



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

DATED THIS THE 24th DAY OF FEBRUARY, 2025

SESSIONS CASE NO: 10/2019

PRESENT:

Sri MAYANNA. B.L.,

B.A., LL.B.,

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

ACCUSED No.2 & 3:

1. Mustaq Ahamad Hussain Shaikh,
Aged 35 years, Occ: Driver,
R/o. Near Bashuban Maszid,
Maruti Nagar, Dandeli,
Taluk: Haliyal,
District : Uttara Kannada.

2. Shafi Anwar Sayed,
Aged 33 years, Occ: Driver,
R/o. Near Bashuban Maszid,
Maruti Nagar, Dandeli,
Taluk: Haliyal,
District : Uttara Kannada.

(By L.S.K., Advocate)

Vs.

RESPONDENT:
COMPLAINANT

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

ORDER

The Accused No.2 and 3 have filed this bail Application under Section 439 of Cr.P.C., seeking regular bail for the offences punishable under Sections 364, 302, 201, 202, 212, 109, 120B read with Section 34 of IPC.

2. The Accused No.2 and 3 have contended that the Accused No.1 has granted bail by the Hon'ble High Court of Karnataka in Criminal Petition No.100661/2020 on 16/10/2020 and Accused No.4 and 5 are granted bail in Criminal Misc. No.536/2018 and 548/2018 on 04/01/2019, by this Court. In the present case, already Trial begins on 26/10/2023 and the Prosecution has examined P.W.1 to P.W.5, who are material witnesses in this case and P.W.1 to P.W.5 were cross examined by the defense counsel and the P.W.1 to P.W.5 are the interested witnesses. The P.W.1 and P.W.2 are the Pancha witnesses and P.W.3 to P.W.5 are the close relatives of the deceased person. The statement of the P.W.1 to P.W.5 are not corroborative with each other and there are lot of contradictions amongst their statements and P.W.1 to 5 are not given material admissions at the time of cross examination and P.W.1 to 5 are not eye witnesses and they are only hearsay witnesses. The prosecution case is totally depending on the circumstantial evidence and already prosecution has examined main witnesses in this case and now, there are only official witnesses have to be examined and therefore, if bail is granted to Accused No.2 and 3, no

interference will be caused to the prosecution case. The Accused No.2 and 3 are innocent of the charges levelled against them and they have not committed the alleged offence and they are falsely implicated in the said case. They are doing driving work and their physical presence is very much necessary for their work and for future livelihood of their family. They are having movable and immovable properties in their native place and hence, there is no chance of their abscondence. They are ready to abide by the terms and conditions and ready to appear before the Court as and when directed. The Accused No.2 and 3 will not hamper and tamper the prosecution witnesses. Hence, it is prayed to allow the bail Application and grant the regular bail.

3. The learned Public Prosecutor has filed objections contending that the bail Application filed by the Accused No.2 and 3 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 thereafter, his son-in-law went out with Accused No.2 and he has not returned home till evening and hence, the Complainant has filed the missing complaint. Thereafter, as he was not found, the Complainant filed another complaint doubting that the son-in-law of the Complainant and Accused No.1 was working in Pioneer Shipping Company in Karwar Port and thereafter, they both discussed to start own shipping company in partnership. During that time, there

was some enmity between the son-in-law of the Complainant and Accused No.1 and Accused No.2, who was working for Accused No.1 and there are chances of kidnapping of his son-in-law by the Accused No.1 and 2. Pursuant to the complainant, the Investigating Officer has conducted investigation and has arrested the Accused Persons and during interrogation, the Accused No.2 stated that on the instigation of Accused No.1, he took the deceased from Karwar to Ulavi forest on 16/10/2018, along with help of Accused No.3 and both committed the murder of the deceased and disposed the dead body in the forest. Based on his confession, the dead body and material objects were recovered in the said Forest. The Accused No.2 and 3 have committed murder of the deceased and the said offence is serious in nature and same is punishable with life imprisonment or death sentence. The Accused No.2 and 3 are cruel minded and at this stage bail is granted and if they are released on bail, there will be serious threat to witnesses, they commit similar offence to witnesses as well as family members of the deceased, they may also abscond from the jurisdiction of the Court and they may hamper the Trial. On these grounds, the learned Public Prosecutor sought for dismissal of the bail Application.

