

Bharath Kumar R @ Bande @ Bharath vs The State Of Karnataka on 11 July, 2022

Author: K.Natarajan

Bench: K.Natarajan

BETWEEN:

SRI.SURESH S. @ LODDE SURI(SOORI)
S/O SHIVANNA
AGED ABOUT 40 YEARS, R/O NO.1232,
GOSEGOWADA STREET,
SRIRANGAPATNA TOWN,
MANDYA DISTRICT,PIN-571401.

.....PETITIONER

(BY SRI.MADHUSUDHAN M.N. ADVOCATE)

AND:

THE STATE OF KARNATAKA,
REPD. BY SRIRANGAPATTANA POLICE STATION
MANDYA DISTRICT,
REPRESENTED BY STATE

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BY ITS SPECIAL PUBLIC PROSECUTOR
HIGH COURT OF KARNATAKA
BANGALORE-560001.

..... RESPONDENT

(BY SMT.RASHMI JADHAV, HC GP)

THIS CRIMINAL PETITION IS FILED UNDER SECTION
439 OF CR.P.C. PRAYING TO ENLARGE THE PETITIONER ON
REGULAR BAIL IN CRIME NO.229/2020 REGISTERED BY THE
SRIRANGAPATTANA POLICE STATION FOR THE OFFENCES
PUNISHABLE UNDER SECTION 120-B, 143, 341, 144, 148,
302, 201 R/W 149 OF IPC PENDING IN S.C.NO.5036/2021 ON
THE FILE OF III ADDL. DISTRICT AND SESSIONS JUDGE,

MANDYA(SITTING AT SRIRANGAPATTANA) .

BETWEEN:

BHARATH KUMAR R. @ BANDE @ BHARATH
S/O LATE RAMACHANDRA
AGED ABOUT 23 YEARS,
R/AT POST OFFICE ROAD,
SRIRANGAPATNA TOWN,
MANDYA DISTRICT, PIN-571401.

.....PETITIONER

(BY SMT.RAKSHA KEERTHANA K. ADV.
FOR SRI.KEMPARAJU, ADV.)

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AND:

THE STATE OF KARNATAKA,
REPD. BY SRIRANGAPATTANA
RURAL POLICE STATION,
MANDYA DISTRICT,
REPRESENTED BY ITS PUBLIC PROSECUTOR
HIGH COURT COMPLEX
BENGALURU-560001.

..... RESPONDENT

(BY SMT.RASHMI JADHAV, HCGP)

THIS CRIMINAL PETITION IS FILED UNDER SECTION
439 OF CR.P.C. PRAYING TO ENLARGE THE PETITIONER ON
REGULAR BAIL IN CC NO.08/2021 (CRIME NO.229/2020) OF
RESPONDENT SRIRANGAPATTANA POLICE STATION FOR THE
OFFENCES PUNISHABLE UNDER SECTION 120-B, 143, 341,
144, 148, 302, 201 R/W SECTION 149 OF IPC PENDING ON
THE FILE OF III ADDL. DISTRICT AND SESSIONS JUDGE,
MANDYA (SITTING AT SRIRANGAPATTANA).

THESE PETITIONS HAVING BEEN HEARD AND
RESERVED ON 06.07.2022 AND COMING ON FOR
PRONOUNCEMENT, THROUGH VIDEO CONFERENCING AT
DHARWAD BENCH, THIS DAY, THE COURT PRONOUNCED THE
FOLLOWING:

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ORDER

Crl.P.No.4024/2022 is filed by the petitioner/accused No.1 and Crl.P.No.8589/2021 is filed by the petitioner / accused no.5 under Section 439 of Cr.P.C. for grant of bail in respect of Crime No.229/2020 registered by the Srirangapattana Police for the offence punishable under Sections 120-B, 143, 341, 144, 148, 302, 201 r/w 149 of IPC which is now pending on the file of III Addl. District and Sessions Judge, Mandya (sitting at Srirangapattana) in S.C.No.5036/2021.

2. Heard the arguments of learned counsel for both the petitioner and learned HCGP for respondent -State.

3. The case of the prosecution is that one Narayana S/o of Late Siddaiah, father of the deceased has filed complaint to Police alleging that on 22.10.2020 at 9 a.m. his son Harish brought food to the complainant when he was working in his land and returned home in his bike. Later complainant went to home. But the deceased did not returned to home and his wife said that his son went to Srirangapattana for purchasing some items for festival. At about 9 p.m. one Nandish came to the complainant's house and informed that somebody has killed his son Harish near Pakshidama gate. Immediately, he went to the spot and found that his son was murdered and his car also found near footpath. Hence, complaint was filed against unknown persons. During investigation, the Police arrested the accused no.5 and other accused and after investigation, police also filed charge sheet against all the accused persons. The petitioner/accused no.5 moved the bail petition before this Court in Crl.P.No.5976/2021 which came to be dismissed by this court and once again he has approached this Court in the successive bail petition on another ground.

4. The accused no.1 previously moved anticipatory bail in Crl.P.No.4572/2021 which came to be rejected. Thereafter, he is said to be surrendered before the Court and is in judicial custody. Hence, once again he came before this Court for grant of bail under Section 439 of Cr.P.C.

5. It is further case of the prosecution that after the investigation, it was revealed that there was enmity between deceased and accused no.1. In this background, accused no.1 is nourishing enmity with the deceased. Therefore, accused no.1 said to have given a contract to accused nos.2 to 8 by giving supari to kill the deceased by giving Rs.50,000/- as advance and he has undertaken to give remaining Rs.2,50,000/- after commission of murder. Based on contract, accused nos.2 to 7 executed the murder. The accused nos.6 and 8 said to have stayed little away from the place of incident by diverting the public coming near to the place of occurrence. Based upon the allegation, police filed charge sheet.

