

State Of Karnataka vs Jagadeesh Devaramaji Choudhari on 27 November, 2024

Author: K.Natarajan

Bench: K.Natarajan

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IN THE HIGH COURT OF KARNATAKA,
DHARWAD BENCH
DATED THIS THE 27TH DAY OF NOVEMBER, 2024
BEFORE
THE HON'BLE MR JUSTICE K.NATARAJAN
CRIMINAL PETITION NO. 103679 OF 2023
C/W
CRIMINAL APPEAL NO. 100393 OF 2024
C/W
CRIMINAL PETITION NO. 102842 OF 2024

IN CRIMINAL PETITION NO.103679 OF 2023

BETWEEN:

MR. AMIT MALLIKARJUN VANNUR
AGED ABOUT 31 YEARS,
S/O MR. MALLIKARJUN VANNUR,
3RD CROSS, SHIV NAGAR,
GOKAK - 591 307.

...PETITIONER

(BY SRI. P.V. GUNJAL, ADVOCATE)

AND:

1 . THE STATE OF KARNATAKA
BY GOKAK TOWN POLICE,
REPRESENTED BY
THE SPECIAL PUBLIC PROSECUTOR,
DHARWAD BENCH,
HIGH COURT OF KARNATAKA,
DHARWAD.

2 . MR. DEEPAK S. INGALGI
SON OF MR. SHRIKANT INGALGI,

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ADI JAMBAVANAGAR,
GOKAK - 591 307.

...RESPONDENTS

(BY SRI. VIJAYAKUMAR MAJAGE, SPP-II FOR R₁;

SRI. AVINASH M. ANGADI, ADVOCATE FOR R₂) THIS CRIMINAL PETITION IS FILED U/S 439 OF CR.P.C., SEEKING TO ALLOW THIS BAIL PETITION AND ENLARGE THE PETITIONER-ACCUSED NO.16 ON BAIL IN CR.NO.72/2020 OF GOKAK TOWN POLICE NOW NUMBERED SPL.C.202/2020 PENDING ON THE FILE OF THE PRINCIPAL DISTRICT AND SESSIONS JUDGE AND KCOCA SPECIAL JUDGE, BELAGAVI, FOR OFFENCE ALLEGED U/S 120B, 109, 201, 212, R/W 34, 35, 37 AND 149 OF THE IPC ALONG WITH SEC. 3(3), 3(4) AND 4 OF THE KARNATAKA CONTROL OF ORGANISED CRIMES ACT, 2000.

IN CRIMINAL APPEAL NO.100393 OF 2024 BETWEEN:

BASAVRAJ @ HALLU BASYA S/O RAMESH @ RAMASIDDAPPA JANAKATTI,
AGED ABOUT 24 YEARS, R/O: SIDDESHWAR NAGAR GOKAK, DISTRICT:
BELAGAVI - 591 308.

...APPELLANT (BY SRI. VASANT. G. HOLEYANNAVAR, ADVOCATE) AND:

1 . THE STATE OF KARNATAKA THROUGH GOKAK TOWN P.S, REPRESENTED
BY HCGP, DHARWAD BENCH.

2 . DEEPAK SHRIKANT INGALAGI AGED ABOUT 25 YEARS, R/O: AADI JAMBAV
NAGAR GOKAK, TALUK: GOKAK, DISTRICT: BELAGAVI - 590 001.

...RESPONDENTS (BY SRI. VIJAYAKUMAR MAJAGE, SPP-II FOR R₁;