4. Heard the arguments addressed by the Counsel for Accused No.2 and 3 and learned Public Prosecutor.

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

- 1) Whether the Accused No.2 and 3 are 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:-** Perused the bail Application, objections filed by the Public Prosecutor and also perused the charge sheet. On perusal of the charge sheet, the Karwar Police have registered the FIR against the Accused in Crime No.141/2018 for the offences punishable under Sections 364, 302, 201, 202, 212, 109, 120B read with Section 34 of IPC. The allegation that on 16/10/2018 at 2.00 p.m., the Accused No.2 telephoned the son-in-law of the Complainant and thereafter, the son-in-law of the Complainant went with him and he was not returned home till evening and his mobile was also not in contact and hence, the Complainant has filed the missing complaint. As the son-in-law of Complainant not found, again he went to Police station and filed the Complainant doubting that his son-in-law and Accused No.1

both were working for Pioneer Shipping Company in Karwar Port and both have planned to open a new shipping Company in partnership. By that time, Accused No.1 had enmity with the son-in-law of the Complainant and Accused No.2, who was working for Accused No.1, and there are chances of kidnapping of his son-in-law by the Accused No.1 and 2. Thereafter, the Police have conducted investigation and arrested the Accused Persons and during interrogation, the Accused No.2 stated that on the instigation of Accused No.1, he and Accused No.3 took the deceased from Karwar to Ulavi forest on 16/10/2018 and both committed the murder and disposed the dead body and weapons in the forest. Based on the confession statement of the Accused No.2, the dead body was recovered and materials objects were also recovered in the said forest area and case was registered against the Accused persons, they were arrested and Accused No.2 and 3 are in custody from the date of arrest.

8. The Counsel for Accused No.2 and 3 argued that the Accused No.2 and 3 were arrested and they are in judicial custody from last 6 years. The Trial has started in the year 2023 and only 5 witnesses have been examined in one year. There are 69 witnesses and hence, the prosecution is required another 3-4 years to complete the Trial. Though P.W.1 to 5 have supported the prosecution case, they have not corroborated and they are circumstantial witnesses and P.W.3 to P.W.5 are the relatives of the deceased and they are the interested witnesses. Out of the 69 witnesses, 39 to 69

witnesses are the official witnesses. He further contended that the Accused No.2 and 3 are ready to abide by the conditions that may be imposed by this Court and ready to give proper surety and prayed for grant of bail.

9. In support of his contention, the counsel for the Accused No.2 and 3 has relied upon the order passed by the Hon'ble High Court of Karnataka in *Criminal Petition No.102445/2022, Shri Parashuram @ Parashu S/o. Appanna Kurbar Vs. The State of Karnataka and orders passed by the Hon'ble Supreme Court of India in Criminal Appeal No.1704/2017, Balkrishna Tukaram Angre Vs.State of Maharashtra, Special Leave Petition(Crl). 1285/2002, Mansab Ali Vs. Irsan and another.*

10. 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 instigation of Accused No.1, he and Accused No.3 took the deceased from Karwar to Ulavi forest and both committed the murder of the deceased and disposed the dead body in the forest. Based on his confession statement, the dead body was recovered and material objects were also recovered from the said Forest. The allegation against the Accused No.2 and 3 is that they have committed murder of the deceased and the said offence is heinous and same is punishable with life imprisonment or death sentence. The Accused No.2 and 3 are cruel in nature and

same is evident from the charge sheet material. The witnesses are receiving threats from the Accused No.2 and 3 and their supporters and the Prosecution yet to examine the other witnesses. Though the prosecution examined the P.W.1 to 5, there are four advocates appearing for the Accused persons and more than 75 pages evidence has been recorded for the five witnesses. If the Accused No.2 and 3 are released on bail, they will threaten the witnesses and family members of the deceased and in this regard, the brother of the deceased has already filed their written submission and expressed their apprehension that they are receiving threats. If they are released on bail, they may commit similar offence and there is chance of abscondence and hence, sought for rejection of bail Application.

11. Having heard the arguments addressed by the Counsel for the Accused and learned Public Prosecutor, upon perusal of the records, the allegation that the Accused No.1 having enmity with the deceased, with regard to business related, he has instigated the Accused No.2 and 3 to commit the murder of the deceased and also provided a car and also gave money to Accused No.2 and 3. Accordingly, the Accused No.2 and 3 took the deceased from Karwar to Ulavi forest on 16/10/2018 and committed the murder of the deceased and thereafter, they disposed the dead body in the forest. Based on the confession statement of Accused No.2, the dead body was recovered and material objects were also recovered from the said Forest.

