

KAUP010023702023



IN THE COURT OF THE II ADDITIONAL DISTRICT AND
SESSIONS JUDGE, UDUPI , AT: UDUPI

Dated this the 5th day of September, 2024

PRESENT

SRI. SRINIVAS SUVARNA, B.A., LL.M.,

Additional District & Sessions Judge,

F.T.S.C.- 1, Udupi

C/c II Addl. District & Sessions Judge, Udupi

S.C. No.33/2023

COMPLAINANT :

The State by Circle Inspector of Police,
Kapu Circle, Udupi District.

(Learned Public Prosecutor)

- Vs -

ACCUSED:

2. Likith Kulal,
S/o. Babu Kulal,
Aged about 21 years,
R/at. Narayana Shetty Compound,
Pilkedadi, Kulai Post,
Mangaluru Taluk and City.

3. Nagaraj Parasappa Talawar,
S/o. Parasappa Talawar,
Aged about 19 years,
R/at. Minu Kalia Baikampadi,
Near Ramanjaneya, Suratkal,
Mangaluru, D.K. District.

(By Shri. Clinton D'Silva, Advocate)

ORDER

This bail application is filed by the accused No.4 and 5 in original charge-sheet and accused No.2 and 3 in this case U/Sec.439 of Cr.P.C. seeking regular bail. Since case against accused No.1 and 2 in original charge-sheet was split up and separate case was registered against them, these accused are numbered as accused No.2 and 3 in this case.

2. The accused No.2 and 3 have sought for regular bail inter alia on the grounds that:

The accused are innocent and they have not committed any offence. They have no nexus with alleged incident. The police officials have falsely implicated the accused persons in this case by making them as scapegoat. There is no reasonable grounds to believe that the accused have committed the alleged offence. The accused are having old aged parents and they are the only bread earning members in the family. Investigation in this case is already concluded, charge-sheet has been filed, the presence of the accused are not at all required for investigation. These accused No.2 and 3 have implicated on the basis of confession statement of the other accused. There are no materials to show the involvement of the accused in this case and they have contact with other accused persons. The accused No.7 had ordered monkey cap and sickles

through mobile. In the said mobile mobile numbers of these accused are not available and there is no documents to show that the materials have been handed over to these accused. The material seized by the Investigating Officer and the materials ordered by the accused No.7 are totally different. The vehicle seized in this case are not belonging to these accused persons and statement of its owners has not supported the case of the prosecution. The charge-sheet material does not reveal the role played by these accused persons. There are no direct or indirect allegation regarding instigation by these accused persons. The accused are undertake to offer substantial surety for their release on bail. The accused are ready to abide by the conditions imposed by the court and prays to enlarge them on regular bail.

3. The learned Public Prosecutor has filed objections by denying the material contents of the application and has stated that the accused have committed heinous offence of murder. The filing of charge-sheet shows that the accused have committed the alleged offence. Filing of charge-sheet is not a ground to grant bail to the accused. The accused have committed the offence punishable with death or imprisonment for life. If the accused are released on bail, they may abscond, may threaten the prosecution witnesses, destroy the evidence and cause hurdle in the

trial of the case. They may also commit similar offences. The accused with the help of underworld sinner have committed murder in public place causing disturbance in the public peace. If the accused are released on bail, the public will lost hope on judicial system. Considering the gravity and severity of the offence, it is prayed to reject the bail petition.

4. Heard the arguments on both the sides and perused the materials on record.

5. The following points arise for consideration:-

- (1) Whether the accused No.2 and 3 have made out grounds for grant of regular bail in their favour under Section 439 of Cr.P.C.?
- (2) What order?

