 in the **Negative**.

12. **POINT No.2:-** In the result, I proceed to pass the following;

ORDER

The Bail application filed by the accused U/Sec.439 of Cr.P.C., is hereby **REJECTED**.

[Dictated to the Stenographer directly on computer, corrected, and signed by me and then pronounced in the Open Court, on this the **30th day of June, 2023**].

(MALLANAGUDA)

IV Addl. District & Sessions Judge,
Mysuru.

