

IN THE COURT OF THE IV ADDL. CITY CIVIL AND SESSIONS
JUDGE MAYOHALL UNIT, BENGALURU (CCH-21)

Dated: This the 19th day of October 2020

PRESENT:

Sri. MOHAMMED MUJEER ULLA C.G. B.A. LL.B.,
IV Addl. City Civil and Sessions Judge, Bengaluru.
(Concurrent charge)

CRL.MISC. NO. 25741/2020

<i>PETITIONER:</i>	<i>STANLEY .B</i> <i>S/o. Bassavaraj</i> <i>Aged about 24 years</i> <i>R/at: No.93, 6th Cross</i> <i>Yerranapalya</i> <i>Ramamurthy Nagar</i> <i>Bengaluru – 560016</i> <i>(Accused No.3)</i>
<i>(REP BY: SRI. MURTHY D.L)</i>	

.. Vs ..

<i>RESPONDENT:</i>	<i>STATE BY RAMAMURTHY NAGAR</i> <i>POLICE STATION</i>
<i>(REP BY: PUBLIC PROSECUTOR)</i>	

ORDERS ON BAIL APPLICATION

The Petitioner has filed the instant petition U/Sec.439 of Cr.P.C., for grant of bail.

2. *The Learned Public Prosecutor has filed objections.*

3. *Heard arguments on both side and perused record.*

4. *The point for consideration is:*

“Whether the Petitioner is entitled for bail?”

5. *My finding on the above point is in the **Affirmative** for the following:*

REASONS

6. *The case of the prosecution is that, on 07.08.2020 at about 6.30 am., Late. Paneer Selvam left home & went in Hero Splendor bike bearing No.KA-03-JT-5323 to go to Subramanya Swamy Temple at Ramamurthy nagar, Bengaluru. He did not return home on that day. On the next day, at about 10.30 am., his motor bike was found behind TATA showroom. Despite his family members searched him, he was not traced. Therefore on 08.07.2020 at about 11.15 am., his wife Smt.Rani given complaint to the SHO of Ramamurthy nagar*

police station alleging that, one Sathyavathi & her son Kumaresan had a quarrel with Paneer Selvam. Therefore they might have abducted him. On the basis of the said complaint, the SHO of Ramamurthynagar police station registered FIR in Cr.No.272/2020 for the offence punishable U/Sec.363 of IPC. Accused No.3 has filed the instant petition.

8. *During the course of investigation, the Investigating officer alleged to have got information from reliable sources that, accused No.1 P.Rajesh Kumar, S/o. Paneer Selvam has given supari to kill his father. Therefore at 7.00 am., on 07.08.2020 the police arrested accused No.1 and recorded his voluntary statement. In the voluntary statement he stated that, he by giving supari in a sum of Rs.10,00,000/- to the accused No.2 & others murdered his father Paneer Selvam by strangulation & by giving poison injection. On the basis of voluntary statement alleged to have been given by accused No.1, the police apprehended the petitioner & 2 others on 08.08.2020 at 10.00 am., recorded their voluntary statement & produced them & accused No.1 before the learned magistrate on the same day at 9.30 pm., and sought police custody. The magistrate has given accused No.1 to 4 to police custody for 10 days i.e., from 08.08.2020 to 17.08.2020.*

After police custody, the petitioner was produced before magistrate and he was remanded to J.C. Thus Since 08.08.2020 the petitioner is behind the bars.

9. *The learned public prosecutor has filed objection contending that, from investigation it was revealed that, the petitioner & accused No.2, 4 & 5 by receiving supari from 1st accused committed murder of Paneer Selvam by giving poison injection. The investigation is not yet completed. The offence punishable U/Sec.302 of IPC is a capital offence. If the petitioner is released on bail, he will tamper the prosecution witnesses & abscond. On these and other grounds stated in the objection, the learned PP prays to dismiss the instant petition.*

10. *The learned counsel for the petitioner has strenuously contended that, the police have falsely implicated the petitioner in this case. There is no material to connect the petitioner to the murder of Paneer Selvam. He submits that, petitioner is leading life by doing cloth business on footpath in Vijayanagar. He is having responsibility of maintaining his wife & 2 minor children. Accused No.2 who was similarly placed was already released on bail. Therefore on parity, petitioner is also entitled for bail. On these and other grounds, he prays to release the petitioner on bail.*

12. *Before considering the material on record let us consider the position of law regarding grant of bail and the factors which the Court has to consider while deciding the bail application.*

