

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 **28th day of June, 2023**

SC No.15/2020

Petitioner/

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

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

//VS //

Complainant: The State
Malpe Police Station,
Udupi District

(Rep.By Public Prosecutor)

ORDER

The petitioner is the accused No.1 in judicial custody has filed this petition under section 439 of Cr.P.C., for grant of bail.

2. The Learned Public Prosecutor received notice and filed objections. The respondent police filed a report. Since the accused urged for bail on the medical grounds, a detailed report was obtained from Superintendent of Jail, District Prison, udupi.

3. Heard the Learned Counsel for the petitioner and the 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 No.1 is entitled for 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 the complainant by name Ranjan M. Poojari S/o Mundappa Poojari has lodged a written complaint before the station house officer of Malpe Police Station alleging that he is a supplier in Sea View Bar. Due to Covid-19 Lock down he was not attending the work and he was inside the house on 06.07.2020 at about 11.30 p.m., when he was watching T.V in his family members, he heard sound out side the

house. When came out he saw Mr. Yogesh who is his relative has been assaulted by a group of people. When Yogesh started screaming for help, complainant also raised scream. After seeing the complainant Rohith Pinto, Sujith Pinto, Pradeep @ Annu, Vinaya and Anup Kunder who are the persons in the group ran away in a WangonR car. Since, Yogesh had sustained many bleeding injuries, he was shifted KMC Hospital Manipal in ambulance. In the hospital it was declared he 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 petitioner in the bail application submitted that 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 has been guilty of committing any offence bailable or 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. That nothing has been seized from the possession of the accused. The accused is completely innocent and ignorant about the aforesaid crime. He has never been involved in any crime much less the offence as alleged in the prosecution papers. That 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 accused submits that the role of the accused in committing the alleged offence is vague and does not show the intention of causing the death of the deceased. The accused submits that the police have already filed the charge sheet and his detention in the judicial custody is not required as he is ready to appear before the court on all the adjourned dates if the court directs him to do so. The accused have been suffering from liver disease and in pursuance of his acute intolerable pain he was admitted to the government hospital and later was shifted to Venlock Hospital where the surgery was conducted and his entire liver was removed. The accused is suffering from diabetic and high BP. After her 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. Petitioner was arraigned as accused No.4 in FIR and subsequently he was made accused No.1 in the charge sheet. It is quit astonishing since there is no explanation as to why the petitioner is arranged as accused No.1 in the charge sheet. The accused is an electrician by profession and commands good respect in the society and is also having good roots. The accused is the permanent resident of Udupi Taluk and District which is within the jurisdiction of this Hon'ble Court. He has got his old ailing mother who is completely dependent on him since there is no one to look after her. He has the responsibility of looking after his entire family. If the accused is continued to be detained in judicial custody for days together, his entire family will be thrown into streets. Now it has come to knowledge of the accused that the accused No.6 Girish Shetty was granted anticipatory bail by this court and accused No.5. Anup Kunder has been ordered to be released on bail by Hon'ble Karnataka High Court as per order dated 09-11-2020. Since accused No.3 and accused No.5 & 6, in the above case have been similarly placed and as such on the ground of parity the accused No.1 maybe released on bail. If the accused is ordered to be released on bail, he undertakes to appear

before this court or any other court as ordered by this court. He also undertakes to abide by the conditions to be imposed against him. The accused is ready to offer substantial surety for his release on bail.

8. In the objections the Public Prosecutor apart from narrating the facts has contended 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 may be hindrance in collecting the evidence against the accused if he is 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. During the investigation the accused persons have been arrested. The charge sheet and the enclosure filed in this case prima facie reveal the prime role of accused No.1 in murder of

deceased Yogesh. The case is in the initial stage of evidence and the summons to CW1 to 3 is issued.

11. It is pertinent to note that bail application filed by this accused was rejected by the District Court vide order dated 25.10.2021. This accused preferred a criminal petition before the Hon'ble High Court of Karnataka in Criminal Petition No. 9489/2021 for grant of bail under Section 439 of Cr.P.C. The Hon'ble High Court of Karnataka in its order held that considering the facts of the case, so also, the ground of parity is not available to this accused in view of the discussions made in the criminal petition. The Hon'ble High Court also observed that after final opinion is filed in to the court and original postmortem report filed in the court, the petitioner may revive his request for grant of bail by filing the separate petition and dismissal of this petition would not come in the way of the deciding of the said petition on merits. With the above observations the Hon'ble High Court dismissed the criminal petition. Similarly, revision petition filed by the accused No.2 in criminal petitioner No.2318/2021 was also rejected by the Hon'ble High Court on 01.06.2021.

12. Material witnesses are yet to be examined. The Hon'ble High Court already dismissed this bail application. Hence the petitioner has not made out the grounds to grant bail. So far as medical grounds urged in the bail petition is concerned, it is the contention of the accused that he is suffering from liver decease and he was shifted to Venlock hospital where a surgery was conducted and his entire liver was removed. The accused is suffering from diabetes and high B.P. Hence, he sought for bail on medical ground.

13. Considering the submission made by the Learned Advocate appearing for the accused during course of arguments, court called for a detailed report from the Superintendent of Jail on medical condition of the accused No.1. He filed detailed report along with treatment given to the accused No.1. On perusal of the medical records furnished by the Superintendent of Jail, the accused No.1 taken for treatment to Venlock hospital, Mangalore and he was admitted an in patient. He had under gone a surgery. After the surgery he was brought that with an advise to take follow up treatment in Government hospital Udupi. During the follow up treatment he was admitted to government hospital, Udupi on

27.04.2023 and discharged him on 07.05.2023. The jail authority has provided regular follow up treatment to the accused. The medical records shows that the accused was suffering from gallbladder perforation with diabetes mellitus and hence he has under gone exploratory laparotomy surgery in Venlock hospital, Mangalore and discharged on 25.04.2023. There was infection in the place of surgery conducted and hence treatment was gone to him in the Udupi Government Hospital and he was discharged. On 06.06.2023 the surgery certified that the accused was recovered. Follow up treatment with tablets was given to him. On 20.06.2023 again he was taken out for follow up treatment in Udupi District Hospital on 20.06.2023 and he was admitted for treatment.

14. The above records reveal that proper treatment is available in the government hospital and in the case of any medical urgency the jail authority is able to shift him to Venlock Hospital, Mangalore for treatment. Under such circumstances no medical grounds are made out by the accused to get him treated out side the District Government Hospital, Udupi and Venlock Hospital, Mangalore. Therefore, the accused is not entitled for

bail on medical ground. For the above reasons, I answered the above point in the negative and pass the following:

ORDER

The bail petition filed under Section 439 of Cr.P.C by the petitioner/accused No.1 is hereby rejected.

However, the Superintendent of jail, Udupi is directed to extend best medical treatment to the accused in the best government hospitals.

Intimate the same to the Superintendent of Jail through e-mail.

(Dictated to the Stenographer, directly on computer corrected and signed by me and then pronounced in open court on this the **28th day of June, 2023**)

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