

ORDER ON BAIL APPLICATION OF ACCUSED No.1

The accused No.1 got filed application under section 439 of Cr.P.C. seeking bail on the following grounds:

- a) Allegation and averments made in the prosecution papers are false, absurd, baseless.
- b) There are no reasonable grounds to believe that the accused No.1 has been guilty of committing any offence bailable or non-bailable.
- c) Documents placed by prosecution do not disclose or explain the exact role played by the accused No.1 in the crime.
- d) There are no materials as such to connect the accused No.1 to the alleged crime.
- e) Prosecution is not certain about the specific case.

- f) Nothing has been seized from the possession of the accused No.1 who is completely innocent and ignorant about the crime.
- g) Accused No.1 has never been involved in any crime much less the offence as alleged in the prosecution papers.
- h) Vague allegations made in the prosecution papers are not sufficient to implicate the accused No.1 in a crime as alleged and deprive his personal liberty.
- i) Story narrated in the prosecution papers are nothing but figments of false imagination. Role of the accused in committing the alleged offence is vague and does not show the intention of causing the death of the deceased.
- j) Police have already filed the charge-sheet, therefore detention of accused No.1 in the judicial custody is not required, he is ready to appear before the court on all date of hearing.

- k) In the FIR name of the accused No.1 is noted as accused No.4, subsequently his name was noted as accused No.1, which is quite astonishing since there is no explanation as to why the petitioner is noted as accused No.1 in the charge-sheet.
- l) Accused No.1 is an Electrician by profession and permanent resident of Udupi Taluk/District.
- m) Accused No.6 Girish Shetty was granted anticipatory bail, accused No.5 has been granted bail by the Hon'ble High Court of Karnataka, since accused No.3, 5 and 6 have similarly placed, on the ground of parity accused No.1 is entitle to be released on bail.
- 2) The learned Public Prosecutor received the notice of the petition and filed objection along with report of the I.O. asserting on the following grounds:

- (a) The petition is not maintainable either in law or on facts.
- (b) Grounds urged in the petition are not entitled to be believed unless proved.
- (c) On the basis of a complaint police have registered Crime No.49/2020 for the offence punishable under section 143, 147, 148, 201, 120B, 323, 302 r/w 149 of IPC, investigated the case and filed charge-sheet.
- (d) Offence alleged to have been committed by the accused No.1 is punishable with death penalty or imprisonment for life.
- (e) In case of release on bail there is likelihood of flee from the process of the Court, tampering the prosecution witnesses, causing trouble to the witnesses.

3) I heard arguments submitted on behalf of both the parties and perused records. On the basis of materials on record, the following points would arise for my consideration:

1) Whether petitioner/accused No.1 made out sufficient grounds to grant bail under section 439 of Cr.P.C.?

2) What order?

4) On the basis of materials on record, my finding on the above points are as under:

Point No.1: In the negative

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

following:

REASONS

5) **Point NO.1:-** Copy of the FIR shows that on 7-07-2020 at about 2.30 a.m. on the basis of a complaint of Ranjan M.Poojary, resident of 4th Cross, Laxminagara, police have registered Crime No.49/2020 against the petitioner and 4 others for having committed offence punishable under sections 143, 147, 148, 302 r/w section 149 of I.P.C.

6). In the complaint, it is alleged that on 6-07-2020 at 11.30 p.m. near the house of Srinidhi, 3rd Cross, Laxmi Nagara, Tenkanidiyoor Village, Udupi Taluk, the petitioner and 4 others

formed unlawful assembly in prosecution of common object/previous enmity stabbed with sharp weapons to the abdomen, back of Yogesh thereby caused his death and left the place by sitting in a car. The complainant witnessed the incident in street light.

