

KAMS010075722023



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

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

Dated this the 6th day of January 2024

SC/255/2023

Complainant:

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

/vs/

Accused No.1 and 2:

1. Shivanaga S/o Chikkarachashetty, Aged about 46 years, R/at Hunasanalu Village, Nanjangud Taluk.
2. Basamma W/o Chikkarachashetty, Aged about 65 years, R/at Nanjangudu Taluk.

Order on bail application filed by the accused No.1 & 2
U/s 439 of Cr.P.C.

It is stated in the bail application that the complainant police have registered a case against these accused No.1 and

2 for the offence punishable U/s 302 R/w 34 of IPC in their Cr.No.117/2023. 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.255/2023. The alleged offence is non-bailable in nature. These accused have been in judicial custody since their arrest.

2. The gist of the complaint is that on 01/06/2023 at about 12.30 p.m when the deceased Chikkarachashetty along with C.W.16 came to Sy.No.72 to get measure the property, at that time the accused No.1 and 2 picked up quarrel with the deceased and the accused No.1 and 2 dragged the deceased into the shed of C.W.2 and accused No.1 assaulted on his cheek, ear, head, finger, shoulder and accused No.2 assaulted with reeper and stone on his right forehead, eye, eyebrow, left eyebrow, teeth and caused grievous injuries and killed the said Chikkarachashetty.

3. It is further stated that on perusal of record, it reveal that the complainant is not the eye witness and he is an earsay witness. C.W.2 is the son of the 2nd wife of the deceased. The accused No.1 is the 1st wife's son. Accused No.2 is the 1st wife of the deceased. The C.W.2 gave his statement regarding the death of his father in his house. In his statement he has stated that when he came to his shed, his father laying in the pool of blood. On seeing the dead body, he went to his wife's house at Chamalapurahundi.

Hence, he is also not an eye witness. Further, as per the charge sheet C.W.11 and 12 are eye witnesses. In their statements U/s 161, they have stated that on the said day at about 3.00 pm the accused No.1 and 2 dragging the Chikkarachashetty into the shed of C.W.2. But, in their statement U/s 164 before the Judge, they have stated that their used to be quarrel between the deceased and his children since more than 1 year. Further, the villagers were talking that these accused No.1 and 2 only killed the deceased 1½ month ago. So, their statement does not reveal who has killed the deceased. C.W.11 and 12 are not eye witnesses.

4. Further stated that the accused No.1 and 2 are innocents and law abiding citizens and from respectable family. The accused No.2 is a woman and senior citizen and suffering from age old ailments. The accused No.1 and 2 are son and mother. Earlier, the accused No.2 filed Crl.Mis.No.1127/2023 before the II Addl District & Sessions Judge, Mysuru and the same was dismissed on 28/06/2023. The accused No.1 is having wife and children and he is the only earning member of his family. He is an agriculturist. Now the investigation has been completed and the IO has filed the charge sheet. Hence, the accused are not required for custodial interrogation. Further, they 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.

5. The PP filed objections by reiterating the complaint averments and contended that the charge sheet reveal the involvement of these accused in committing the offence. They have murdered the Chikkarachashetty. The accused No.1 is the 1st wife's son of deceased Chikkarachashetty and accused No.2 is his 1st wife. Because of the dispute regarding the properties, the accused have actively participated in committing the murder of the deceased. The offence committed by the accused is non-bailable in nature. The offence U/s 302 of IPC is punishable with death sentence or life imprisonment with fine. So, the application filed by the accused No.1 and 2 is not at all maintainable at this juncture. Moreover, just because of the reason that the accused No.2 is a lady, definitely, she is not at all entitled for bail as she has committed the heinous offence. In case, if the bail application is allowed, the accused may abscond and may tamper the witnesses and thereby hamper the investigation. They may threaten the complainant and his family members. They have not at all made out any grounds to allow the application. Hence, prayed to dismiss the application.

6. Heard the argument of both side.

7. The prosecution has filed a memo along with judgment of **High Court of Karnataka, Bengaluru in Criminal Petition No.1698/2023.**

8. The advocate of the accused No.1 and 2 has filed a memo along with the following citations:

(i) Crimes 2023(3) Supreme Court of India, between Teesta Atul Setalval Vs State of Gujarat.

(ii) CRL.P.No.2509/2019 High Court of Karnataka, between Kavitha Vs State of Karnataka.

(iii) CRL.P.No.2306/2022 High Court of Karnataka, between Nethra Vs State of Karnataka.

