

KAUP010016622020



**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 **6th day of January, 2024**

SC No.15/2020

Petitioners/

Accused No.1 : Vinaya Devadiga,
Aged about 38 years,
S/o Late Naga Devadiga,
R/at Lingotugudde,
Puttur Village,
Udupi District.

Accused No.2 : Rohith Pinto,
Aged about 45 years,
S/o Late Jayakumara,
R/at Siwera Complex,
Manipura Village,
Kaup Taluk,
Udupi District.

(By Sri. M.S.S., Advocate)

//VS //

Complainant: The State
Malpe Police Station,
Udupi District

(Rep.By Public Prosecutor)

ORDER

The petitioners are the accused No.1 and 2 who are in judicial custody have filed this petition under section 439 of Cr.P.C., for grant of bail.

2. The learned Public Prosecutor received notice and filed his objections to the bail application.

3. Heard the Learned Counsel for the petitioners and the learned Public Prosecutor. Perused the petition, objections and records.

4. The point that arises for my consideration is:

“Whether the petitioners/accused No.1 and 2 are entitled for grant of bail under Section 439 of Cr.P.C.?”

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

REASONS

6. It is the case of the prosecution that Sri. Ranjan M. Poojari S/o Mundappa Poojari has lodged a written complaint

before station house officer of Malpe police station alleging that he is a supplier in Sea View Bar. Due to COVID-19 lock down he did not attending the work and he was in house. On 06.07.2020 at about 11.30 p.m., he was watching T.V with his family members. He heard a sound from out side the house. When he came out from his house, he saw the assault by a group of people on Mr. Yogesh who is his relative. When Yogesh screaming for help, complainant also raised alarm. After seeing the complainant, the members of the group by name Rohith Pinto, Sujith Pinto, Pradeep @ Annu, Vinaya and Anup Kundar left the spot in a WangonR car. Since, Yogesh had sustained bleeding injuries he was shifted to KMC Hospital Manipal in an ambulance. In the hospital it was declared that injured was brought dead. Therefore, an FIR was registered against the accused persons for the offences punishable under Section 143, 147, 120B, 323, 201, 302 r/w 149 of IPC.

7. The petitioners in their bail application submitted that the allegations and averments made against the accused in the prosecution papers are all false, absurd and baseless. There are no reasonable grounds to believe that the accused persons have been guilty of committing any offence bailable of non- bailable. The

documents produced by the prosecution do not disclose or explain the exact role played by the accused in the aforesaid crime. Also there are no materials as such to connect the accused to the alleged crime. There are no reasonable grounds to believe that the accused has been guilty of the aforesaid offence. The prosecution is not certain about the specific case. Nothing has been seized from the possession of the accused. The accused are completely innocent and ignorant about the aforesaid crime. They have never been involved in any crime much less the offence as alleged in the prosecution papers. The vague allegations made in the prosecution papers are not sufficient to implicate the accused, in a crime as alleged and deprive him of his personal liberty. The story narrated in the prosecution papers are nothing but figments of false imagination. The role of the accused persons in committing the alleged offences are vague and does not show the intention of causing the death of the deceased. In the charge-sheet the witnesses CW1 to 6 have been projected as eye witness to the alleged incident that is the incident of causing death of Yogish by accused. These witnesses have been examined before this Court and all of them either have become hostile to the prosecution case or not supported the prosecution case. PW 4 is the close relative

and persons staying with deceased at the time of so called incident one of the person is one who has complained appears to have registered as FIR and other witnesses have been projected as eye witnesses. But all the witnesses have not supported the case and failed to connect the accused to the alleged incident. The material witnesses have been already examined before the trial court. There cannot be any apprehension that the petitioners are likely to tamper with the prosecution witnesses. The accused have been in custody since 07-07-2020 and the rest of the witnesses to be examined are all formal/official witnesses whose evidence are not material to establish the charges leveled against the accused since the material witnesses have not supported the prosecution case. The detention of the accused in custody is not required. The accused No.1 has been suffering from liver disease and in pursuance of his acute intolerable pain he was admitted to the government hospital and later he was shifted to Venlock Hospital where the surgery was conducted. The accused is suffering from diabetic and high BP. After his surgery he is not able to do his own daily chores and need someone to help him do his basic hygienic chores like taking bath going to wash room etc. The accused No.1 is an electrician by profession and accused No.2 is

driver and commands good respect in the society and are also having good roots. The accused are the permanent resident of Udupi Taluk and District which is within the jurisdiction of this Hon'ble Court. They have the responsibility of looking after their entire family. If the accused are continued to be detained in judicial custody for days together, their entire family will be thrown into streets. The accused No.6 Girish Shetty was granted anticipatory bail by this Hon'ble Court and accused No.5. Anup Kunder has been ordered to be released on bail by the Hon'ble Karnataka High Court as per order dated 09-11- 2020. Since accused No.3 and accused No.5 and 6, in the above case have been similarly placed and as such on the ground of parity the accused No.1 and 2 maybe released on bail. If the accused is ordered to be released on bail, they undertake to appear before this court or any other court as ordered by this Court. They also undertake to abide by the conditions to be imposed against them. The accused persons are ready to offer substantial surety for their release on bail. Hence, prayed this petition.