6. My findings on the above points are as follows:-

Point No.1: In the **Negative**

Point No.2: As per final order

for the following:-

REASONS

7. **Point No.1:-** The C.P.I. of Kapu Circle has filed charge-sheet against the accused for the offences punishable U/Sec.302, 120B, 201 r/w. 34 of IPC in Kapu Police Station Crime No.16/2023. After

conclusion of the investigation the charge-sheet came to the filed. The brief case of the prosecution that the accused, Yogish Acharya, and the deceased Sharath Shetty, were friends. When they had gone to Katapady Posaru in Moodabettu Village, Kapu Taluk, regarding a property dispute, CW.35 and others assaulted and caused injuries to Yogish Acharya. At that time, the deceased, Sharath Shetty, ran away from the spot without helping him. Enraged by Sharath Shetty's action, the accused, Yogish Acharya developed grudge against him and with an intention to kill him, called underworld don Kali Yogish, who promised to help. Kali Yogish, in turn, called Akash Karkera to kill the deceased, offering him money and promising to cover legal expenses. Akash Karkera asked Mukesh Kumar to provide men to kill the deceased. Mukesh Kumar convinced Divesh Shetty to kill the deceased, offering money and promising to cover legal expenses. Divesh Shetty convinced Likith Kulal, who then convinced Nagaraj Parasappa Talawar to join them in killing the deceased. They hatched a criminal conspiracy to kill the deceased. Akash Karkera ordered three sickles and three monkey caps from Amazon and handed them over to Divesh Shetty and Likith Kulal near his house on February 3, 2023. On the same day, Divesh Shetty, Likith Kulal, and Nagaraj Parasappa Talawar, intending

to kill the deceased, searched for him but could not find him. The accused, Yogish Acharya, and Prasanna Shetty, then took Divesh Shetty, Likith Kulal, and Nagaraj Parasappa Talawar to Pangala, showed them where the deceased would be, and informed them that the deceased would attend a Kola function within two days and needed to be killed there. They instructed them to dispose of the weapons in the Pangala river and showed them where to do so. On 05.02.2023, Divesh Shetty, Likith Kulal, and Nagaraj Parasappa Talawar, with the common intention of killing the deceased, proceeded on a motorcycle equipped with three sickles and three monkey caps. They met Yogish Acharya and Prasanna Shetty, then went to Mandara Hotel, and hatched a conspiracy to kill the deceased. On the same day, at around 4:55 p.m., the deceased arrived at the spot, and Yogish Acharya and the deceased talked to each other. At that time, Yogish Acharya signaled Divesh Shetty, Likith Kulal, and Nagaraj Parasappa Talawar to kill the deceased. Accordingly, they approached the deceased with sickles. Yogish Acharya attempted to stab the deceased with a knife but was restrained, and the knife fell to the ground. Yogish Acharya then held the deceased from behind, and Divesh Shetty, Likith Kulal, and Nagaraj Parasappa Talawar brutally assaulted the deceased with sickles,

leading to his death. During the incident Yogish Acharya also sustained injuries to his hands.

8. The learned counsel for the accused has argued that the accused have not committed any offences as alleged. Investigation in this case is already completed and charge-sheet is filed. The presence of the accused are no more required for any investigation. There is no eye-witness to the incident. The prosecution has relied on circumstantial evidence. The involvement of the accused has not been established by the prosecution. The accused are in judicial custody since from the date of their arrest. If the accused are further detained in judicial custody, their personal liberty will be curtailed and their dependents would be put to hardship. The accused are ready to furnish sufficient surety and to abide by the conditions those may be imposed for their release on regular bail. Hence, sought for allowing the petition. The learned counsel for the accused has relied on the judgment of Hon'ble High Court of Karnataka reported in SLC- Daily Law – 70325 between Ravindra @ Ravi R.D. Vs. The State of Karnataka.

9. The learned Public Prosecutor has contended that the accused have committed heinous offence of murder. The charge-sheet filed by the Investigating Officer goes to show that the accused has

committed the alleged offence. Filing of charge-sheet is not a ground to grant bail. The accused are hails from other District, if he is released on bail, there is every possibility of absconding fearing for the law. In such case, the trial would be hampered. In the event of release on regular bail, accused is likely to commit similar offences, may tamper with the prosecution witnesses. Hence, sought for rejection of the petition. In support of his argument the learned Public Prosecutor has relied on the judgment of Hon'ble Supreme Court of India reported in (2019) 1 Supreme Court Cases (Cri) 325 between State of Orissa Vs. Mahimananda Mishra and judgment of Hon'ble Supreme Court in Criminal Appeal No.____ of 2021 arising out of SLP (Crl) No.6335 of 2021 between Brijmani Devi Vs. Pappu Kumar and another.

