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

Dated this the 5th day of August, 2022

:: PRESENT ::

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

SC/251/2021

Complainant :

The State by
Hullahalli Police Station,
Mysuru District.

(By **Public Prosecutor**)

Vs

Accused No.1

Sri Sharath Kumar,
S/o late Muddaramappa,
Aged 45 years,
R/at Gowdarahundi Village,
Nanjangud Taluk,
Mysuru District.

(By Sri **CMJ**, Adv.)

:: ORDERS ::

This bail application is filed by the Accused No.1
under Section 439 of Cr.P.C. praying to enlarge him on

bail in Cr.No.70/2021 of Hullahalli Police Station for the offences punishable U/Sec.120(B), 302 & 201 R/w Sec.34 of I.P.C. on the file of this Court.

2. The Accused No.1 has narrated the facts of the case and contended since 09.06.2021 he is continued in judicial custody and also contended he is innocent, law-abiding citizen and not committed the alleged offences and a false case is registered only with an intention to spoil his reputation in the public eye. It is his contention, the motive alleged against him in order to kill the deceased is very vague, ambiguous and absurd and also contended the alleged motive does not throw light that he had the intention to kill the deceased. It is his contention, the illicit relationship with Smt.Malligamma is known to villagers and his daughter also and when such being the case, the marriage of Sri Pavan Kumar and Kum.Preethi could not have an obstacle to continue the alleged illicit relation.

3. It is his contention, the motive alleged by the Complainant Police is far from truth and it does not inspire the confidence of the Court. It is his contention, there are no direct witnesses to the alleged crime and it was only on the basis of suspicion and circumstantial evidence and also contended the last seen theory is also not a material vital evidence prior to the date of incident. It is his contention, the quarrel with the informant i.e. Sri Pavan Kumar on 28.05.2021 is also a concocted one

and the same has not been revealed either in the complaint or in the statement of Sri Prathap during the inquest proceeding.

4. It is his contention, the statement of one Sri Somanna recorded on 09.06.2021 and the said witness has not revealed the last seen movement with the deceased Shivarajappa. It is his contention, the other material as he was found in the company of somebody on Tractor and Bike in and around the village and different points of time on 28.05.2021 cannot be considered as a believable ground to refuse the bail. It is his contention, the recovery of seized articles on the basis of his voluntary statement is also not helpful so as to establish the said articles have been used in the commission of the offence and the said recoveries are only concocted for the purpose of creating a false evidentiary materials.

5. It is his contention, the circumstantial evidence collected by the Police is not forming a chain so as to establish his guilt beyond all reasonable doubt. The Accused No.1 has under taken to abide by the conditions that may be imposed by the Court and to furnish the surety for his release on bail and contended he is the permanent resident of Nanjangud Taluk, agriculture by profession having wife and children who are depending on his earnings and in the event of rejection of bail application himself and his family members will be put to hardship and injustice. With all

other grounds, the Accused No.1 prayed to allow the bail application.

6. By referring to the contents of the complaint as well as the charge-sheet the learned P.P., has filed a detailed objection and contended the Accused No.1 along with other accused persons have committed the offences punishable under U/Sec.302, 201 and 120(B) R/w. Sec. 34 of I.P.C, and the offence U/Sec.302 of I.P.C., is punishable with death, or imprisonment for life, and fine and exclusively triable by the Court of Session. It is the objection, the investigation is completed and the charge-sheet is filed and as per the contents of the charge-sheet there is a prima-facie case against the Accused No.1 and also contended about the necessity of the Accused No.1 who has committed the offences along with the other accused persons.

7. It is the objection, in the event of grant of bail there are every possibility of tampering the prosecution witnesses. By disputing the grounds urged in the bail petition, it is the objection under any circumstances the Accused No.1 is not entitled for bail as he has made out false grounds for the purpose of the bail petition which are not tenable. It is also the objection, in the event of grant of bail there are every possibility of destroying the evidence. The learned Public Prosecutor has referred to various reported decisions and to read the charge-sheet

as part and parcel of the objection and with all other grounds, prayed to reject the bail petition.

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

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

(1) Whether the Accused No.1 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: **In the Negative**

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

REASONS

11. **POINT No.1:-** By referring to the contents of the complaint, bail application and the charge-sheet, it was the submission of the learned Advocate for the Accused No.1 that the Accused No.1 is in judicial custody since 09.06.2021 and contended there is no direct evidence and the entire case is depending on

circumstantial evidence. It was the submission, there was no motive on the part of Accused No.1 and he has been falsely implicated on the invented motive as all the accused persons and the deceased are known to each other.

12. The learned Advocate of the Accused No.1 has also referred to the statement of the brother of Accused No.1, Sri Somanna and Smt.Gowramma which came to be recorded on 03.06.2021 and 09.06.2021 and contended only subsequent to arrest of Accused No.1, the statements came to be recorded and the same has been improved from stage to stage only to implicate the Accused No.1 and his family members. It was the submission, the last seen theory cannot be accepted and also contended as the investigation is completed and charge sheet is filed there is no necessity to continue in the judicial custody. It was the submission, the Accused No.1 is ready to abide by the conditions that may be imposed by the Court and with all other grounds, prayed to allow the bail petition.