8. In the objections the Public Prosecutor apart from narrating the facts, he has contended that if accused persons are

released on bail there are every chances of threatening and destroying the prosecution witnesses and there are chances of again assaulting the complainant. There may be hindrance in collecting the evidence against the accused persons if they are released on bail. There are every chances of absconding and it is not a fit case to grant bail. Hence, prayed to reject the bail application.

9. On perusal of the records, after investigation the police filed charge sheet and the case was committed for trial to this court. The charges have been already framed against the accused persons. The accused No.1 and 2 are in judicial custody and rest of the accused No.3 to 6 are on bail.

10. Learned Advocate appearing for the petitioners relied upon a decision of the Hon'ble High Court of Karnataka in **Criminal Petition No.9174/2023** between **Manoj Kodikere @ Manoj Kulal @ Manju and others Vs State (unreported)**, wherein it was held that, "since the material witnesses have been already examined before the trial court, there cannot be any apprehension that the petitioners are likely to tamper with the prosecution witnesses. The petitioners are in custody for the last

three years and hence bail granted.” The above decision is arising out of the offences punishable under Sections 120B, 143, 144, 147, 148, 341, 427, 504, 506, 324, 307, 302 r/w 149 of IPC.

11. He has relied upon another unreported decision of the Hon’ble High Court of Karnataka in **Criminal Petition No.4439/2023** between **Raghavendra Kanchan @ Barikeri Raghu Vs State**, wherein the Hon’ble High court granted bail to the accused for the offences punishable under Sections 120B, 143, 147, 148, 449, 342, 504, 323, 324, 506, 307, 302, 212, 201 of IPC holding that investigation is completed and charge sheet has been filed and witnesses have been examined.

12. On the other hand learned Public Prosecutor has opposed the bail application and relied upon a decision of the Hon’ble High Court of Karnataka in **2022(4) Kar.L.J 520** between **Lohitha @ Loki Vs State**, it was held that, “the specific overtact allegation is made against the petitioner that he inflicted injury with dagger and when such being case the contention that most of it attract Section 304 of IPC cannot be accepted. CW2 to 5 have witnessed the incident. The granting of bail in favour of other accused cannot be a ground and parity is not sustainable.”

13. Learned Advocate appearing for the accused No.1 and 2 has argued the bail application filed by the accused No.2 was rejected by the Hon'ble High Court of Karnataka in Criminal petition No.2318/2021 dated 01.06.2021 with a observation that petitioner is at liberty to file a fresh petition before the trial court after the examination of the eye witnesses/material witnesses.

14. On the other hand learned PP has submitted that PW9 and 6 have supported the case of the prosecution and some of the material witnesses yet to be examined. Hence, bail cannot be granted to the accused persons.

15. The record of the instant case reveal that PW1 to 13 are already examined by the prosecution. PW1 is the eye witness and the complainant in this case himself turned hostile to the case of the prosecution. PW2 is also the eye witness turned hostile to the case of the prosecution. PW3 is the relative of deceased is also turned hostile to the case of the prosecution. PW4 is the relative of the deceased is another eye witness to the prosecution turned hostile. PW5 is the circumstantial witness also turned hostile. PW6 is the neighbour of the deceased supported the case of the prosecution but he is the circumstantial witness and seizure

mahazar witness. PW7 is also the circumstantial witness and seizure mahazar witness. PW8 to 11 are the mahazar witnesses already examined. PW12 is the assistant engineer who prepared the sketch and PW13 is the panchanama witness is also examined. So, the material witnesses such as eye witnesses and seizure mahazar witnesses have been examined. The remaining witnesses to be examined are CW23 to 44 who are the official witnesses and seizure mahazar witnesses.

16. The accused No. 1 and 2 are in judicial custody from 08.07.2020. The eye witnesses/material witnesses PW1 to 13 are already examined. Hence, there cannot be any apprehension that the petitioners are likely to tamper with prosecution witnesses. The petitioners are in custody for the more than three years. Hence, the decisions relied by the Advocate for the accused is applicable to this case also. Moreover, the Hon'ble High Court of Karnataka in Criminal Petition No.2318/2021 in its order dated 01.06.2021 has observed that petitioner is yet liberty to file fresh petition before the trial court after examination of eye witnesses/material witnesses.

17. Under these circumstances the apprehension of the prosecution can be safe guarded by imposing stringent conditions. Therefore, the petitioners/ the accused No. 1 and 2 are entitled for bail. For the above reasons, I answered the above point in the affirmative and pass the following:

ORDER

The bail petition filed under Section 439 of Cr.P.C by the petitioners/accused No.1 and 2 is allowed.

The petitioners/accused No.1 and 2 are directed to be enlarged on bail by executing personal bond for Rs.1,00,000/- each with two sureties for the like sum to the satisfaction of the court with following conditions;

1) The petitioners/accused No.1 and 2 shall appear regularly on all the dates of hearing unless their appearance exempted for valid reasons.

2) The petitioners shall not directly and indirectly threaten or tamper with prosecution witnesses.

3) The petitioners shall not leave the jurisdiction of this court without permission until the case is disposed off.

Violation of any one of the conditions shall result in cancellation of bail granted to them.

(Dictated to the Stenographer, directly on computer corrected and signed by me and then pronounced in open court on this the **6^h day of January, 2024**)

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