SRI. AVINASH M. ANGADI, ADVOCATE FOR R₂) THIS CRIMINAL APPEAL IS FILED U/S 14 A(2) OF SC AND ST (POA) ACT, 1989, SEEKING TO SET ASIDE THE ORDER DATED 03.01.2023 PASSED BY THE PRL.DISTRICT AND SESSIONS JUDGE (KCOCA SPL.JUDGE) BELAGAVI IN SPECIAL CASE NO.202/2020 WHEREBY REJECTING THE BAIL PETITION FILED BY THE APPELLANT UNDER SECTION 439 OF CR.P.C., MAY BE SET ASIDE AND FURTHER ORDER THAT, THE ACCUSED NO.10/APPELLANT BE RELEASED ON REGULAR BAIL IN SPECIAL CASE NO.202/2020 REGISTERED BY THE GOKAK TOWN POLICE FOR THE OFFENCES PUNISHABLE U/S 143, 144, 147, 148, 150, 120(B), 341, 302, 504, 506 AND 34, 35, 37 R/W SECTION 149 OF IPC AND SECTION 3(1) (r), 3(1)(s), 3(2)(V), 3(2)(va) OF SC AND ST (PA) ACT, 1989 AND SECTION 3(1)(i), 3(2)(c), 3(4), 3(5) OF KARNATAKA CONTROL OF ORGANIZED CRIME (KCOC) ACT 2000.

IN CRIMINAL PETITION NO.102842 OF 2024 BETWEEN:

STATE OF KARNATAKA THROUGH GOKAK TOWN POLICE STATION,
REPRESENTED BY ITS STATE PUBLIC PROSECUTOR, HIGH COURT OF
KARNATAKA, DHARWAD.

...PETITIONER (BY SRI. VIJAYAKUMAR MAJAGE, SPP-II) AND:

1 . JAGADEESH DEVARAMAJI CHOUDHARI S/O DEVARAMAJI CHOUDHARI,
AGED ABOUT 55 YEARS, OCC: BUSINESS, R/O GOKAK VIRABHADRESHWAR
TEMPLE NAGAR NEAR, TALUK: GOKAK, DISTRICT: BELAGAVI - 591 307.

2 . ANAND SIDDALINGAPPA GOTADAKI S/O. SIDLINGAPPA GOTADAKI, AGED
ABOUT 44 YEARS, OCC: BUSINESS, R/O SOMAWAR PETH, GOKAK, TALUK:
GOKAK, DISTRICT: BELAGAVI - 591 307.

3. DEEPAK SHRIKANT INGALAGI S/O SHRIKANT INGALAGI, AGED ABOUT 27
YEARS, OCC: COOLIE, R/O ADI JAMBHAV NAGAR, GOKAK, TALUK: GOKAK,
DISTRICT: BELAGAVI.

...RESPONDENTS (BY SRI. SRINANDA A. PACHAPURE, ADVOCATE FOR R₁; SRI. PRAKASH S
G., ADVOCATE FOR R₂;

SRI. AVINASH M. ANGADI, ADVOCATE FOR R₃) THIS CRIMINAL PETITION IS FILED U/SEC.
439(2) OF CR.P.C. (U/S. 483(3) OF BNSS) SEEKING TO CANCEL THE BAIL GRANTED BY THIS
HON'BLE COURT IN CRL.APPEAL NO. 100093/2021 AND 100089/2021 ON 02.07.2021 AND
PERMIT THE INVESTIGATING OFFICER/ OF GOKAK TOWN POLICE IN CRIME NO. 72/2020
CONCERNED POLICE TO ARREST THE AND COMMIT THEM TO CUSTODY FOR THE
OFFENCES P/U/SEC. 143, 144, 147, 148, 150, 341, 120B, 302, 109, 115, 212, 201, 504, 506 R/W
SEC. 34, 35, 37, 149 OF IPC AND SEC. 3(1)(i), 3(2), 3(3), 3(4), 3(5), 4 OF KCOCA ACT 2000 AND
SEC. 3(1)(r), 3(1)(s), 3(2)(v), 3(2)(v,a) 8(1)A OF SC/ST PREVENTION OF ATROCITIES ACT AND
SEC. 25(1)(A), 25(1)(B)vi(6)(7) OF ARMS ACT.

