

**IN THE COURT OF THE III ADDL. DISTRICT AND
SESSIONS JUDGE, RAMANAGARA**

:PRESENT:

Sri.Gopal Krishna Rai T., B.A.(Law), LL.B.,
III Addl. District and Sessions Judge,
Ramanagara.

Dated this the 25th day of February 2017

S.C.No.77/2016

Accused No.8:

Mohammed Abdul Ghani,
S/o. late Munaver Pasha,
26 years,
R/at. Near Siddika Masjid,
10th cross, Gangondanahalli,
Chandralayout, Bengaluru.

(Rep. by Sri.R.S. Adv.)

V/S

Respondent:

Magadi Police Station,
Ramanagara Dist.

(Rep. by P.P.)

ORDERS ON BAIL APPLICATION FILED BY
ACCUSED No.8

Accused No.8 Mohammed Abdul Ghani has filed bail application u/s 439 Cr.P.C.

2. The brief facts of the case of the prosecution are that:

One Syed Khaleem S/o. Syed Abbas lodged a complaint to the respondent police stating that, his son by name Nadeem Pasha left the house on 14.05.2016 at 3 p.m., but he did not return. The complainant called to the mobile number of his son and it was switched off. He searched all his relatives houses and he was not seen. As such, on 16.05.2016, he lodged a missing complaint at Chandralayout police station. On the very same day, at about 8 p.m., Chandralayout police have informed him that, a dead body of male aged about 30 years traced within the jurisdiction of Magadi police station at 7 a.m. and learnt that, the dead body was laying in the land of Kempaiah of Thirumale village and it was in decomposed condition and as such, an inquest proceedings as well as post mortem was conducted. In the post mortem report it was revealed that, the deceased was hit by a sharp object. As the dead body was in decomposed

condition, it was cremated. The police have shown the photographs of the dead body and the complainant has identified the same as his son. The complainant requested to exhume the body. As such, the complainant police in the presence of Thasildar, Magadi Taluk has exhumed the dead body and he has identified the dead body as that of his son. The two wheeler belonging to the deceased was taken by the assailants after assault. Accordingly, a missing case was converted into Cr.No.129/2016 for the offence punishable u/s 302 and 201 of IPC against unknown persons.

3. The grounds urged in the bail application are that:

The accused is innocent of the offence alleged. The complainant has foisted a false case against him. The Investigating Officer after the investigation has filed the charge-sheet. There is delay in lodging the complaint. There are no eye witnesses to the alleged incident. The case of the prosecution rests on the circumstantial evidence. The prosecution has not made a single circumstance to implicate the present accused. The prosecution case is doubtful. According to the prosecution, the accused Nos.1 to 6 who had ill-

will against the deceased took him to the place of occurrence and made the accused Nos.7 to 9 to stand in the road along with the auto and accused Nos.1 to 6 murdered him behind the temple. Accused No.8 is in judicial custody from last 8 months. He is the only bread earning member of the family. He is ready to abide by any conditions in the event of grant of bail. He is the permanent resident of the address given in the cause title. There is no single criminal case registered against the accused except the present case. Hence, prayed for bail.

4. Per contra, the learned Public Prosecutor filed objections to the bail application and same reads as follows:

Accused Nos.1 to 6 have killed Nadeem Pasha and made accused Nos.7 to 9 to stand near the auto bearing No.KA-05-AF-6562. The auto has already been recovered. The weapons used to kill Nadeem Pasha is also recovered. If the 8th accused is released on bail, he will threaten the prosecution witness and hence, prayed to reject bail application.

5. Heard the arguments of Sri.R.S., Advocate for the accused No.8 and learned PP for the State. Perused the entire material evidence placed on record in detail.

6. Now the points that arisen for due consideration of this court are:

- 1) Whether the 8th accused has made out sufficient and reasonable grounds to grant regular bail as contemplated u/s 439 of Cr.P.C?
- 2) What Order?

7. My answers to the above points are as follows:

Point No.1: In the **Negative**,

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

REASONS

8. **POINT No.1:** The offence alleged against the accused is punishable u/s 302 and 201 of IPC. It is very relevant to note that, the Investigating Officer has failed to secure accused Nos.1 to 6 and accordingly, case against them was already split up. The Investigating Officer during the course of investigation has apprehended this accused and recovered the auto bearing No.KA-41-A-3685.

9. It is the contention of the accused that, he is innocent of the offence alleged and he has been falsely implicated in the instant case. The counsel for the accused has placed reliance on the complaint dated 17.05.2016 and submitted that, there is inordinate delay in lodging complaint and which goes to show that, the complainant who is inimically disposed towards this accused and misused the delay and has falsely implicated the present accused. This contention is cannot be accepted, because on 17.05.2016, the complainant Sri.Syed Khalim has lodged man missing complaint. In his complaint, he has not disclosed the name of accused No.8. If really he had intended to implicate this accused, he could have mentioned the name of the present accused in his complaint. But he has not chosen to do so. Therefore, it is highly improbable to accept the contention of the accused that, he has been falsely implicated by Syed Khalim.

10. It is argued on behalf of accused No.8 that, accused Nos.7 to 9 were made to stand near auto-rickshaw bearing No.KA-41-A-3685 and accused Nos.1 to 6 have killed Nadeem Pasha behind the temple. However, the careful reading of investigation records would disclose that, this accused was participated in

the conspiracy and plan hatched by accused Nos.1 to 6 to kill Nadeem Pasha. Therefore, at this stage, to disbelieve the theory of the prosecution, absolutely there are no reasons before the court.

11. It is the contention of the accused that, since 8 months, he is in judicial custody and if he is retained in judicial custody, his wife and children will be put to great hardship. While considering the family condition of the accused, duty is also cast upon the court to consider the death of Nadeem Pasha and the suffering of his parents. Therefore, on this score, accused No.8 is not entitled for bail.

12. The counsel for the accused has placed reliance on a decision reported in 2009(8) Kar.L.J. 95 in a case between Doddasadeppa Gundyagol vs. State of Karnataka and decision reported in CrI.P.No.7357/2012 dated 07.01.2013 on the file of Hon'ble High Court of Karnataka. By relying these two decisions, it is argued that, when the case of the prosecution is solely rests upon circumstantial evidence, accused is entitled for bail. It is very pertinent to note here itself that, though the Investigating Officer has made efforts to secure

accused Nos.1 to 6, he has failed to arrest these accused. The offence alleged against the accused is heinous in nature. From the reading of charge-sheet, it is clear that, at this stage there are prima-facie materials available in the line of accusation made against the accused No.8. Therefore, this court is of the opinion that, accused No.8 is also entitled for bail. Accordingly, the point No.1 is answered in the **Negative**.

13. **POINT No.2**: In view of my finding on point No.1 in the negative, I proceed to pass the following:

ORDER

The bail application filed by the accused No.8 is hereby rejected.

(Dictated to Stenographer, thereof transcribed by her, then corrected, signed and pronounced by me in the open court on this the **25th day of February 2017**)

(Gopal Krishna Rai T.)
III Addl. Dist & Sessions Judge,
Ramanagara.