

KAMS010075702023



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

Dated this the 4th day of November, 2023

:: PRESENT ::

Sri S.T. Devaraja, B.Sc., LL.B.,
II Addl. District & Sessions Judge,
Mysuru.

SC.No.253/2023

Complainant : State by Yelawala Police Station
Mysuru District.
(By **Public Prosecutor**)

V/s

Accused -: Sri.Shivu @ Shivaiah, T.C.
S/o Channappa,
Aged about 34 years,
R/at D.No.37/A,
Gaddige Main road,
Ganigarahundi Village,
Yelawala Hobli,
Mysuru Taluk.

(By **Sri.H.N.M.,** Adv.)

ORDER

Vide Bail application under Section 439 of Cr.P.C. the Accused prayed for grant of bail in Cr.No.104/2023 (SC.No.253/2023) pending on the file of this Court for the offence punishable under Sec.306 of IPC.

2. The Accused has narrated the contents of the complaint and the charge sheet and contended the complainant police have registered a case for the offence punishable under Sec.306 of IPC. It is his contention, he has not committed the alleged offence and on the basis of the false complaint given by one Sri.Venugopal S/o Late Javaraiah who is the father of deceased Kum.Harshitha.V, the complainant police have registered a case. It is his contention, the complainant police have already completed the investigation and filed the charge sheet. It is his contention, CW.1 to CWs.25 are the charge sheeted witnesses and there are no eye witness.

3. It is his contention, the further statement given by the complainant on 3.7.2023 revealed the deceased Kum.Harsihtha.V was not having mobile phone, she used to keep the mobile bearing No.7760869211 at home and the deceased Kum.Harshitha.V sent so many messages to the accused. It is his contention, there was no previous complaint nor any statement of the villagers for having advised and contended a false complaint was lodged by the complainant. It is his contention, the CW.7 & 9 to

11 are the circumstantial witnesses and contended the investigation is completed and the charge sheet is filed and that he is not required for any custodial interrogation.

4. It is his contention, Kum.Harshitha.V was able to talk when she was admitted to the Hospital, but the I.O has not intimated the Executive Magistrate to record the statement and the Investigation Officer has not seized the mobile. It is his contention, there was no instigation or conspiracy against the deceased Kum.Harshitha.V to commit suicide and contended the alleged offence under Sec.306 of IPC., is punishable with maximum punishment of 10 years and not punishable with life imprisonment or death penalty.

5. It is his contention, he is having a wife and children and they are all depending on his earnings and he is in judicial custody since 2½ months, it is pre-trial conviction. It is his contention, he is ready and willing to abide the terms and conditions that may be imposed by the Court and undertaken to furnish surety to ensure the participation in the investigation and the trial. With all other grounds and by enclosing the letter with copies of whatsapp communications, the Accused prayed to allow the bail application.

6. By referring to the contents of the charge sheet, the learned P.P., has filed a detailed objection and contended the Accused has committed the offence

punishable under Sec.306 of IPC which is non bailable in nature and exclusively triable by the Court of Session. It is the objection, there is a prima-facie case against the Accused and also contended about the necessity of the Accused for the purpose of trial and it is also the objection in the event of grant of bail there are every possibility of tampering the prosecution witnesses.

7. By disputing the grounds urged in the bail petition, it is the objection under any circumstances the Accused is not entitled for bail as he has committed the heinous offence as he has abetted and instigated Kum.Harshitha.V to commit suicide by consuming pesticide and after completing the investigation the charge-sheet is filed which reveals the involvement of the Accused. It is also the objection, in the event of grant of bail there are every possibility of destroying the evidence. By referring to the reported decisions, the learned P.P. prayed to reject the bail petition.

8. Heard. Perused the entire record and the decision.

9. The only point that arises for my consideration is;

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

(2) What Order?

