

**IN THE COURT OF THE XXVI ADDL. CITY CIVIL &
SESSIONS JUDGE, AT MAYO HALL, BENGALURU
(CCH.20)**

Present

Sri.D.S.Vijaya Kumar, B.Sc, LL.B.,
XXVI Addl. City Civil & Sessions Judge, Bengaluru

Dated this 28th day of January, 2021

Crl.Misc.No.25057/2021

Petitioner:-

Mazhar @ Bacha Mazhar,
Son of Syed Aziz,
Aged about 23 years,
R/a. Near Khuba Masjid,
Sampur Main Road,
Coffee Board Colony,
Bengaluru – 560 045.

[By Sri.S.A-Adv]

Vs.

Respondent:-

State by Devara Jeevanahalli
Police Station, Bengaluru City.

[By Public prosecutor]

ORDER

Petitioner has filed this bail petition under
sec.439 of the Cr.P.C., praying for granting an order
of Regular bail in respect of the offences alleged

under sections-302, 143, 147, 148, 149 of the Indian Penal Code, in Crime No.79/2020 of the Respondent-Devara Jeevana Halli Police Station, Bengaluru, charge sheeted in C.C.No.52799/2020 on the file of 11th ACMM., Bengaluru.

2. Brief facts of the bail petition are as under:-

Respondent Police have falsely implicated him in the case. He is totally innocent of the offences alleged against him. He is in judicial custody. He is the sole bread earner of the family. Offence is not punishable with imprisonment for life or death. He has valid and tenable defence. He has not committed any offences as alleged. He is ready to offer solvent sureties and abide by any conditions and there are no overtacts attributed against him. Thus, petitioner has sought for enlarging him on bail.

3. Objections filed by the prosecution to the above petition, are as under:-

Respondent Police have registered a case in Crime No.79/2020 for the offences under section- 302, 143, 147, 148 r/w. Sec. 149 of the IPC against the Accused persons. Investigation is completed and charge sheet is filed. Petitioner has committed the offence. If the petitioner is released on bail, he may abscond permanently and also commit similar offences and abscond from trial. Offence alleged is punishable with death or imprisonment for life. Hence, on these grounds, learned Public Prosecutor has sought for rejection of the bail petition.

4. Heard arguments and also perused the records.

5. In the circumstances, the following points arise for determination:-

1. Whether petitioner is entitled to an order of Regular Bail, as sought for?

2. What order?

6. My findings to the above points are under:

Point No.1 :- In the **negative**

Point No.2 :- As per final order for the following:

R E A S O N S

7. Point No.1:- Counsel for petitioner/Accused No.13 has produced certified copy of the FIR, remand applications, order sheet in Crime No. 79/2020 which is registered as CC No.52799/2020, entire charge sheet with enclosures. According to the charge sheet, CW.1's elder brother deceased Amjad Khan was standing in front of his timber shop situated at Tannery Road on 29.02.2020. Petitioner/Accused No.13 informed Accused Nos.1 to 13 about

the deceased Amzad Khan being present in his timber shop at 5.20 PM. Thereafter, Accused Nos.1 to 13 formed an unlawful assembly being possessed with deadly weapons, came in their two wheel motor vehicles to the said spot and fatally assaulted C.W.1's elder brother deceased Amzad Khan causing his death. Pursuant to registering the FIR in Crime No.79/2020 after investigation charge sheet has been filed for the offences under secessions-143, 147, 148, 302 r/w. Sec. 149 of IPC.

8. Petitioner's counsel has placed reliance on a decision dtd.21.10.2020 in Crl.Petition No. 4608/2020, Order dtd.02.12.2020 in Crl. Ptn. No.5894/2020 and Order dtd. 10.12.2020 in Crl. Ptn. No.7435/2020 to contend that in similar circumstances, High Court of Karnataka, Bengaluru has granted bail. Further, petitioner's counsel has produced copy of the Order dtd.8.7.2020 passed in

Crl.Misc.No.25371/2020 wherein Accused No.14 of this case has been granted bail by this court.

9. I have perused the records and cited decisions.

10. Learned counsel for the petitioner has drawn attention to the title sheet of the charge sheet, wherein at column no.7, inter-se, as regards the petitioner/Accused No.13 is concerned, it is stated that Accused No.13's chopper was used to indiscriminately assault the deceased on his head and back. Words may be slightly jumbled in stating the overtact of the petitioner/Accused No.13 in col.no.7 of the charge sheet title sheet. However, statement of eye witnesses namely CW.13 to 16 show that they have witnessed the incident and petitioner/Accused No.13 has assaulted the deceased with deadly weapon as per the statements

given by them. Since there are eye witnesses to the incident and they have all stated about the petitioner's active role in committing murder of the deceased, I am of view that the fact that Accused No.14 has been granted bail will not help petitioner's case.

11. As for the Accused No.14, there is no overtact attributed against him. But, as against the petitioner/Accused No.13 there is clear overtact and also incident has not taken place in a spur of moment. Accused persons have made preparation to commit murder and come in assembly being possessed with deadly weapons and indiscriminately assaulted the deceased with weapons. In these circumstances, offence being quite heinous and punishable with imprisonment for life or death, I am of opinion that it is not a fit case to grant bail to

petitioner/Accused No.13. Consequently, point no.1 is answered **in the negative.**

12. Point No.2: On the above findings, I proceed to pass the following:-

ORDER

Bail petition filed by Petitioner/
Accused No.13 under Sec.439 of the
CR.P.C **is hereby dismissed.**

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(Dictated to the Stenographer, transcribed by him and computerized and then corrected and pronounced by me on this **28th day of January, 2021**)

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(D.S.VIJAYA KUMAR)
XXVI Addl.CC & SJ, Mayo Hall Unit
Bengaluru.

(Order pronounced vide separate Order)

ORDER

Bail petition filed by Petitioner/
Accused No.13 under Sec.439 of the
CR.P.C **is hereby dismissed.**

(D.S.VIJAYA KUMAR)
XXVI Addl.CC & SJ, Mayo Hall Unit
Bengaluru.