

KAUK010007802019



**IN THE COURT OF THE 2nd ADDL. DISTRICT &
SESSIONS JUDGE, UTTARA KANNADA, KARWAR**

DATED THIS THE 7th DAY OF SEPTEMBER-2023

SESSIONS CASE NO.10/2019

PRESENT: **Sri MAYANNA. B. L.,**
B.A., LL.B.,
II Addl., District & Sessions Judge,
Uttara Kannada, Karwar.

COMPLAINANT: The State of Karnataka,
Through Karwar Town Police Station
Represented by Public Prosecutor,
Uttara Kannada, Karwar.

Vs.

ACCUSED: 2. Mustaq Ahammad Hussain Shaikh,
Aged 30 years, Occ: Driver,
R/o. Near Bashuban Maszid,
Maruti Nagar, Dandeli,
Haliyal, Uttara Kannada.

(By Sri. R.K.M., Advocate)

ORDER

The learned Counsel for Accused No.2 has filed the present bail Application under Section 439 of Cr.P.C., for release of the Accused No.2 – Mustaq Ahammad Hussain Shaikh, from judicial custody.

2. The Accused No.2 has contended that he has been indicted for the offence under Sections 109, 120-B, 302, 201, 202, 212, 364 read with Section 34 of I.P.C., along with other Accused. The Accused No.2 was arrested on 23/10/2018 and remanded to judicial custody and since then he has been in the judicial custody for the last four years and four months. Though the Accused No.2 had earlier applied for regular bail on two occasions before this Court, the same were rejected. The earlier bail application was filed after filing of the charge sheet and the later was filed seeking bail on the ground of parity. In view of delay in commencement of trial and anticipation of protracted trial and the incarceration of Accused No.2, since last four years four months has caused change in circumstances, the present bail application has been filed. It is further contended that the present case is entirely based on circumstantial evidence and there are no direct evidence in the present case. The Accused No.1, 4 and 5 are already enlarged on bail. The Accused No.2 has been languishing in jail since last four years and four months and there has been no contribution on the part of the Accused No.2 or any Accused in causing delay in commencement of trial. Though the present case demanded speedy trial, as the Accused No.3 and 2 were in the custody, the Prosecution has been delaying the commencement of trial without any proper reason and explanation and hence, the

Prosecution cannot absolve itself from contributing in delay. Due to the delay in commencement of trial, it may not conclude early and further even if the trial begins, it shall be protracted trial. He has further contended that further incarceration without any contribution on his part, same will deprive his right to speedy trial and he shall be deprived of his right to prepare his defence. Hence, prayed to allow the Application.

3. The learned Public Prosecutor has filed objection and contended that the bail application filed by the Accused No.2 is contrary to law and hence, same is liable to be dismissed. It is contended that the Complainant has filed the Complaint alleging that on 16/10/2018 at 2.00 p.m., the Accused No.2 telephoned the son-in-law of the Complainant and as his son-in-law was not returned back and he was not in contact with his mobile phone, the Complainant has filed complaint for missing of his son-in-law. His son-in-law was working as Pioneer Shipping Company in Karwar Port and the Accused No.2 also was working in Karwar Shipping Company and there was some enmity between them and hence his son-in-law left his job and hence the Accused No.2 and Accused No.1 were on enmity with his son-in-law and there are chances of kidnapping of his son-in-law by the Accused No.1 and 2. Thereafter, the Investigating Officer has conducted investigation and arrested the Accused Persons and during interrogation, the Accused No.2

stated that on the inspiration of Accused No.1 on 16/10/2018 he took the deceased from Karwar to Ulavi forest and committed murder along with Accused No.3 and tried to dispose of the dead body in the forest. Based on his confession, the dead body was recovered. The allegation against the Accused No.2 is that he has committed murder of the deceased and the said offence is punishable with life imprisonment or death sentence. If the Accused No.2 is released on bail, there is chance of abscondence and also there is a chance of giving threat to the witnesses. Further, there is a chance of committing similar offences. On these grounds, the learned Public Prosecutor sought for rejection of the bail Petition.

4. Heard the arguments of the learned counsel for the Accused No.2 and the learned Public Prosecutor.

5. The points that arise for the consideration of the Court are as under:

- 1) Whether the Accused No.2 is entitled for bail under Section 439 of Cr.P.C.?
- 2) What Order?