6. Learned counsel for the petitioner/accused no.1 has contended that there is no evidence against this petitioner and there is no recovery from him and he is in custody from March-2022. He himself surrendered to police. His previous anticipatory bail petition was rejected and there is no material to show that he has conspired with other accused to commit the murder of deceased. Co-accused nos.2, 4, 6 have already granted bail by co-ordinate bench of this court and accused no.8 granted bail by

this court. On the ground of parity, petitioner no.1 is entitled for bail. Hence, prays to allow the petition.

7. Learned counsel appearing for accused no.5 has contended that previously his bail petition was rejected and now co-ordinate bench of this Court has granted bail to accused nos.2 and 4 who are having similar allegation who have assaulted on the head of deceased have been granted with bail. Therefore, on the ground of parity, this petitioner also entitled for bail. There is no recovery from this petitioner.

8. Per contra, learned HCGP seriously objected the bail petition and contended that the rejection of bail petition are not brought to the notice of co-ordinate bench and co-ordinate bench has granted bail on parity ground and ground of parity will not available to this accused no.1, as this court has already considered the case on merit and dismissed the petition. Accused no.1 who is conspirator of murder, who was paid supari to accused nos.2 to 8 for committing murder. Accused no.1 continuously absconding from the court, inspite of rejection of anticipatory bail in August-2021. Then also, he has not chosen to surrender. He was continuously absconding till March-2022 and subsequently, he was surrendered before Sessions Court and he was not at all co-operated with the Police for the purpose of interrogation and for recovery. Therefore, he is not entitled for bail. He has destroyed almost evidence. Learned HCGP further contended that accused no.5 was assaulted on the head and also on right shoulder with sword which is clearly depicted in the postmortem report and this Court has already considered all these grounds on merits and rejected the bail petition. There was joint recovery of weapons from the accused persons, blood stained clothes were also seized. Articles 1 to 7 were seized which were blood stained. Articles 1,5 and 6 with human blood, articles 1 and 5 were stained with group 'B' blood and article No.1 is stained with group 'A' blood which are all going to connect the accused persons who committed the murder. Hence, prays for rejection of bail petitions.

9. Learned HCGP further contended that co-ordinate bench granted bail to the accused no.6 as he was a student and he was actually not committed murder. This court also granted bail to accused no.8 as he also not participated in murder except watching out side. The Co-ordinate bench has granted bail to the other accused without considering the overt acts only based on the ground that co-accused were granted bail. Therefore, ground of parity is not available to this petitioner. Hence, prays for rejection of bail petitions.

10. Having heard the arguments of learned counsel for the parties, perused the records.

11. Admittedly, accused no.1 was absconding from the date of incident i.e. from 22.10.2020. In spite of rejection of anticipatory bail in August-2021, neither he chosen to surrender before the Police nor himself co-operated for any investigation and he has dogged the matter for almost seven months and waited till the case was committed to the Court of Sessions. Thereafter, he surrendered himself before Magistrate on 21.03.2022 and he was taken into custody. The allegation against him is that he was a conspirator and he engaged accused nos.2 to 8 for committing murder by agreeing to pay Rs.3,00,000/- and he has given R.50,000/- as advance and agreed to pay Rs.2,50,000/- after commission of murder. But, till date he has not co-operated with investigating officer and

absconding and inspite of this Court categorically held that he is required for custodial interrogation, he has not obeyed the order of this Court and surrendered before Police and he destroyed almost evidence and continuously absconding from the case. Therefore, the contention of the petitioner counsel that nothing has been recovered from this petitioner is not acceptable and it is a failure of the investigating officer in recovering any material from this petitioner because he has not co-operated with investigating officer and absconding of petitioner is the main cause for recovering nothing from him. However, there are two witnesses who have categorically stated that this accused was conspired with other for killing the deceased. Therefore, it cannot be said that this accused has not given any supari to murder the deceased and he is the author of the crime and paid supari to other accused for committing murder. Therefore, section 302 and Section 120-B are attracted against him. Apart from that, if they are released on bail, again there is chance of threatening and tampering of witnesses, is not ruled out. Therefore, he is not entitled for grant of bail.

12. As against accused no.5, this Court has already considered all the grounds urged by the learned counsel in the previous bail petition and dismissed the same as there is a specific overt act made against him. He has assaulted on the head and right shoulder of the deceased with sword and caused the death. Of-course accused no.4 has also said to be assaulted the deceased have granted bail by the co-ordinate bench of this court. Co-ordinate bench while granting bail not at all touched the subject and simply granted bail based upon the ground of parity that some of the co-accused have granted bail. In fact, accused nos.6 and 8 were granted bail based upon the evidence that they stayed out side the place of occurrence and watching that public will not come near to the place of occurrence. Therefore, granted anticipatory bail to accused no.8. Accused no.6 is student as he has not actually participated in committing murder, except watching but based upon this male adults were granted bail by co- ordinate bench of this court and nowhere co-ordinate bench of this Court has taken into consideration the rejection of bail petition against accused nos.1 and 5 in the order dated 23.08.2021. Therefore, order of this court was not at all distinguished by the Co-ordinate bench's and which is not diluted in the court. Such being the case, co-accused persons granted bail without considering the overt acts of the accused persons that is not binding on this court. Apart from that granting bail is discretionary relief and these accused persons were contract killers for killing and committing murder of other persons. There was a joint recovery of weapons stained with blood group of accused and deceased for having commission of murder. Accused no.1 is a conspirator and author of murder. Therefore, ground of parity is not available to both accused nos.1 and 5. Therefore, I do not find any additional ground or fresh ground for granting regular bail to accused nos.1 and 5.

Accordingly, both the bail petitions are dismissed.

Sd/-

JUDGE HMB