THESE PETITIONS AND APPEAL HAVING BEEN HEARD AND RESERVED FOR ORDERS ON
12.11.2024 THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

RESERVED FOR ORDERS ON: 12.11.2024 PRONOUNCED ON : 27.11.2024
CORAM: HON'BLE MR JUSTICE K.NATARAJAN CAV ORDER This
Crl.P.No.103679/2023 filed under section 439 of Cr.P.C. by the petitioner/accused
No.16 for granting of regular bail.

ii. Crl.A.No.100393/2024 filed by the appellant/accused No.10 under section 14A(2)
of SC & ST (Prevention of Atrocities Act, 1989) herein referred as Atrocities Act, for
granting regular bail.

iii. CrI.P.No.102842/2024 filed by the State under Section 439(2) of Cr.P.C. (U/S. 483(3) of BNSS) for cancellation of the bail granted to the accused No.11 and 14 by this Court in CrI.A.No.100093/2021 and 100089/2021 dated 02.07.2021.

2. Heard the arguments of learned senior counsel Jayakumar Patil appearing for the petitioner/ accused No.16.

Counsel for the appellant appearing for the petitioner/accused No.10. Learned SPP-II Vijayakumar Majage, appearing for respondent No.1, for cancellation of bail in CrI.P.No.102842/2024 and also respondents State in other two cases, and learned counsel appearing for the defacto complainant Avinash M Angadi, Srinanda A Pachapure and Kalyan Shetar for the respondent/accused Nos. 11 and 14.

3. All these three petitions arising out of same case registered in Crime No. 72/2020 by Gokak Town P.S. and charge sheeted for the offences punishable under sections 143, 144, 147, 148, 150, 341, 302, 120(B), 212, 201, 109, 115, 188, 504, 506 R/w 34, 35, 37 & 149 of IPC, also the offences punishable under section 3(1)(r), 3(1)(s), 3(2)(v), 3 (2)(v,a), 8(1)A of SC/ST Prevention of Atrocities Act, also for the offences punishable under Section 25 (1) A of the Arms Act, 25 (1)(B), VI (6), (7) of Arms (Amendment) Act, 2019 and Section 3(1) (i), 3(2), 3(3), 3(4), 3(5) and Section 4 of Karnataka Control of Organised Crimes Act, 2000 hereinafter referred as KCOCA Act.,

4. The case of the prosecution is that the respondent No.2 defacto complainant in above said two first cases filed a first information to the Gokak Town police on 06.05.2020, where in the police registered a case in Crime No.72/2020 against the accused Nos.1 to 3 and some other unknown persons for the offences punishable under section 143, 147, 148, 307, 504, 506, R/w 149 of IPC., and under Section 3(2)(v) of SC & ST Prevention of Atrocities Act, 1989, wherein it is stated by the complainant that the complainant and the deceased Siddappa Arjun Kanamadi is the State Youth President of Youth Wing of Dalith Sangharsha Samiti. That the accused Gangadhara Santhrama Shindhe and his associates had rivalry with the deceased in connection with murder of one Rohith Patil, who said to be belongs to Maratha community. Due to which some cases were registered against the persons who was committed murder of Rohith Patil and the deceased said to be helped those accused persons for coming out on bail. On these background there was enmity between the two rivalry group . That on 06.05.2020 at 8.00 P.M. the defacto complainant and the deceased along with one Kiran Shankar Kadatti, Raju Huchanavar, Prashanth were sitting at Katta of Hanuman Temple in Adhijambav Nagar, the deceased was speaking to somebody over phone, at that time Gangadhara Santhrama Shindhe, Vinayaka Hadaginal, Vitthal Pawar the accused along with some other persons came on two wheeler and auto riksha holding talvar assaulting Siddappa Arjun Kanamaddi and abused him by taking caste name as "holeya Sulemagana, ninna bidangilla" and stating that they assaulted. The complainant and his friends try to save the Siddappa Arjun Kanamadi but the other accused were prevented them from protecting the deceased and assaulted him on the head, nose and chest. Then the public started pelting stones on the accused persons then they escaped in the vehicles. Later the injured Siddappa Arjun Kanamadi was taken to the hospital and he has made declaration which was video graphed and later he was succumbed to the injuries. Later the police inserted the office publication under Section 302 of IPC and during the

investigation the police have invoked KCOCA Act, against accused, charge sheet filed against 20 accused persons, some of the accused were absconding. The accused persons are in custody.