7). After investigation, I.O. filed the charge sheet by changing serial numbers of the accused No.1 to 6 (name of the petitioner is noted as accused No.1) making allegation in the following words:

"ದಿನಾಂಕ:6-7-2020 ರಂದು ರಾತ್ರಿ 8.30 ಗಂಟೆಯ ಬಳಿಕ ರಾತ್ರಿ 10.30 ಗಂಟೆ ವೊದಲು ಆರೋಪಿಗಳೆಲ್ಲ ಸಮಾನ ಉದ್ದೇಶದಿಂದ ಉಡುಪಿ ತಾಲೂಕು ಕೊಡವೂರು ಗ್ರಾಮದ ಕಂಬ್ಲಕಟ್ಟೆ ಮೂಡಬೆಟ್ಟು ಎಂಬಲ್ಲಿರುವ ಆರೋಪಿ 3 ನೇ ಸುಜಿತ್ ಪಿಂಟೋ ಯಾನೆ ಸುಜಿತ್ ಕುಮಾರ್ ನ ಹೆಂಡತಿ ಮನೆಯಲ್ಲಿ ಅಕ್ರಮ ಕೂಟ ಸೇರಿ ಯೋಗೀಶನನ್ನು ಹೀಗೆ ಬಿಟ್ಟರೆ ಬೆಳೆಯುತ್ತಾನೆ ನಾವೆಲ್ಲಾ ಸೇರಿ ಅವನನ್ನು ಕೊಲೆ ಮಾಡುವ ಎಂದು ಪರಸ್ಪರ ಮಾತನಾಡಿಕೊಂಡು ಒಳಸಂಚು ರೂಪಿಸಿದ ಬಳಿಕ ಆರೋಪಿ 3 ನೇ ಸುಜಿತ್ ಪಿಂಟೋ ಯಾನೆ ಸುಜಿತ್ ಕುಮಾರ್ ನ KA-20N-6805 ನಂಬ್ರದ ವ್ಯಾಗನಾರ್ ಕಾರಿನಲ್ಲಿ ಆರೋಪಿಗಳೆಲ್ಲಾ ಸುಜಿತ್ ಪಿಂಟೋ ಯಾನೆ ಸುಜಿತ್ ಕುಮಾರ್ ನ ಮನೆಯಿಂದ ರಾತ್ರಿ 10.30 ಗಂಟೆಗೆ ಹೊರಟು ಕಾರನ್ನು ಆರೋಪಿ 2 ನೇ ರೋಹಿತ್ ಪಿಂಟೋ ಚಲಾಯಿಸಿಕೊಂಡು ಲಕ್ಷ್ಮೀ ನಗರ 6 ನೇ ಕ್ರಾಸ್