12. It is further relevant to mention here that after hearing the present bail application, P.W.3, who is the brother of the deceased, appeared before this Court on 30/01/2025 and filed his written submission stating that when he came to Court along with P.W.5, who is the brother-in-law of the deceased, who came to give evidence, the Accused No.2 and 3 stared at him (P.W.3) in the Court corridor and also shown gesture and threatened to kill him. Hence, the brother of the deceased has stated that he and his family members are having life threat from the Accused No.2 and 3 and their supporters. Further, from the perusal of the material charge sheet, it can be seen the nature of crime alleged against the Accused persons.

13. The allegation that the Accused No.2 and 3 took the deceased to Ulavi Forest and tied the blindfold to deceased and thereafter, the Accused No.2 and 3 both attacked on the deceased with knives and committed the murder and thereafter, they disposed the dead body in the Forest. Based on the confession statement of the Accused No.2 and 3, the Police recovered dead body and materials objects from the said Forest. Further, the Police have also recovered the gold from the house of the Accused No.3, which were on the deceased. As such, it cannot be treated as simple and common case and same is heinous crime and therefore, while considering the bail application, the Court has to see the nature of crime alleged and consequences of release of the Accused No.2 and 3 on bail.

14. It is further relevant to mention here that after filing of the charge sheet, the Accused No.2 has approached the Hon'ble High Court of Karnataka in Criminal Petition No. 101077/2020 seeking bail and the said Petition came to be dismissed on 01/10/2020. Thereafter, again the Accused No.2 has filed the Criminal Petition No.101227/2021 before the Hon'ble High Court of Karnataka, seeking bail and the said Petition also came to be dismissed on 14/07/2021. Further, the Accused No.3 has approached the Hon'ble High Court of Karnataka seeking bail on twice in Criminal Petition Nos.101051/2020 and 101680/22 and the said Petitions also came to be dismissed.

15. However, this Court has fixed the Trial on 26/10/2023 and commenced the recording of evidence of witnesses on 11/01/2024 and thereafter, this Court has continuously recording the evidence of P.W.1 to 5 and all have supported the prosecution case. Further, there are four advocates appearing for the accused persons and this court recorded the evidence of P.W.1 to 5 in more than 75 pages on several dates. Further, this Court has also fixed the Trial for other witness and issued witness summons to 14 witnesses, which start from 07/03/2025 to 22/03/2025.

16. The C.W.1 to 38 in the present case, are private individual persons and they have not been examined, except P.W.1 to 5. The apprehension of the Prosecution that if the Accused No.2 and 3 are released on bail, they may threaten

the witness, commit similar offences to the family members of the deceased and they may give life threat to the prosecution witnesses. In a similar matter, the Hon'ble High Court of Karnataka in Criminal Petition No.100508/2024, has dismissed the bail Petition for the reasons mentioned at paragraph 8 as follows;

“It is submitted by the learned High Court Government Pleader that even now Accused is calling the sister of the deceased and giving threat not to give evidence against him. Having regard to the above facts and circumstances, if released on bail, there is likelihood of accused threatening and tampering with the witnesses. Therefore this Court is of the considered opinion that Petitioner is not entitled for bail”.

In the case on hand also, the brother of the deceased appeared before this Court and he has submitted that there is serious life threat to their family members and the Accused persons are threatening them not to give evidence against them. As such, the apprehension of the prosecution that the Accused Persons may threaten the witnesses cannot be ruled out.

17. The further apprehension of the Prosecution that if the Accused No.2 and 3 are released on bail, there is chance of abscondence and they may hamper the Trial. In view of the above, this Curt has not found any reasons to grant bail to

Accused No.2 and 3. Therefore, by keeping in mind the nature of crime committed, nature of offences, material evidence on record and consequences, this is not a fit case to grant bail and hence, this Court of the opinion that it is necessary to reject the bail Application. On these observations, this Court answers the Point No.1 in the **Negative**

18. **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 and 3 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 24th day of February, 2025.)

(MAYANNA. B.L.)

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