5. The accused No.16 i.e., petitioner in moved bail petition in CrI.A.No.100129/2021 which came to be dismissed on 30.08.2021. Hence once again the accused No.16 filed the petition for granting bail.

6. In respect of accused No.10 who is also in custody, his bail application rejected by the trial court. Hence, he has filed the appeal for granting bail.

7. Whereas the co-ordinate bench of this court granted bail to the accused No.11 and 14 in CrI.P.No.100093/21 & 100081/21 which came to be allowed on 02.07.2021 and granted bail. Subsequently the State has move SLP before the Hon'ble Supreme Court for cancellation of bail by filing the appeal in SLP.(CrI).Nos.7965-7966/2021. The Hon'ble Apex Court has directed the State to approach this court for cancellation of bail. Accordingly the State has filed this petition in criminal petition No.102842/2024 for cancellation of bail.

8. The learned senior counsel appearing for the petitioner /A16 has contended the petitioner was arrested on 04.09.2020 but the police have shown the arrest date as 16.09.2020 and search was conducted in the house, there is nothing recovered and his name was not shown in the FIR at the first instance. Previously Hon'ble Apex Court granted interim bail and later it was cancelled or withdrawn on 23.08.2023. Thereafter petitioner was surrender before the court. He is in custody almost 4 years, the trial is not yet started. There are 250 witnesses cited in the charge sheet. There is no possibility of concluding trial in near future, there is no material against the petitioner except naming in the charge sheet. And he is also contended the allegation in the charge sheet is that he has harboured the accused No.10 and 17 but there is no statement of the accused No.10 and 17 to show they are resided in the house of A16. Therefore keeping accused in custody will not serve any purpose, there is no other case registered against him. Hence prayed for granting bail.

9. The counsel for the accused No.10 has contended the appellant has not attacked the deceased except watching the public and preventing the public from stopping the accused from attacking the deceased. Except that contention there is no evidence against appellant he is in custody, almost 4 years. In order to invoke KCOCA Act, a case was registered one day prior to the arresting the petitioner, as he has committed the offence 1 year back. Name of the petitioner not mentioned in the FIR, his name was implicated in the charge sheet, he has not assaulted deceased, even eye witnesses has not stated his name in the statement and FIR. Therefore prayed for granting the bail.

10. The learned SPP-II has filed the statement of objections to both cases as against accused Nos.10 and 16. It is contended in the objection that the accused persons are very well aware that the deceased belongs to member of the SC & ST and they committed murder. Some of the witnesses given statement before the Magistrate under Section 164(5) of Cr.P.C. The KCOCA Act, has been invoked, the confession statement of accused Nos.1 to 3 were admissible in evidence and the confession statement of accused persons prima facie shows the role of present petitioners in the commission of Crime. As per Section 22(4)(b) of KCOCA Act, the petitioner has to show the reasonable ground that they are not guilty, the bail application of accused No.12, 13 and 15 has been

dismissed by the Court. There are eye witnesses to the incident. The police have recovered arms and vehicle used for commission of the offence. The dying declaration was recorded by C.W.20 and 21 and they have given the statement under Section 164 of Cr.P.C. The call details reveals that accused No.10 and 16 in touch with the other accused persons. They are syndicate members of one gang called 'Tiger Gang'. They used to collect hafta in Gokak town from the business man. C.W.169, 198, 199, 200, 202, 216 to 221, 222, and 224 have given statement against accused persons. They also filed a petition for quashing the Criminal proceedings which came to be dismissed. The accused persons involved in Criminal activity conducted by 'Tiger Gang'. Accused No.18 and 20 are still absconding. An additional charge sheet is filed against accused No.19 after his surrender. One of the accused informed this petitioner through jail with the help of the jail warrant who also made an accused. Accused Nos.11 and 14 have misused the bail and threatened the wife of the deceased. A case was registered.

