

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

Present: Sri.Hosamani Pundalik,
II Addl. District & Sessions Judge,
Mysuru.

Dated this the 23rd day of January 2023

SC/268/2021

Complainant :

The State of Karnataka by
T.Narasipura Police Station,
T.Narasipura.

(By Public Prosecutor)

V/S

Accused :

Sri Mahesh Kumar S/o Late
Nanjundaiah, aged about 24 years
residing at Ambedkar Beedi,
Muguru, T.Narasipura taluk, Mysuru
District.

(By Sri.M.S.B., Advocate)

ORDER

This is an application filed by the accused under Sec.439 of Cr.P.C. for grant of regular bail for the offences punishable under Sections 302 and 201 of IPC.

2. The case of the accused in brief is as under:

That the accused is innocent person and law abiding citizen. He has not committed any offences as

alleged by the complainant police. The detention of the accused will cause great hardship to him and his family members. Further it is stated that the complainant police in due course of their investigation arrested the accused person and produced before the court and the court remanded the accused person to the judicial custody. Further it is stated that the outcome of the entire investigation absolutely could not make out any case prima-facie to establish that the accused has been directly or indirectly involved in the case. Further it is stated that absolutely there is no eyewitness and circumstantial evidence in the case against the accused nor has there been any overt act attributed against him. Further it is stated that the accused has aged parents, he owns movables in his home town and he hails from a respectable family having good reputation in the locality. He is the only person to look after his aged parents. Further it is stated that the accused has been falsely implicated by the complainant police due to personal vengeance. Further it is stated that the accused is ready and willing to abide by any conditions that may be imposed by the Court. Further it is stated that the accused undertakes that he will not hamper or tamper the prosecution witnesses. Further it is stated that the accused is ready to furnish surety. Further it is stated that the accused will be put to greater

injustice, inconvenience and loss in the event if the bail is not granted and so also his personal liberty as guaranteed under the Constitution will be deprived of and prayed to allow the application for regular bail.

3. Per contra, it is contended by the Learned Public Prosecutor by filing objection that the application filed on behalf of the accused is not maintainable. It is contended that as per the records prima-facie the accused has committed the offences of murder and destroying evidence under Section 302 and 201 of IPC, which are serious in nature. The accused has committed offences serious in nature punishable with death and life imprisonment. It is stated that the accused has not shown reasonable grounds in his application for enlarging him on bail. As such, at this stage if the accused is released on bail, he may tamper the prosecution witnesses and hamper the trial and also there is every chance of absconding and hence prayed to dismiss the application.

4. Thereafter, I have heard the arguments advanced by the learned counsel for the accused 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 is entitled for regular bail under Sec.439 Cr.P.C. as sought for ?
2. What Order ?

6. My findings to the above points are as under:

Point No.1 : In the Negative

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

REASONS

7. **Point No.1:** The Police Inspector, T.Narasipura police station filed the present Charge Sheet against the accused alleging that on 25.8.2021 at about 6.20 p.m., at 39 Sub canal, near Kachcha Road of Chamaraja Right Canal within the jurisdiction of T.Narsipura Police Station. When Smt.Bhagyalakshmi proceeding to attend natural call, at that time the Accused abused her in filthy language as she is objecting him for love affairs with her daughter and assaulted her with spade on her head, face, chin and near eyes and committed murder of Smt.Bhagyalakshmi. In order to destroy the evidence of murder he put the dead body in a gunny bag and pushed into pipe near canal bridge and thereby

committed the offences punishable under Sections 302 and 201 of IPC.

8. The learned counsel for the accused submitted that the accused is innocent person and law abiding citizen. He has not committed any offences as alleged by the complainant police. The detention of the accused will cause great hardship to him and his family members. Further it is stated that the complainant police in due course of their investigation arrested the accused person and produced before the court and the court remanded the accused person to the judicial custody. Further it is stated that the outcome of the entire investigation absolutely could not make out any case prima-facie to establish that the accused has been directly or indirectly involved in the case. Further it is stated that absolutely there is no eyewitness and circumstantial evidence in the case against the accused nor has there been any overt act attributed against him. Further it is stated that the accused has aged parents, he owns movables in his home town and he hails from a respectable family having good reputation in the locality. He is the only person to look after his aged parents. Further it is stated that the accused has been falsely implicated by the complainant police due to personal vengeance. Further it is stated that the accused is ready and willing to abide by any conditions

that may be imposed by the Court. Further it is stated that the accused undertakes that he will not hamper or tamper the prosecution witnesses. Further it is stated that the accused is ready to furnish surety. Further it is stated that the accused will be put to greater injustice, inconvenience and loss in the event if the bail is not granted and so also his personal liberty as guaranteed under the Constitution will be deprived of and prayed to allow the application for regular bail.

