

**IN THE COURT OF THE XXVI ADDL. CITY CIVIL &
SESSIONS JUDGE, AT MAYO HALL, BENGALURU (CCH.20)**

Present:

Sri.D.S.Vijaya Kumar, B.Sc, LL.B.,
XXVI Addl. City Civil & Sessions Judge, Bengaluru

Dated this the 29th day of February, 2020.

Crl.Misc.No.25117/2020

Petitioner:-

Yusuf
S/o Khaja Mohiyuddin
Aged about 26 years,
R/a. No.69, Beside Sofhiya School,
Doddanna Nagar, Kaval Byrasandra,
D.J.Halli, Bangalore=560 045.

[By Sri.J.L.C-Adv]

Vs.

Respondent:-

State by D.J.Halli Police Station,
Bengaluru City.

[By Public prosecutor]

O R D E R

Petitioner has filed this bail petition under section-439
of the Cr.P.C., praying for granting an order of Regular bail in

respect of the offences alleged u/ss.143, 144, 147, 148, 120(B), 302 read with Sec.149 of the Indian Penal Code, in Crime No.348/2019 of the Respondent-Devara Jeevana Halli Police Station, Bengaluru.

2. Brief facts of the bail petition are as under:-

Respondent Police have falsely implicated him in the case. He is totally innocent of the offences alleged against him. He is in judicial custody. Offences are not punishable with imprisonment for life or death. He has valid and tenable defence. He has not committed any offences as alleged. He is ready to offer solvent sureties and abide by any conditions and there are no overtacts attributed against him. He is sole bread earning member of his family. Thus, petitioner has sought for enlarging him on bail.

3. Objections filed by the prosecution to the above petition, are as under:-

Respondent Police have registered a case in Crime No.348/2019 for the offences u/ss. 143, 144, 147, 148, 120(B), 302 read with Sec.149 of Indian Penal Code against the Accused persons. Investigation is still under progress. Petitioner has committed the above offences. If the petitioner is released on bail, he may abscond permanently and also commit similar offences and abscond from trial. The Offences are punishable with death or imprisonment for life. Hence, on these grounds, learned Public Prosecutor has sought for rejection of the bail petition.

4. Heard arguments and also perused the records.

5. In the circumstances, the following points arise for determination are:-

1. Whether petitioner is entitled to an order of Regular Bail, as sought for?

2. What order?

6. My findings to the above points are under:

Point No.1 :- In the **affirmative**

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

R E A S O N S

7. Point No.1:- In this matter on the basis of complaint filed by one Smt.Vinodini on 27.12.2019 FIR in Crime No.348/2019 is registered for the offence u/s.302 of Indian Penal Code against unknown persons. According to the FIR allegations, informant's husband had three years ago quarrelled with informant's uncle's son by name Charles Kumar and had committed his murder. Informant had secured bail to her husband namely Surya on the 1st of August. After release on bail, her husband was attending to his work as usual. When that is so, on 26.12.2019 at 8.15 PM

her husband went out from home and at about 11.30 PM he told her that he would return soon. But, since he did not return, afterwards she made call to his mobile phone, but found phone was switched Off. On 27.12.2019 at around 3 AM in the early morning someone came over near her house and informed that her husband has been assaulted on his head near Govindapura Railway Gate with some weapons and he has sustained bleeding injuries and has been admitted to AMC Hospital and therefrom he has been shifted to NIMHANS. Then she went to NIMHANS in an auto rickshaw, but doctors informed her that her husband Surya died due to injuries. So, immediately she came to Police station and submitted FIS at 4.45. AM.

8. Petitioner who has been arrested is cited as Accused No.1 in the remand application claims that he is absolutely innocent of the alleged offences and even though there is no material whatsoever against him, he has been falsely

implicated in the matter. He contends that Respondent Police have intentionally implicated him in the case, although, there is no substantiation of the allegations and no material is there against him. Thus, petitioner has sought for enlarging him on bail.

9. Prosecution has filed objections to the above petition, reiterating the FIR allegations, besides contending that if petitioner is released on bail, he abscond permanently and also commit similar offences and abscond from trial. The Offences are punishable with death or imprisonment for life.

10. Learned counsel for petitioner submitted that except for the baseless allegations that on the basis of the information of some informers, in the first instance Accused No.7 was arrested and on his voluntary statement, other accused are arrayed in remand application, there is

absolutely no material against the petitioner to implicate him in a serious offence of this nature. Prosecution papers clearly shows that even though absolutely there is no material against the petitioner, he has been deliberately implicated in the case. Learned counsel placed reliance on the decision in Sanjay Chandra Vs. Central Bureau of Investigation (2012) 1 S.C.C. 40. Observation of the Apex court in the said decision at para-21, 24 and 40 are noteworthy, which are culled out as below:-

“21. In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it is required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is

deemed to be innocent until duly tried and duly found guilty”

22.

23.