11.It is further contended that various statement of the witnesses were stated the role of the accused persons including accused No.16. The accused No.16 along with accused NO.14 tried to tamper and destroy the records, the accused No.11 was financier to the 'Tiger Gang'. The statement of C.W.125 and 127 reveals the offence committed by the accused No.16. The police seized the car belongs to accused No.16 and recovered various documents including 26 the blank cheques belonging to various charge sheet witnesses. Accused No.16 also member of the 'Tiger Gang' and used to collect Hafta and created fear in the general public, and prayed for dismissal of the petition.

12.The learned SPP-2 has further strenuously contended that the above said accused persons were members of the gang called 'Tiger Gang'. They have committed heinous offences in and around Gokak town, they are all members of the organized group. There is various cases registered against them. The interim bail of the A16 recalled by the Supreme Court and he was surrendered. The accused persons were participated in committing murder and therefore, police invoked KCOCA Act. The police have arrested 17 accused persons and 3 accused persons absconding, A19 was arrested subsequently who is brother of A2. The said accused persons approached the High Court of Karnataka for having invoked KCOCA Act, which came to be dismissed. After the arrest of accused persons crime rate in Gokak Taluk was reduced in 50%. Therefore prayed for rejecting the bail applications.

13.The learned SPP-II appearing for the petitioner-State in Criminal Petition No.102842/2024 has argued for cancellation of bail as against respondent Nos.1 and 2 - accused Nos.11 and 14. The petitioner-State has filed this petition for cancellation of bail granted to above said two accused on various grounds alleging that after the grant of bail to these accused persons, the other accused persons approached the High Court for granting bail on the ground of parity, which came to be dismissed. During the pendency of the SLP filed by the State and after release of these two accused persons Accused No.11 & 14, they threatened the wife of the deceased. Therefore, she lodged the complaint to the Gokak Police, a case in Crime No.13/2022 was registered and after investigation, the police have filed charge sheet against accused Nos.11 and 14 along with two other accused. Initially, accused Nos.3 and 4 were the unknown persons and during investigation, it was revealed that these accused persons were involved in the Crime. It is further contended by the learned SPP-II that after registering the FIR in Crime No.13/2022, accused Nos.11 and 14 moved the High Court for

quashing the FIR, which came to be dismissed. If the bail of these accused Nos.11 and 14 is not cancelled, no other prosecution witnesses will come forward to give evidence in the Spl. Case No.202/2020 (Crime No.72/2020). It is further contended that the accused persons are the members and associates of a gang called 'Tiger Gang' and they are committing the notorious and heinous activities & committed various Crimes. The other cases also registered against these accused persons in various crime numbers. The Hon'ble Supreme Court has ordered to surrender accused No.16. The trial is already fixed after framing of the charge. The prosecution has to examine many witnesses and at this stage, if bail is not cancelled, the respondents-accused will threaten the prosecution witnesses and no persons will come forward for giving evidence in favour of prosecution due to fear of the 'Tiger Gang'. Therefore, prayed for cancelling the bail granted by this Court in Criminal Appeal Nos.100093/2021 and 100089/2021 dated 02.07.2021. In support of his case, the learned SPP-II has argued the matter at length by taking various contentions.

14.Learned counsel for the respondent No.1 i.e. accused No.11 has filed statement of objections contending that, in order to cancel the bail, the prosecution should show the supervening facts and circumstances, post grant of bail and establish that the accused have misused the liberty of bail by threatening the witnesses and violated the conditions of bail. It is further contended that the Crime No.13/2022 has been registered against the accused during the pendency of the SLP before the Hon'ble Supreme Court, where the Hon'ble Supreme Court directed the petitioner-State to approach this Court. The charge sheet is filed in the said case only for abetment under Section 109 of IPC. The allegation is that all the accused persons conspired to commit the murder of the deceased at the godown of accused No.11. But, the statement of C.W.27, recorded by the police, reveals that the conspiracy took place in the ground of Gnanadeepa college and not in the godown of accused No.11 and the name of the accused No.11 was not stated by C.W.27. It is further contended by the learned counsel that the alleged recovery of Rs.30.00 lakhs from accused No.11 when was claimed as Hafta, but accused No.11 is a business man running two oil shops and the same was considered by this Court while granting bail. Therefore, once again, it cannot be re- appreciated.