(iv) 2022(3) Crimes 290(SC), Supreme Court of India, between Satender Kumar Antil Vs Central Bureau of Investigation and Another.

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

1. Whether the accused No.1 and 2 have made out grounds to allow the present application?

2. What order?

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

Point No.1 : Partly in the Affirmative

Point No.2 : As per the final order

for the following:-

REASONS**POINT NO.1:**

11. I have gone through the charge sheet. Here, Nanjangud Rural Police have filed the charge sheet against the accused for the offence punishable U/s 302 R/w 34 of IPC in their Cr.No.117/2023. Later, filed the charge sheet for the offence.

12. The complainant is one Siddaraju S/o Madashetty. He has lodged a complaint on 01/06/2023 alleging that he is the resident of Hunasanalu Village. One Chikkarajashetty of his village got married one Basamma 45 years back. They have got children by name Raju, Shivanaga, Mahesh, Rathnamma, Lakshmi, Jayalakshmi, all are married. Thereafter, 20 years back the said Chikkarajashetty again married one Jayamma of Hullapura Village, Gundlupet Taluk. They have got children by name Shivu and Srikanta. After the 2nd marriage, the said Chikkarajashetty was staying with his 2nd wife and children at Hullapura Village. Once in a while he used to come over to Hunasanalu Village to look after his lands. One year back, he had sold 5 acres of his land. But, the 1st wife Basamma and her children used to complain that they did not get any share. In this back ground, on 01/06/2023 at about 12.30 pm when Chikkarajashetty got measured his sites to sell the same, the 1st wife Basamma

and her son Shivanaga came and quarreled with him and they dragged the Chikkarajashetty to the house and quarreled with him. Further, he came to know around 3.00 pm that they assaulted on Chikkarajashetty with machete, reeper and stone on his head, face and all over the body and killed him. When he came to the village around 6.00 pm, the villagers gathered in front of the house of Basamma. So, he went there and saw that the said Chikkarajashetty lying in a pool of blood. The said Chikkarajashetty died due to the assault of Basamma and Shivanaga. They only killed the said Chikkarajashetty. Hence, prayed to take action against them.

13. Here, the complainant is also not an eye witness. The charge sheet reveal that there are 30 witnesses. Among them, the C.W.1 is the complainant. The C.W.2 and 10 are cited as circumstantial witnesses. C.W.11 and 12 are cited as eye witnesses. This Court has gone through the statement of the eye witnesses. The eye witness C.W.11 Siddashetty has stated about the galata took place between the deceased Chikkarajashetty and these accused on 01/06/2023 at about 12.30 pm. He has stated that around 3.00 pm the accused No.1 and 2 were abusing the Chikkarajashetty and quarreling with him and they were dragging him to the shed of Srikanta who is the son of Chikkarajashetty and he heard the sound of galata from the said shed and also heard the screaming of Chikkarajashetty from the said shed. By that time, he went to

his house. Later, around 6.00 pm the villagers were gathered in front of the said house and he went inside the said shed and saw the dead body of the said Chikkarajashetty laying in pool of blood. Another, eye witness C.W.12 Siddaiah @ Siddesh also stated like above. Thus, these two witnesses saw the accused No.1 and 2 quarreling with the Chikkarajashetty and dragging him into the shed of Srikanta and also heard the sound of galata from the said shed and also heard the screaming of the Chikkarajashetty.

14. The C.W.2 is a circumstantial witness, who is the 2nd wife's son of deceased Chikkarajashetty. He has stated that on 01/06/2023 at about 8.00 am he came to know through his mother Jayamma that his father Chikkarajashetty had gone to Nanjangudu to attend a marriage. As usual, at about 4.00 pm he came back to his shed which is in the name of his father Chikkarajashetty. The front door was closed with a drip wire. By removing the same he opened the door and found his father laying in a pool of blood. He found the injuries on his head, face and all over the body. By seeing the said scene and by afraiding he went to his wife's house at Chamalapuradahundi. Thus, he is also a circumstantial witness.