10. I have carefully considered the contentions urged by both sides in the light of the materials available on record.

11. A perusal of the records go to show that the above named accused Likith Kulal and Nagaraj Parasappa Talawar were hired persons to kill the deceased Sharath Shetty by Yogish Acharya through the other accused persons in view of existing grudge between Yogish Acharya and deceased. They have been offered money and incur legal expenses of the case in

order to kill the deceased. The present accused have brutally assaulted the deceased along with Divesh Shetty and Yogish Acharya leading to the death of deceased Sharath Shetty using sickle by wearing monkey cap which was provided by Akash Karkera. The perusal of the charge sheet clearly indicates that deceased Sharath Shetty had sustained grievous injuries on his left side of the chest, right hand forearm, left chin, right hand thumb, small finger, right thigh and he succumbed to the injuries. The Investigating Officer has cited witnesses who have clearly stated about the presence of the accused at the spot. The CCTV Footage of the spot of offence and place of conspiracy clearly goes to show the presence of the accused. The Investigating Officer has recorded the voluntary statement of the accused, wherein the accused have revealed about the alleged incident. Apart from that there are other witnesses who have stated that they came to know that the accused have committed murder of the deceased Sharath Shetty. The Investigating Officer has recovered the weapons used by the accused during the commission of the offence from the pangala river where they have thrown the same as shown by these accused.

12. The learned Public Prosecutor has relied on the judgment of Hon'ble Supreme Court in Criminal

Appeal No.____ of 2021 arising out of SLP (Crl) No.6335 of 2021 between Brijmani Devi Vs. Pappu Kumar and another wherein the Hon'ble Supreme Court by referring its various judgments observed that:

“In Gudikanti Narasimhulu (supra), Krishna Iyer, J., while elaborating on the content and meaning of Article 21 of the Constitution of India, has also elaborated the factors that have to be considered while granting bail which are extracted as under:

7. It is thus obvious that the nature of the charge is the vital factor and the nature of the evidence also is pertinent. The punishment to which the party may be liable, if convicted or conviction is confirmed, also bears upon the issue.

8. Another relevant factor is as to whether the course of justice would be thwarted by him who seeks the benignant jurisdiction of the Court to be freed for the time being.

9. Thus the legal principles and practice validate the Court considering the likelihood of the applicant interfering with witnesses for the prosecution or otherwise polluting the process of justice. It is not only traditional but rational, in this context, to enquire into the antecedents of a man who is applying for bail to find whether he has a bad record – particularly a record which suggests that he is likely to commit serious offences

while on bail. In regard to habituals, it is part of criminological history that a thoughtless bail order has enabled the bailee to exploit the opportunity to inflict further about the criminal record of a defendant, is therefore not an exercise in irrelevance.”

b) Prahlad Singh Bhati vs. NCT of Delhi & ORS – (2001) 4 SCC 280 is a case wherein this Court proceeded to state the following principles which are to be considered while granting bail:

“(a) While granting bail the court has to keep in mind not only the nature of the accusations, but the severity of the punishment, if the accusation entails a conviction and the nature of evidence in support of the accusations.(b) Reasonable apprehensions of the witnesses being tampered with or the apprehension of there being a threat for the complainant should also weigh with the court in the matter of grant of bail.

(c) While it is not expected to have the entire evidence establishing the guilt of the accused beyond reasonable doubt but there ought always to be a prima facie satisfaction of the court in support of the charge.

(d) Frivolity in prosecution should always be considered and it is only the element of genuineness

that shall have to be considered in the matter of grant of bail, and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail

13. Having regard to the principles enunciated by the Hon'ble Apex Court in the above referred judgment, let this Court to scrutinize the material on record to the extent necessary for determining the bail application.