ಬೊಬ್ಬಯ್ಯ ದೈವಸ್ಥಾನದ ಬಳಿ ಕಾರನ್ನು ನಿಲ್ಲಿಸಿ ಅವರೆಲ್ಲ ನಡೆದುಕೊಂಡು ಹೋಗಿ ದಿನಾಂಕ:6-7-2020 ರಂದು ರಾತ್ರಿ ಸುಮಾರು 11.30 ಗಂಟೆಗೆ ಉಡುಪಿ ತಾಲೂಕು ತೆಂಕನಿಡಿಯೂರು ಗ್ರಾಮದ ಲಕ್ಷ್ಮೀ ನಗರ 3 ನೇ ಕ್ರಾಸ್ ಎಂಬಲ್ಲಿ ಕೊಲೆಯಾದ ಯೋಗೀಶ್ ನ ಮನೆಯ ಗೇಟಿನ ಬಳಿ ಸಾರ್ವಜನಿಕ ರಸ್ತೆಯಲ್ಲಿ ಯೋಗೀಶನನ್ನು ಕೊಲೆ ಮಾಡುವ ಸಮಾನ ಉದ್ದೇಶದಿಂದ ಅಕ್ರಮ ಕೂಟ ಸೇರಿ ಯೋಗೀಶನನ್ನು ಮನೆಯಿಂದ ಹೊರಗೆ ಕರೆದು ಅವನು ಗೇಟಿನಿಂದ ಹೊರಗೆ ಬಂದಾಗ ಆರೋಪಿ 4 ನೇ ಪ್ರದೀಪ್ ಯಾನೆ ಅಣ್ಣು ಯೋಗೀಶನನ್ನು ಓಡಿ ಹೋಗದಂತೆ ಅಪ್ಪಿ ಹಿಡಿದಿದ್ದು ಆರೋಪಿ 1 ನೇ ವಿನಯ ದೇವಾಡಿಗ ಆರೋಪಿ 3 ನೇ ಸುಜಿತ್ ಪಿಂಟೋ ಯಾನೆ ಸುಜಿತ್ ಕುಮಾರ್ ಆರೋಪಿ 5 ನೇ ಅನುಪ್ ಕುಂದರ್ ಹಾಗೂ ಆರೋಪಿ 6 ನೇ ಗಿರೀಶ್ ಶೆಟ್ಟಿ ರವರು ಸೇರಿ ಕೈಗಳಿಂದ ಮನಸೋ ಇಚ್ಛೆ ಮಾರಾಣಾಂತಿಕವಾಗಿ ಹಲ್ಲೆ ಮಾಡಿದ್ದು ಆರೋಪಿ 2 ನೇ ರೋಹಿತ್ ಪಿಂಟೋ ಅವನ ಕೈಯಲ್ಲಿದ್ದ ಚೂರಿಯಿಂದ ಯೋಗೀಶನ ಬೆನ್ನಿನ ಭಾಗಗಳಿಗೆ 2-3 ತಿವಿದಿದ್ದು ಯೋಗೀಶ ತಪ್ಪಿಸಿಕೊಂಡು ಮುಂದಕ್ಕೆ ಓಡಿದಾಗ ಆರೋಪಿ 1 ನೇ ವಿನಯ ದೇವಾಡಿಗ ರೋಹಿತ್ ಪಿಂಟೋನ ಕೈಯಿಂದ ಚೂರಿಯನ್ನು ತೆಗೆದುಕೊಂಡು ಯೋಗೀಶನ ಹೊಟ್ಟೆಗೆ ತಿವಿದು ಗಂಭೀರ ಸ್ವರೂಪದ ಗಾಯ ಗೊಳಿಸಿ ಕೊಲೆ ಮಾಡಿ ಕೃತ್ಯಕ್ಕೆ ಬಳಸಿದ ಚೂರಿ ಹಾಗೂ ಕಾರಿನೊಂದಿಗೆ ಪರಾರಿಯಾಗಿರುವುದಾಗಿದೆ. ಆರೋಪಿಗಳನ್ನು ಕೃತ್ಯದ ಬಳಿಕ ರಕ್ತ ತಾಗಿದ ಬಟ್ಟೆಗಳನ್ನು ಉಡುಪಿ ತಾಲೂಕು ಕೊಡವೂರು ಗ್ರಾಮದ ಸಾಯಿಬಾಬ ನಗರದಲ್ಲಿ ಇಂದ್ರಾಣಿ ಹೊಳೆ ನೀರಿಗೆ ಬಿಸಾಡಿ ಸಾಕ್ಷ್ಯ ನಾಶ ಮಾಡಿರುವುದಾಗಿದೆ.”

8). As per prosecution papers in the incident, the accused No.1 and 2 made assault with weapons, thereby killed the victim (Yogish).

9). In the charge-sheet and enclosures the method how accused No.1 involved in the incident and became the reason for the homicidal death of Yogish are clearly mentioned /explained.

10). In this case at this stage submission made on behalf of accused No.1 and grounds urged on behalf of accused No.1 are not sufficient to disbelieve or discard the materials collected and produced along with the charge-sheet by the Investigating Officer.

11). The material available in the file shows that apart from accused No.1 and 2, other accused made assault on the victim with hands. Therefore, orders passed releasing accused No.3 and 5 on bail granting anticipatory bail to accused No.6 are not applicable to the accused No.1/petitioner.

12). The material collected and produced by the Investigating Officer along with the charge-sheet prima facie shows that accused No.1 and weapon possessed by the accused No.1 are the main reasons for the homicidal death of Yogish.

13). Hence, I came to the conclusion that at this stage it is neither fit nor proper to grant bail to the accused No.1. Hence, I came to the conclusion that accused No.1 has not made out sufficient grounds to grant bail as sought in the petition. Hence, I answer point No.1 in the negative.

14). Point No.2:- After completion of the arguments on the bail petition, learned advocate appearing for the accused and public prosecutor requested to frame charge on the basis of the allegations made in the charge-sheet and enclosures. Hence, the following:

ORDER

The application filed under section 439 of Cr.P.C. on behalf of the accused No.1 is hereby rejected.

Call 30.11.2021 for charges.

Intimate concerned jailer to produce accused No.1 and 2 to through V.C.

(Dictated to the Stenographer on computer, who fed & computerized, print taken, pronounced in the open court on 25th day of October, 2021)

(J.N. Subramanya)
Principal Dist & Sessions Judge
Udupi.