15. But, the C.W.11 and 12 have seen the accused No.1 and 2 quarreling, abusing with the deceased Chikkarajashetty and also seen that they were dragging him

into the shed of Srikanta and also heard the screaming of the said Chikkarajashetty from the said shed. So, though there are no eye witnesses to the incident, there is prima-facie case against these accused No.1 and 2. At this juncture, under the above said facts and circumstances, the counsel for accused No.1 and 2 cannot argue that they have not at all involved in committing the alleged offence. The alleged offence is punishable with death sentence or life imprisonment. But, here, the accused No.2 is a lady aged about 65 years. The medical documents from the prison reveal that she has been suffering from leg pain due to fall. Further, this Court also observed that she is not in a position to walk properly. In this regard, the learned Public Prosecutor relied upon the judgment of our own High Court in Criminal Petition No.1698/2023 dated 12/06/2023, in which the Hon'ble High Court of Karnataka has observed as '**merely because the petitioner is a woman is not a ground to enlarge her on bail**'. So, the learned Public Prosecutor has argued that as the prosecution has made out prima-facie case against the accused No.1 and 2, just because the accused No.2 is a woman, she is not at all entitled for bail as she has committed heinous offence. But, the learned counsel for the accused No.1 and 2 has drawn the attention of this Court towards the proviso Sec.437 of Cr.P.C, which reads as under:

'Provided that Court may direct that a person referred to in clause (i) or clause (ii) be released on bail if such person is under the age of sixteen years or is a woman or is sick or infirm:

Provided further that the Court may also direct that a person referred to in clause (ii) be released on bail if it is satisfied that it is just and proper so to do for any other special reason:'.

16. As per the above said proviso, the Court can direct the person to be released on bail if such a person is under the age of sixteen years or is a woman or is sick or infirm. Here, in the present case on hand, the accused No.2 is a woman aged about 62 years, who is suffering from ill health, which this Court has observed when she was produced before the Court. The learned counsel for the accused relied upon the judgment of **Hon'ble Supreme Court of India reported in 2023 (3) CRIMES 1 (SC), between Teesta Atul Setalvad Vs State of Gujarat**, in which the Hon'ble Apex Court held as **"Bail – A lady is entitled to special protection under Section 437 of Cr.P.C"**. In the same way, the counsel for the accused relied upon the judgment of **our own High Court in CRL.P.No.2509/2019 between Kavitha Vs State of Karnataka**, in which the Hon'ble High Court of Karnataka has observed in para 4 of the judgment as **"In the above facts and circumstances of the case, proviso to**

Section 437 Cr.P.C. would come to the help of the petitioner herein. Even at this stage, if the court comes to the conclusion that, a strong prima facie case is made-out against a woman, still the court can exercise its discretion and it may enlarge a lady on bail with conditions. Though the petition is filed under Section 439 of Cr.P.C, the proviso to Section 437 can be equally made use of. The said proviso says that, even if there appears reasonable grounds for believing that the accused is guilty of the offences punishable with death or imprisonment for life, provided the Court may direct that the person referred to in Clause (i) or Clause (ii), be released on bail, if such person is under the age of sixteen years or is a woman or is sick or infirm". In the same way, the counsel for the accused relied upon the judgment of our own High Court in CRL.P.No.2306/2022 dated 12/05/2022 between Nethra Vs State of Karnataka by Madanayakanahalli Police Station, Bengaluru Rural District.

17. Thus, by going through the above judgments, it reveal that the Court can take the aid of Section 437 of Cr.P.C in respect of a person below 16 years of age, a woman, a sick or infirm. Here, in the present case on hand, of course, there is a prima-facie case against the accused No.1 and 2. But, the accused No.2 though a woman, if suffering from sick. This Court has observed that she is not in

a position to walk. So, by considering this aspect, by taking the aid of proviso of Section 437 of Cr.P.C, this Court is of the view that the accused No.2 is entitled for bail. The accused No.1 has not at all made out grounds to allow the application. Hence, I answer Point No.1 **partly in the Affirmative.**

POINT NO.2:

18. 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.

The bail application filed by the accused No.2 U/s 439 Cr.P.C., is hereby allowed with the following conditions:

1. The accused No.2 has to execute a bond for a sum of Rs.1,00,000/- with a surety for the likesum.
2. She shall be regular in attending the Court on all hearing dates.
3. She shall not tamper Prosecution witnesses.

4. She shall not leave the jurisdiction of this court till the conclusion of trial without prior permission of this court.

5. She shall furnish her photo along with address proof and photo of the surety with the address proof.

(Dictated to the Stenographer directly on computer and then pronounced in the open court on this the 6th day of January 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.

The bail application filed by the accused No.2 U/s 439 Cr.P.C., is hereby allowed with the following conditions:

1. The accused No.2 has to execute a bond for a sum of Rs.1,00,000/- with a surety for the likesum.

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III AD & SJ, Mysuru.