24.In our view, seriousness of the charge is, no doubt, one of the relevant considerations while considering bail applications but that is not the only test or the factor: the other factor that also requires to be taken note of is the punishment that could be imposed after trial and conviction, both under [the Penal Code](#) and the [Prevention of Corruption Act](#). Otherwise, if the former is the only test, we would not be balancing the constitutional rights but rather "recalibrating the scales of justice".

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40. The grant or refusal to grant bail lies within the discretion of the court. The grant or

denial is regulated, to a large extent, by the facts and circumstances of each particular case. But at the same time, right to bail is not to be denied merely because of the sentiments of the community against the accused. The primary purposes of bail in a criminal case are to relieve the accused of imprisonment, to relieve the State of the burden of keeping him, pending the trial, and at the same time, to keep the accused constructively in the custody of the court, whether before or after conviction, to assure that he will submit to the jurisdiction of the court and be in attendance thereon whenever his presence is required”.

11. Learned Public Prosecutor has argued that investigation is at initial stage and offence is very serious and it is not a fit case to grant bail to petitioner. Learned Public Prosecutor has placed reliance on the decisions in (1) 1991 Crl.L.J. 3205 and (2) 1991 Crl.L.J.1298 and prayed for dismissing the application.

12. I have carefully perused Certified copy of FIR, complaint, remand application dated 4.1.2020 and Report of I.O dated 03.01.2020 to the Learned 11th Additional Chief Metropolitan Magistrate, Bengaluru for incorporating offences u/s. 143, 144, 147, 148, 120(B) read with Sec. 149 of Indian Penal Code along with offence u/s 302 of Indian Penal Code.

13. Entire prosecution material do not show any specific role of Accused No.1/petitioner. Prosecution papers merely show that after informant submitted complaint, I.O deputed his staff to trace accused persons and they in turn on the alleged information given by their informants arrested accused no.7 and also produced vehicle he had allegedly used for committing crime. Then, it is alleged that on the basis of voluntary statment given by accused no.7, remaining accused persons were named in the remand application and also present petitioner/Accused No.1 among

others were arrested on 3.1.2020. Prosecution materials do not show that any witnesses saw the incident or gave any incriminating circumstances against the petitioner/accused No.1. As such absolutely, there is no material at all against the petitioner/accused no.1 to prima facie form opinion that he has involved in the crime. Petitioner is in judicial custody from 4.1.2020 after he was arrested on 3.1.2020. As such, he is no longer required for any further interrogation purpose. As the principles of bail are well settled that though seriousness of offence is a factor to be considered, same alone cannot be basis for granting or rejecting bail and other facts and circumstances will have to be verified. In the present case, even though about two months have elapsed since the time petitioner was arrested, investigation has not yet been able to place any specific material/evidence either direct or circumstantial which point finger at him.

14. In fact, C.D. extracts upto point of this time along with I.O's report was called for and submitted on 27.02.2020. I have gone through the I.O's report dtd. 26.02.2020 and Extracts of Part-I to IV of C.D. produced by the I.O. Same do not reveal any material to prima facie link the petitioner/Accused No.1 to the crime. C.D. extract do not show recording of statement of any eye witnesses in the case and as such, possibility of any eye witnesses being available in respect of the incident. Already in Crl.Misc.Nos. 25038/2020,25050/2020 and 25079/2020 by Order dated 31.01.2020 and 10.02.2020 and in other petitions many of the remaining accused persons have been enlarged on bail. Though the petitioner is arrayed as Accused No.1 he stands on the same footing as the other accused persons and there is no specific overtact attributed to the petitioner/Accused No.1 or is there specific allegation against him, which prima facie shows his involvement in the crime. Hence, I am of

opinion that petitioner may be enlarged on bail by imposing appropriate conditions. Consequently, point no.1 is answered in the affirmative.

15. Point No.2: On the above findings, I proceed to pass the following:-

ORDER

Petition filed under Sec.439 of the Cr.P.C
by the Petitioner is **hereby allowed.**

Petitioner/accused No.1 in Crime No.
348/2019 of Devara Jeevana Halli Police
Station, Bengaluru, is hereby enlarged on bail
for the offences u/ss. 143, 144, 147, 148,
120(B), 302 read with Sec.149 of the IPC,
subject to the following conditions:-

1) Petitioner shall give attendance before the I.O on every Sunday of the month between 10 a.m. and 2 p.m. till the Final Report/Charge sheet is filed.

2) Petitioner shall not threaten the prosecution witnesses or tamper with the prosecution evidence.

3) Petitioner shall co-operate in the investigation of the case.

4) Petitioner shall not abscond from the trial.

5) Petitioner shall execute personal bond for a sum of Rs.1,00,000/- with two surety in like sum to the satisfaction of the Learned 11th

Additional Chief Metropolitan
Magistrate, Mayo Hall Unit,
Bengaluru.

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(Dictated to the Stenographer, transcribed by him and computerized and then corrected and pronounced by me in the open court on this the **29th day of February, 2020**)

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(D.S.VIJAYA KUMAR)
XXVI Addl.CC & SJ, Mayo Hall Unit
Bengaluru.