15.The learned counsel for the respondent-accused No.11 further contended that the provisions of KCOCA is not applicable to accused No.11. This Court cannot go beyond the scope of bail to consider and sit in an appeal. The judgments relied on by the learned SPP-II is not applicable to the facts of this case. The provisions of KCOCA and the applicability of KCOCA shall be considered at the time of granting bail and it cannot be a ground for cancellation of bail. It is further contended that accused No.11 was arrested on 06.05.2020 and was released on bail on 2.7.2021. The Special Leave Petition before the Hon'ble Supreme Court was filed on 20.09.2021 and after lapse of 10 months, the SLP came to be dismissed. The accused was on bail after the arrest of three years, there is no violation of conditions of bail to cancel the bail. Hence, prayed for dismissing the petition. In support of his contentions, the learned counsel relied upon the various judgments of the Hon'ble Supreme Court.

16.The learned counsel for respondent No.2 i.e. accused No.14 also filed statement of objections contending that the petition filed by the State is devoid of merits, false and incorrect grounds and liable to be dismissed. It is further contended that respondent No.3-complainant filed FIR and a case was registered and the charge sheet was filed for the offence punishable under Section 302 of

IPC and for the offences punishable under provisions of Atrocities Act. The statement made under Section 164 Cr.P.C. by Raju, Prashant, Kiran Ullagaddi, Kiran Shankar Kadatti shows that the accused were involved and therefore, invoking the provisions of the KCOCA Act is bad in law. There is no prima facie offences alleged against accused No.14 and this accused is not connected to accused No.1 and 2 and not involved in any offences. The case in Crime No.13/2022 was registered by the police on the complaint of wife of the deceased on 24.03.2022 and the notice was served on the accused on 18.09.2022 and took six months for enquiry, but this accused approached the court and obtained the bail. The said complaint is filed against the unknown persons and not against this accused. The name of this accused is shown as accused No.14 in Crime No.13/2022, only for abetment. There is no whisper in the FIR about the 'Tiger Gang'. The application is filed on the assumption and presumption on the baseless allegations. Accused No.21 against whom the charge sheet is filed was on bail and two more accused were also seeking bail. Therefore, the cancellation of bail is not required. Accused No.14 is not guilty of the other cases and he was acquitted in other cases and therefore, the bail cannot be denied in this case. Accused No.14 has been falsely named as rowdy sheeteer in the list. He is regularly attending the Court and he has not misused the bail. Hence, prayed for dismissing the petition.

17.The learned counsel appearing for the de-facto complainant has supported the petitioner-State and has seriously argued for cancellation of bail and also opposed the bail application of accused No.10 and 16 in all the three petitions.

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

The points that arise for consideration is :

(i) Whether accused No.10 and 16 in Criminal Petition No.103679/2023 and Criminal Appeal No.100393/2024 are entitled for bail ?

(ii) Whether the petitioner-State has made out sufficient grounds in Criminal Petition No.102842/2024 for the cancellation of bail granted to accused Nos.11 and 14 in Criminal Appeal Nos.100093/2021 and Criminal Appeal No.100089/2021 dated 02.07.2021 ?

(iii) What Order ?