13. *In the case of "**CHAMAN LAL V/S STATE OF UTTAR PRADESH AND ANOTHER**", the Hon'ble Supreme Court of India has held as under:*

“At the stage of granting bail a detailed examination of evidence and elaborate documentation of the merits of the case is not to be undertaken, but there is a need to indicate in the order reasons for prima facie concluding why bail was being granted, particularly where an accused was charged of having committed a serious offence. Though a conclusive finding in regard to the points urged by the parties is not expected of the court considering the bail application yet giving reasons suffers from discussing merits or demerits. Any order devoid of such reasons suffers from non-application of mind. The court dealing with the application for bail is required to exercise its discretion in a judicious manner and not as a matter of course. The factors which the court must consider among other circumstances before granting bail are (i) the nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence, (ii) reasonable apprehension of tampering with the witness or apprehension of threat to the complainant, and (iii) prima facie satisfaction of the court in support of the charge.”

14. *In the case of "**SANJAY CHANDRA V/S C.B.I**" the Hon'ble Supreme Court of India has held as under.*

“Criminal Procedure Code, 1973 - Ss. 437 and 439 - Bail - Conditional bail to balance competing considerations - Relevant considerations in granting such conditional bail - Gravity of alleged offence - Severity of punishment prescribed in law - Both parameters, held, ought to be taken into consideration simultaneously - Gravity alone cannot be decisive ground to deny bail - Competing factors to be balanced by court while exercising its discretion - Protection of personal liberty against securing attendance of accused at trial - Presumed innocence till a person is convicted - Hard waist caused to individual on account of detention before conviction - Unnecessary burden on State to keep a person who is yet to be proved guilty - Constitutionally protected liberty, held, must be respected unless detention becomes a necessity - Bail is the rule and jail an exception - Each case however to be decided on its own merits - Apprehended tampering of evidence - Denial of bail on this count - Held, to be resorted to in most extraordinary circumstances only - Lengthy trial which may prolong beyond maximum sentence awardable under relevant law.

- Balanced approach held, is to grant bail subject to certain conditions, rather than to keep individuals under detention for an indefinite period - liberty also given to CBI to seek cancellation/modification of bail if appellants violate conditions imposed on them.”

15. *As per the ratio laid down in the above cited judgments while considering the bail application, the main point for consideration is the severity/gravity of the offence/offences alleged against the petitioner and the prima facie material on record regarding involvement of accused/petitioner in the commission of the offence. In the case of **SANJAY CHANDRA V/S C.B.I.**, the Hon’ble Supreme Court of India has held that, the bail cannot be rejected only*

on the count that, the offences alleged are of serious nature. What is more important is, what is the material on record to establish prima facie that, the petitioner involved in the commission of the alleged offences.

16. *The prosecution has produced the case diary in Crl.Misc.No.25560/2020 upto 16.09.2020. Therefore in this case, the IO was directed to produce further Case diary from 16.09.2020 along with all the relevant documents collected after 16.09.2020 and also other documents which are relevant but not produced along with the CD in Crl.Misc.No.25560/2020. Accordingly, the IO submitted case diary. Perused, the entire case diary. In the FIR given by the wife of deceased, the name of the petitioner is not mentioned. In the said FIR the wife of the deceased has stated that, one Sathyavathi and son Kumaresan might have kidnapped Paneer Selvam.*

17. *The learned PP submits that, accused No.1 has given voluntary statement before the Police that, he by giving supari of Rs.10,00,000/- to accused No.3 (petitioner) & others committed murder of Paneer Selvam. In the case diary it is stated that, on 08.08.2020 the police arrested accused No.1 and recorded his voluntary statement. For the reasons best known, the said voluntary statement of*

accused No.1 is not furnished along with CD. Further in the CD it is stated that, on the basis of voluntary statement given by accused No.1, on the same day petitioner & accused No.2 & 4 were arrested. As stated above, as per the request of the IO, the learned magistrate has given, petitioner & 3 other accused to the police custody for 10 days. In the case diary it is mentioned that, the police have recorded the voluntary statement of petitioner and other accused. For the reasons best known, the said voluntary statements are not submitted along with case diary or further diary submitted in this petition.