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

Point No.1: **Negative**

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

REASONS

11. **POINT No.1:-** By referring to the contents of the bail petition as well as the complaint and the charge-sheet, it was the submission of the learned Advocate for the Accused there was no instigation, no conspiracy, no motive, no intention and the Accused has not instigated Kum.Harshitha.V to commit suicide. It was the submission, there was no prior complaint and the Investigation Officer has not followed the procedure as contemplated under Cr.P.C., and contended the stated mobile was not seized during investigation.

12. It was the submission, the Accused is married having two children and vide Memo dated 26.10.2023 produced the letter said to have written by the deceased Kum.Harshitha.V and addressed to the Accused as well as the copies of the WhatsApp communication. In support of the submission referred to and relied upon a decision reported in 2023(4) KCCR 3099. By referring to the observations and the principles laid down in the said decision, it was the submission, the Accused is entitle for bail as he continued judicial

custody since 03.08.2023 and contended the Accused is ready to furnish surety and to abide all the conditions that may be imposed by the Court and accordingly prayed to allow the bail Petition.

13. As against the said submission, by referring to the contents of the complaint, charge-sheet and the objection, it was the submission of the learned P.P. that the Accused is not entitle for bail as he has not made out prima-facie grounds for grant of bail as he has committed heinous offence and that he is not entitle for bail. It was the submission, in the event of grant of bail there are every possibility of tampering the witnesses and obstructing the trial. It was also the submission, the Accused is directly involved in the commission of the offence as he has instigated and abated the said Kum.Harshitha.V to commit suicide on the guise of love affair and also contended that he is not entitle for bail. With all other grounds and by referring to the observations and the principles laid down in the reported decisions, the learned P.P. prayed to reject the bail petition.

14. On consideration of the materials available on record, on the complaint of Sri.Venugopal a case is registered against the Accused for the offence punishable U/Sec.306 of I.P.C. The contents of the complaint reveals the deceased is the daughter of the complainant and it is forthcoming from the record about

the love affair between the Accused and the deceased and in that connection the Accused has abated and instigated to commit suicide. The contents of the complaint also reveals that on 01.07.2023 during the course of treatment the deceased has revealed with regard to the incident as the Accused is responsible for the cause of suicide. As rightly contended by the learned P.P., except the fact of love affair between the Accused and the deceased there was no other reason or any such incident to commit the suicide. Thereby, the Accused is solely responsible for the commission of the offence and except that there is no other reason.

15. The contents of the charge sheet also reveals the Accused is in judicial custody since 03.08.2023 and admittedly the investigation is completed and the completion of investigation is not a ground to grant of bail. The contents of the charge sheet also made clear about the involvement of the Accused and the Investigation Officer is also of the opinion in the event of grant of bail there are every possibility of tampering the prosecution witnesses and destroying the evidence. The learned P.P has referred to various reported decisions and by taking into consideration of the observations and the principles laid down there under, this Court is of the opinion that the act of the Accused is highly condemnable and under any circumstances the Accused

is not entitle for bail particularly for having committed the alleged offence.

16. In a decision reported in; **(2005) 8 SCC 21 (State of Uttar Pradesh through CBI Vs. Amarmani Tripathi)**, the Hon'ble Supreme Court of India has laid down;

"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.

In a decision reported in; **(2016) 15 SCC 422 (Neeru Yadav Vs State of Uttar Pradesh)**, the Hon'ble Supreme Court of India has laid down;

"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."

17. The offence alleged against the Accused clearly indicate that the Accused has no apprehension of law and when 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, this Court is of the view that there are no reasonable and sufficient grounds which warrant this Court to enlarge the Accused on bail at this stage. Hence, the bail petition is liable to be rejected. Accordingly, I answer the Point No.1 in the **Negative**.

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

ORDER

The Bail Petition filed U/Sec.439 of Cr.P.C., by the Accused in Cr.No.104/2023 (SC.No.253/2023) of Yelwala Police Station 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 **4th day of November, 2023**].

(S.T.DEVARAJA)

II Addl. District & Sessions Judge,
Mysuru.