13. By referring to the contents of the charge-sheet, it was the submission of the learned P.P., about the involvement of the Accused No.1 and others and for having committed the heinous offences punishable U/Sec.302, 201 and 120(B) R/w Sec. 34 of I.P.C. and also contended about the commission of the offences and involvement of the Accused No.1 who has caused the

murder of Sri Shivarajappa in a brutal manner and thrown the dead body in a canal. The learned Public Prosecutor has referred the contents of PM report, photographs and the statement of CW-13 and contended there is prima-facie material against the Accused No.1 who has committed the murder and under any circumstances, the Accused No.1 is not entitled for bail as there are every possibilities of tampering the witnesses.

14. It was the submission, the judicial custody of the Accused No.1 since 09.06.2021 itself is not a ground for grant of bail and also contended the Trial is yet to be commenced and in the event of grant of bail there are every possibilities of absconding and threatening the witnesses. It was the submission about the intention and motive on the part of the Accused No.1 as he along with other accused persons shifted the dead body in a Tractor and a Trailer and thrown the same in a canal along with weapons and cloths of the deceased. In support of the submission, the learned P.P. has also referred to the decisions reported in; **2011(3) SCC 765, SCC (Crime) 2016(3) 685, SCC (Crime) 2011(3) 766 and 2021 Crl.L.J 4244.** By referring to the observations and the principles laid down in the referred decisions as well as the contents of the charge-sheet and with all other grounds, the learned P.P. prayed to reject the bail petition.

15. On consideration of the materials available on record, on the complaint of Sri.Pavan Kumar, a missing complaint is registered in Cr.No.67/2021 against the Accused No.1 and another and subsequently a case in Crime No.70/2021 is registered for the offences punishable U/Sec.302 and 201 R/w Sec.34 of IPC., and after completion of the investigation the charge sheet is filed including the offence punishable U/Sec.120(B) of IPC. The contents of the complaint reveals the informant by name Sri Pavan Kumar who is the son of deceased Shivarajappa fell in love with the daughter of Smt.Malligamma and they are in love with each other since long time, the Accused No.1 and Sri Sudarshan who are none other than maternal uncles of the informant opposing the marriage proposal.

16. It is the case of the prosecution, the Accused No.1 and Sri Sudarshan informed the said Sri.Shivarajappa and Smt.Malligamma not to perform the marriage of the informant with the daughter of Smt.Malligamma and after discussion with the family members the marriage was fixed to be performed on 05.06.2021 and due to lock-down the marriage was postponed till "Karthikamasa". It is the contents of the complaint, that on 28.05.2021 the said Sri.Shivarajappa found missing and the missing complaint came to be filed on 30.05.2021 and that on 02.06.2021 the informant received the information the dead body of one

person floating in the channel near Ramapura at Bidaragudu pump house, the informant and others went to the spot and found the dead body of Sri Shivarajappa, subsequently the Accused No.1 and Sri Sudarshan arrested and on their voluntary statement it was revealed the Accused No.1 was having illicit relationship with Smt.Malligamma since long time and the said Smt.Malligamma and Accused No.1 have made conspiracy to kill the father of the complainant and that on 28.05.2021 assaulted on the head with some hard object and also caused cut injuries on both the heels resulting in death and thereafter the Accused No.1 with the help of Accused No.3 carried the dead body and thrown into the channel in order to screen off the offence and thereby committed the offences charged.

17. On consideration of the materials available on record, the submission of the learned Advocate for the Accused No.1 is not sustainable for grant of bail. The reported and unreported decisions referred to and relied upon by the learned Public Prosecutor are applicable to the facts and circumstances of the case on hand. As per the case of the Prosecution and in view of the relationship of the Accused No.1 and Smt.Malligamma, the Accused No.1 caused the murder of Sri Shivarajappa by making use of some hard object by causing head injury and with the help of Accused No.3 thrown the dead body into the channel and the said fact makes it

very clear about the intention and motive of the Accused No.1 in committing the offences.

18. This Court is of the opinion, the Accused No.1 has committed heinous offences and the act of the Accused No.1 is highly condemnable and under any circumstances the Accused No.1 is not entitled for bail particularly for having committed the offences punishable U/Sec.302, 201 and 120(B) R/w Sec.34 of I.P.C. and the fact of judicial custody since 09.06.2021 is not a ground for grant of bail. As pointed out by the learned P.P., the Accused No.1 has not made out bonafide ground for grant of bail and in the event of grant of bail there are every possibility of tampering and threatening the witnesses.

19. 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.

20. In another 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.”

21. The offences alleged against the Accused No.1 and others clearly indicates that they have no apprehension of law as they have committed heinous offences and when such being the facts, it is not safe to release the Accused No.1 on bail at this stage. The completion of investigation is not a ground for grant of bail and sufficient material is forthcoming against the Accused No.1 which also supports to reject the bail application of the Accused No.1. Having regard to all these facts and circumstances, this Court is of the opinion, there are no reasonable and sufficient grounds which warrant this Court to enlarge the Accused No.1. By taking into consideration of the observations and the principles laid down in CrI.A.No.649/2022 dated 19.04.2022 before the Hon'ble Supreme Court of India, this Court is of the opinion the bail petition is liable to be rejected. Accordingly, I answer the Point No.1 in the **Negative**.

22. **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 No.1 – Sri Sharath
Kumar 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 **5th day of August, 2022**].

(S.T.DEVARAJA)

IV Addl. District & Sessions Judge,
Mysuru.