18. According to the prosecution, the police came to know about the conspiracy of the accused to commit the murder of Paneer Selvam on 08.08.2020. In Crl.Misc.No.25560/2020 the case diary was produced to the Court on 16.09.2020. In this petition, further case diary was produced on 16.10.2020. Thus the police have produced case diary of 68 days of investigation. The case diary & further case diary produced by I.O do not contain either the voluntary statement of accused persons or the statements of any of the witnesses. Except the alleged voluntary statements of accused which are not produced along with case diary and the mahazars alleged to have been drawn on the basis of information

alleged to have been given by petitioner & other accused, there is no cogent material to connect the petitioner to the murder of Paneer Selvam. Despite the police have taken petitioner & other 3 accused to police custody for 10 days, they have not collected any information regarding the source of 1st accused to mobilize Rs.10,00,000/- to give as supari to petitioner & others to kill his father. There is no explanation regarding what happened to that Rs.10,00,000/-.

19. *The inquest and postmortem of the deceased Paneer Selvam are available in case diary. In the postmortem report, the doctor has not given opinion about the cause of death. No anti-mortem injuries are noted. Therefore the postmortem report would not support the contention of the prosecution regarding strangulation or giving poison injection.*

20. *In the CD dated:07.08.2020 it is stated that, on 07.08.2020 the Investigating officer has collected the footages of C.C.TV cameras of the locality where the incident was alleged to have been occurred and also examined the witnesses and collected information that, accused No.1 to 4 were following the motor bike of the Paneer Selvam. Along with CD, the C.C.TV footages or the statements of any of the witnesses alleged to have been examined by I.O are not*

produced. Thus there is no statement of any of the witnesses on record who alleged have seen the petitioner at the place of occurrence on the date of incident along with deceased Paneer Selvam or accused No.1.

21. The learned PP submits that, accused No.5 is not yet arrested. Therefore at this stage, if the petitioner is released on bail, it will hamper the investigation. Bail cannot be rejected only on the count of non-arresting of one of the accused. As I have already stated above, the material on record is to be looked into to see, is there any prima-facie material to connect the petitioner to the Crime. As I have already stated above, the documents submitted along with CD is not helpful to the prosecution to connect the petitioner to the crime of death of Paneer Selvam.

22. Petitioner has produced Election Identity card & birth certificates of his daughters. Petitioner contends that, he is doing cloth business in the footpath in Vijayanagar, his wife and minor children are depending on him. The recitals of the above documents would support the contention of the petitioner that, he is the resident of Bengaluru, he is having wife & 2 minor daughters.

23. *A perusal of entire case diary and the material available on record would show that, except the alleged voluntary statements of accused which are not produced along with the case diary and the alleged recovery mahazars, there is no cogent material to connect the petitioner to the crime of murder of Paneer Selvam. The police have already taken the petitioner for 10 days custody and alleged to have been recorded his voluntary statement. On the request of police the petitioner was remanded to JC. From this it could be inferred that, the presence of petitioner is not required for police for further interrogation. In Crl.Misc.No.25560/2020, accused No.2 who was similarly placed with petitioner was released on bail. When such is the case, in view of my afore said findings that, there is no cogent material to connect the petitioner to the crime of murder, the Court is of the opinion that, the petitioner can be released on bail by imposing reasonable conditions to safeguard the apprehensions raised by the learned PP. In view of the above, I answer the point for consideration in the Affirmative and pass the following:*

ORDER

The Petition filed by the Petitioner U/Sec.439 Cr.P.C., is allowed.

He is ordered to be released on bail in Cr.No.272/2020 of Ramamurthynagar Police Station for the offence punishable U/Sec.120(B), 363, 302 R/w Sec.34 of IPC by taking bond in a sum of Rs.1,00,000/- with 2 sureties of like sum subject to the following:

CONDITIONS

- 1. The Petitioner shall not try to meet any of the family members or relatives of deceased or to tamper or inter-meddle with the prosecution witnesses.*
- 2. He shall appear before the I.O whenever called upon to appear by giving notice well in advance fixing date & time and co-operate with the investigation.*
- 3. He shall produce Aadhaar Card/Identity Card, residential proof, contact number and occupation of himself and his sureties to the committal court and also to the I.O.*

4. *He shall not leave the jurisdiction of Bengaluru without prior permission of the Court.*
5. *He shall not change his residence without prior permission of the Court.*
6. *If the petitioner is not having the Aadhaar card, he shall get it within a month, after release and produce before IO and also before the committal court.*

[Dictated to the Stenographer directly on computer, corrected, signed and then pronounced by me in the open Court on this the 19th day of October 2020].

[MOHAMMED MUJEER ULLA C.G]

C/C IV Addl. City Civil Judge

Mayo hall, Bengaluru (CCH 21)