14. It is relevant to note that substantial material available is in the form of circumstantial evidence and statements of some of the witnesses clearly indicate that there was extra judicial confession statement by the accused. Therefore, definitely these witnesses before whom the accused had disclosed about commission of offence are vulnerable witnesses and are easily susceptible for external and internal influences. The offence alleged is punishable with death or imprisonment for life and accused being permanent resident of Dakshina Kannada District, in view of the severity of the punishment prescribed for the offences alleged they may abscond and hamper the trial.

15. Though the learned counsel for the accused by relying on the judgment reported in reported in SLC-Daily Law – 70325 between Ravindra @ Ravi R.D. Vs. The State of Karnataka would argue that as there is insufficient identification evidence. The accused No.7 who ordered monkey cap and sickle through his mobile, but the said mobile does not contain the mobile number of these accused and there is no evidence to show that he has supplied weapons to these accused. The ordered weapon and seized weapons are different. The involvement of the present accused are not established, as such they are entitled for bail.

16. It is to be noted that the material available on record i.e. CCTV footages and evidence of the circumstantial witnesses shows the presence of the present accused persons. The material objects were seized as shown by the accused under panchanama. Since the investigation is completed and trial is yet to begin, it would not be proper to dwell upon the subject matter in detail at this stage, lest it may prejudice the case of either of the parties during trial. Another argument of the learned counsel for the accused is that the accused by name Akash H. Karkera and Mukesh Kumar were granted bail by this Court and these accused are entitled to be enlarged on bail on the ground of parity. A perusal of the material reveals that

the allegation against accused by name Akash H. Karkera and Mukesh Kumar are totally different from these accused. Akash H. Karkera had supplied monkey cap and weapons and Mukesh Kumar convinced Likith Kulal for commission of offence. However, allegation against these accused persons that they have brutally assaulted the deceased with sickle and committed murder. As such this argument of the learned counsel for the accused cannot be taken into consideration for granting bail. The judgment relied by the learned counsel for the accused is not applicable to be present facts of the case.

17. Furthermore, these accused persons have allegedly hired for killing the deceased for money. The possibility of recurrence of offence in future cannot be ruled out. These accused being residents of Dakshina Kannada District and considering the severity of the punishment of the offences alleged against them, they may abscond and hamper the trial. Moreover, the trial of the case not yet commenced and material witnesses yet to be examined. Since these accused have committed the offence for money, they may not hesitate to tamper the prosecution witnesses and threaten the prosecution witnesses and destroy the prosecution evidence. Even the court has to consider the nature of accusation and the severity of the punishment in case

of conviction and nature of supporting evidence. The accused No.1 and 2 are absconding since from the date of registration of the case. In this case it is alleged that the deceased Sharath Shetty was brutally murdered by the accused and the material available on record prima facie shows the commission of the offence. The judgment relied by the learned Public prosecutor are aptly applicable to the case on hand.

18. In view of these circumstances available, this court do not find any reason to hold that filing of charge sheet has changed circumstances substantially. This court do not find any reasons to accept the arguments of the learned counsel for the accused that the accused is entitled for bail in view of filing of charge sheet. The decision rendered by the High Court of Karnataka in the case of **Manjunath Y.V. @ Thamma Manja Vs. State of Karnataka by Talaghattapura Police**, held that mere grant of bail to co-accused or filing of charge sheet do not automatically entitle the other accused for bail. Therefore, the arguments of the learned counsel for the accused are not acceptable, there are no change in circumstance that would render the involvement of these accused doubtful. As such, this Court is of the opinion that these accused are not entitled to be enlarged on bail at this stage. Hence,

considering the same, the point No. 1 is answered in the **negative**.

19. **Point No.2:-** In view of the discussions made at point No.1, I proceed to pass the following:-

ORDER

*The petition filed by the accused No.2 by name Likith Kulal and accused No.3 by name Nagaraj Parasappa Talawar U/Sec.439 of Cr.P.C., seeking regular bail, is hereby **rejected**.*

(Dictated to the Stenographer-Grade-III on computer, order corrected, signed and then pronounced by me in open Court, on this the **5th day of September, 2024**)

(SRINIVAS SUVARNA)

Addl. Dist. and Sessions Judge-F.T.S.C.-1, Udupi,
C/c II Addl. District and Sessions Judge, Udupi.