6. The findings of the Court on 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:** I have perused the records. Karwar Police have registered against the Accused No.1 to 5 in Crime No.141/2018 for the offences punishable under Sections 109, 120-B, 302, 201, 202, 212, 364 read with Section 34 of I.P.C. The allegation in the material charge sheet that on 16/10/2018 the Accused No.2 took the deceased from Karwar to Ulavi forest and committed murder along with Accused No.3 and tried to dispose of the dead body in the forest. Based on the confession statement of the Accused No.2, the dead body was recovered.

8. The Counsel appearing for the Accused No.2 argued that the Accused No.2 has been languishing in jail since last four years and four months and there has been no contribution on the part of the Accused No.2 or any Accused in causing delay in commencement of trial. Though the present case demanded speedy trial, as the Accused No.3 and 2 were in the custody, the Prosecution has been delaying the commencement of trial without any proper reason and explanation and hence, the Prosecution cannot absolve itself from contributing in delay. Due to the delay in commencement of trial, it may not conclude early and further even if the trial begins it shall be protracted trial. He has further contended that further incarceration without any contribution on his part, same will deprive his right to speedy trial and he

shall be deprived of his right to prepare his defence. The counsel for Accused No.2 has relied upon the decisions of the Hon'ble Supreme Court of India in Criminal Appeal No.98/2021, (Union of India Vs. K.A. Najeeb); Criminal Appeal No.3/2011 (State of Kerala Vs. Raneef) and Special Leave Petition (Crl.) No.915/2023 (Mohd Muslim @ Hussain Vs. State of Delhi) and prayed for grant of bail.

9. The learned Public Prosecutor argued that the Investigating Officer has conducted investigation and arrested the Accused Persons and during interrogation, the Accused No.2 stated that on the inspiration of Accused No.1 on 16/10/2018 he took the deceased from Karwar to Ulavi forest and committed murder along with Accused No.3 and tried to dispose of the dead body in the forest. Based on his confession statement, the dead body was recovered. The allegation against the Accused No.2 is that he has committed murder of the deceased and the said offence is heinous and same is punishable with life imprisonment or death sentence. Further, there is no delay on the part of the Prosecution. If the Accused No.2 is released on bail, there is chance of abscondence and also there is chance of giving threat to the witnesses and also there is chance of committing similar offences and hence, sought for rejection of bail Application.

10. After hearing the arguments addressed by the Counsel for the Accused No.2 and learned Public Prosecutor and upon perusal of the records, the allegation made in the Complaint that the Accused No.2 took the deceased from Karwar to Ulavi forest and committed murder along with Accused No.3 and tried to dispose of the dead body in the forest. Based on the confession statement of the Accused No.2, the dead body was recovered. From the perusal of the record, it is found that after the investigation, the Karwar Town Police have filed the charge sheet against the Accused Persons for the above said offences. Thereafter, the learned Magistrate has committed the above case on 08/04/2019. Upon committal, on 12/09/2019 this Court has issued summons to Accused No.4 and 5 and Accused No.1 to 3 were in judicial custody. Thereafter, the Accused No.1 and 3 have moved the bail Applications and also Applications for release of the vehicles were filed. After disposal of the said Applications, on 10/02/2020 this Court has posted the matter for hear before charge. On 17/02/2020 the Accused No.2 has moved the bail Application.

11. Thereafter, in view of Covid-19, the proceedings were not taken place and bail application of the Accused No.2 was disposed on 08/04/2021 and the above case was adjourned for HBC till 14/09/2021. However, on 22/09/2022 the charges were framed and on

27/07/2023 the Public Prosecutor has fixed the trial and issued summons to the witnesses. Since there is no delay in fixing the trial, the decisions relied upon by the counsel for Accused No.2 are not applicable to the case on hand. Further, the offence under Section 302 is serious in nature and witnesses were not examined, if the Accused No.2 is released on bail, there is chance of threatening the witnesses of Prosecution and also chances of destroying the evidence. Further, this Court has already fixed the trial and summons were issued to the witnesses. Therefore, by keeping in mind the nature of offences and allegation made against the Accused No.2, this Court is of the opinion that it is necessary to reject the bail Application of Accused No.2. On these observations, I proceed to hold the above point No.1 in the Negative.

12. **Point No.2:** For the reasons, discussed in the above point No.1, I proceed to pass the following:

ORDER

The bail Application filed by the Accused No.2 under Section 439 of Cr.P.C., is hereby rejected.

(Dictated to the stenographer directly on computer, typed by her, revised and corrected by me, signed and then pronounced in the open court on this the 7th day of September 2023.)

(MAYANNA. B.L.)

II Addl. District & Sessions Judge,
Uttara Kannada, Karwar.