

KAUP010004892023



IN THE COURT OF II ADDITIONAL DISTRICT & SESSIONS
JUDGE, UDUPI

Present : **Dinesh Hegde, B.A., LL.B.,**
II Addl. District and Sessions Judge,
Udupi

Dated : This the **30th day of March, 2023**

S.C.No.5/2023

Petitioner/Accused : Dinesh Sapaliga,
Aged about 43 years,
S/o Leeladhar Sapaliga,
R/at D.No.8-7,
VTC, Mundkuru Post
and Village,
Karkala Taluk,
Udupi District.

(By Sri. E.B.R., Advocate)

V/s

Respondent: The State
Hiriyadka Police Station,
Udupi District.

(Rep.By Public Prosecutor)

ORDERS ON APPLICATION FILED U/S 439 OF Cr.P.C.

The petitioner/accused who is in judicial custody has filed this petition under section 439 of Cr.P.C., for grant of regular bail.

2. The Learned Public Prosecutor received notice of the bail application and filed objections. The respondent police filed their report.

3. Heard the Learned Counsel for the petitioner and Learned Public Prosecutor. Perused the petition, objections and other materials placed on record.

4. The point that arises for my consideration is:

“Whether the petitioner/accused has made out sufficient grounds to grant of bail under Section 439 of Cr.P.C.?”

5. My answer to the above point is in the **Negative** for the following:

REASONS

6. It is the case of the prosecution that initially a UDR No.36/2022 under Section 174 of Cr.P.C was registered before the

Hiriyadka Police Station, on the basis of the complaint lodged by Smt. Sangeetha Salian who is the maternal aunt of deceased Krithik. During the enquiry on 21.10.2022 it was revealed that the accused borrowed a sum of Rs.13,00,000/- from the deceased and without returning the same with an intention of cheating the deceased and by using mental weakness, the accused made the deceased to write death note in the name of Smt. Sharada and hatched a plan to record a video of attempting to suicide. On 14.09.2022 at around 4.45 a.m., near the forest the accused asked the deceased Krithik to come to that place and made a scene of Krithik committing suicide and while doing so, the accused brought a rope and tied the same into the branch of tree and to the neck of Krithik and made Krithik stand on a stone. The accused made Krithik to stand on the stone and suddenly the accused came back and thereby Krithik died to asphyxia. Even, when the deceased asked for help, the accused did not rescue him. Later, the accused took the mobile phone belonging to the deceased and threw into a dam near Baje. During the interrogation the accused confessed his offence. During the investigation the statement of witnesses were recorded, forensic experts have investigated the case. During the investigation it was revealed that in order to cheat the deceased

Krithik, the accused hatched a plan to eliminate the deceased and thereby he has committed the offences punishable under Section 302, 204 and 201 of IPC.

7. The petitioner sought the bail on the ground that he has not committed any grave offences or any other offences as alleged by the complainant in her complaint before the police. The entire complaint not discloses any offence of 302 of IPC or of any other offences. The accused has not at all committed any grave offences as alleged and the reasons stated in the complaint is not sufficient to hold that the accused have committed any such offences. The accused is not habitual offenders and there is no previous criminal records upon him. He is the respectable person of the society not involved in any other offences. The accused is innocent of the alleged offences and the case was registered against him upon rivalry in order to give harassment to him. The accused is law abiding citizen and if he is released on bail, there is no apprehension of jumping out of bail or tampering the witnesses and he will abide by any conditions that may be imposed upon him as per the bail order. The petitioner is offering substantial surety/sureties for his release on bail. There are no reasonable grounds

for believing that he has committed the offences with imprisonment of death or life imprisonment. There is no valid grounds to believe that he has committed any offences as stated in the complaint. The accused is the bread earner of the family and having old aged parents and wife and 1½ years old baby.

8. In the objections apart from narrating the facts of the case and gist of the investigation conducted by the Investigating Officer and collection of material evidence and recovery, the learned public prosecutor has stated that the accused is released on bail there are every chances of threatening and destroying the prosecution witnesses and there are chances of again assaulting the complainant. There are every chances of the accused absconding. Hence prayed to reject the bail application.

9. On perusal of the records, the offences alleged against the accused is punishable with death or imprisonment for life with fine. The Learned Advocate appearing for the accused has raised certain doubts regarding the case of the prosecution. However, the material witnesses are not examined in this case, certain properties were seized at the instance of the accused based on the confession statement

leading to recovery as contemplated under Section 27 of the Indian Evidence Act. The prima facie appears that the accused is involved in the murder of deceased Krithik. When such being the case only because the investigating officer completed the investigation and filed charge sheet is not a ground to enlarge the accused on bail. Therefore, it is not a fit case to grant bail at this stage. The accused can approach for grant of bail after examination of material witnesses. Therefore, I answer above point in the **Negative** and pass the following:

ORDER

The bail petition filed by the accused under Section 439 of Criminal Procedure Code is rejected.

(Dictated to the stenographer, transcribed by her, corrected and signed by me and then pronounced in open court on this the **30th day of March, 2023**)

(DINESH HEGDE)
II Addl. District & Sessions Judge,
Udupi