9. Per contra, it is contended by the Learned Public Prosecutor by filing objection that the application filed on behalf of the accused is not maintainable. It is contended that as per the records prima-facie the accused has committed the offences of murder and destroying evidence under Section 302 and 201 of IPC, which are serious in nature. The accused has committed offences serious in nature punishable with death and life imprisonment. It is stated that the accused has not shown reasonable grounds in his application for enlarging him on bail. As such, at this stage if the accused is released on bail, he may tamper the prosecution witnesses and hamper the trial and also there is every chance of absconding and hence prayed to dismiss the application.

10. 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 discussion on 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.

11. The decision reported in **(2020) 2 SCC 743 in case of Myakala Dharmarajam and others Vs. State of Telangana and another.** *Wherein the Hon'ble Supreme Court of India held that " The factors to be considered while granting bail have been held by this Court to be the gravity of the crime, the character of the evidence, position and status of the accused with reference to the victim and witnesses, the likelihood of the accused fleeing from justice and repeating the offence, the possibility of his tampering with the evidence and witnesses, and obstructing the course of justice, etc. Each criminal case presents its own peculiar factual scenario and, therefore, certain grounds peculiar to a particular case may have to be taken into account by the Court. The Court has to only opine as to whether there is prima facie case against*

the accused. For the purpose of bail, the Court must not undertake meticulous examination of the evidence collected by the Police and comment on the same. "

12. Another 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.

13. The another decision reported in **(2016) 15 SCC 422 in the case of Neeru Yadav Vs State of Uttar Pradesh**, the Hon'ble Supreme Court held that :

Para No.13 : We will be failing in our duty if we do not take note of the concept of liberty and its curtailment by law. It is an

established fact that a crime though committed against an individual, in all cases it does not retain an individual character. It, on occasions and in certain offences, accentuates and causes harm to the Society. The victim may be an individual, but in the ultimate eventuate, it is the society which is the victim. A crime as is understood, creates a dent in the law and order situation. In a civilized Society, a crime disturbs orderliness. It affects the peaceful life of the Society. An individual can enjoy his liberty which is definitely of paramount value but he cannot be a law unto himself. He cannot cause harm to others. He cannot be a nuisance to the collective. He cannot be a terror to the Society and that is why Edmund Burke, the great English thinker, almost two centuries and a decade back eloquently spoke thus.

14. From the perusal of the materials available on record, I am of the considered opinion that there is prima-facie and reasonable ground at this stage for believing that the accused has committed the offences punishable under Sec.302 and 201 r/w 34 of IPC as alleged against the accused, which are heinous in nature and against the society at large. The accused is involved in the crime. There are sufficient materials available on record to connect the accused with the

crime and prima facie show the involvement of the accused in the crime.

15. It is pertinent to note that if we carefully appreciate all these facts, it would clearly indicate that the accused committed murder of Smt.Bhagyalakshmi by assaulting with spade and put the dead body with gunny bag in a pipe in order to destroy the evidence and thereby committed the offences punishable under Sections 302 and 201 of IPC. It is pertinent to note that the offences alleged against the accused clearly indicate that the accused has no apprehension of law. Such being the facts, it is not safe to release the accused on bail. As such, the allegations are very grave, heinous and against to the Society at large.

16. It is pertinent to note that considering the nature of accusations against accused nature of evidence in support thereof, reasonable apprehension of witnesses being tampered with and the larger interest of the public and State, I am of the considered opinion that the accused is not entitled for bail. In case of grant of bail to the accused chances of accused causing threat to the prosecution witnesses and chance of his abscondance cannot be ruled out. Considering the gravity and seriousness of the offences, this court

is of considered view that the accused is not entitled for bail.

17. It is pertinent to note that the offences alleged against the accused clearly indicates that the accused has no apprehension of law. Such being the facts, it is not safe to release the accused on bail at this stage. As such, having regard to all these facts and circumstances, I am of the view that, there are no reasonable and sufficient grounds which warrant this court to enlarge the accused on regular bail at this stage. Hence, the bail application deserves to be rejected. Accordingly, I answered the **point No.1 for consideration in the Negative.**

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

ORDER

The application filed on behalf of the accused under Section 439 of Cr.P.C., for grant of regular bail is rejected.

(Dictated to the Stenographer directly on computer, corrected and then order pronounced by me in the Open Court, on this the 23rd day of January 2023).

(Hosamani Pundalik)
II Addl. District & Sessions
Judge, Mysuru