19.On perusal of the records which reveals that the de- facto complainant-C.W.1 namely Deepak Ingalagi, filed first information to the Gokak Police alleging that he himself and the deceased Siddappa Kanamaddi, who was the State Youth President of Sangarsha Samithi, and accused No.1 - Gangadhar Shinde and his associates had rivalry with the deceased in respect of the murder of one Rohith Patil, thereby there was community clash between Scheduled caste and Maratha community and some cases were registered by the police. On this background and on 06.05.2020 at 8.00 p.m. when himself and the deceased Siddappa along with Kiran Shankar Kadatti, Raju Huchchannavar, Prashant patrut were sitting at Katta of Hanuman Temple, Jambav Nagar, the deceased was speaking over phone. At that time, the accused Nos.1 to 3 and other accused persons came on two wheeler and in auto rickshaw by holding deadly weapons and started assaulting the deceased by

abusing in filthy language and by taking caste name as "Holeya Sule Magana, Ninnannu bidangilla". When the de-facto complainant and others tried to save the deceased, the accused persons threatened them with dire consequences and the accused persons prevented the public from rescuing the deceased. It is seen from the charge sheet that the public started pelting the stones on the accused persons and at that time, they ran away from the spot. The injured shifted to the hospital wherein the de facto complainant lodged the complaint. Initially, the police registered the case under Section 307 of IPC along with Sections 143, 147, 149, 158, 150 and 149 of IPC along with SC/ST prevention of Atrocities Act, during the treatment the deceased said to be given some oral dying declaration which was recorded in the mobile phone and later he succumbed to the injuries. Hence, the police invoked Section 302 OF IPC. Thereafter, during the investigation the police also invoked Sections 3 and 4 of KCOCA and finally, the police filed charge sheet for the offences punishable under the IPC, SC ST (Prevention of Atrocities) Act and KCOCA Act and Arms Act. During the investigation, the police also arrested accused persons and they have been remanded to judicial custody. The bail application of accused Nos.11 and 14 has been allowed by the High Court. The same was challenged before the Hon'ble Supreme Court by filing an SLP. Accordingly, the Apex Court directed the State to file an application for cancellation of the bail before this Court. Hence, the State has filed Criminal petition 102842/2024 for cancellation of bail granted to accused NOs.11 and 14.

20.The learned counsel appearing for accused No.10 and Learned senior counsel appearing for accused No.16 contended that the accused persons are all in jail for last 4 years, there were 250 witnesses have cited by the police . Trial very recently commenced, it takes much time for concluding the trial, therefore keeping them in jail will not serve any purpose and it is nothing but pre trial punishment and the allegation against them is that they have harboured the other accused persons while they were committing the offence. The accused no.16 already enjoyed the interim bail granted by the Hon'ble Supreme Court and Subsequently as per the direction for the Hon'ble Supreme Court he has surrendered before the trial court and seeking fresh bail. The allegations are not serious one, there is no other cases registered against them. The KCOCA act invoked by the police but they do not belong to the 'Tiger Gang'.

21.Per contra, the SPP has contended the accused No.10 and 16 were the gang members of the 'Tiger Gang' they are terrorising the local town by collecting the haftha committing robbery, murder, extortion etc. There were 44 cases registered against the said gang different accused persons involved in different cases. The trial is already begun, PW1 examined and one or other reasons, the accused persons files applications Interlocutory Applications and delay the proceedings, there is no fault on the part of the prosecution in delaying the process. These accused persons conspired with the main accused persons and involved in the commission of murder. There are various witnesses stated that the accused persons used to collect the haftha from the traders / business people from North India. They have fear of filing the complaint against the petitioner and now the complaint has been registered, they came forward and given statements against the accused persons and some of the accused persons already challenged the KCOCA Act and petition was dismissed by the coordinate bench of the high court. Therefore, prayed for rejecting the petition.

22. On perusal of the records, especially, the charge sheet filed by the police, it reveals that the accused persons involved in committing the murder of the deceased Siddappa Arjun Kanamadi, who is also said to be the member of SC/ST community, and the accused used deadly weapons for the commission of murder of the deceased in respect of previous enmity. During investigation, it was revealed that the accused persons and other petitioners were all the members of the gang called 'Tiger Gang'. They were involved in various offences and collecting Hafta by extortion, committing robbery, theft, assault and other offences. Therefore, the police have invoked the offence punishable under the provisions of KCOCA. Learned counsel for the petitioner- accused No.16 submitted that the offences which attract against the petitioner-accused No.16 are Sections 120-B, 109, 201, 34, 35 and 37 and 149 of IPC apart from KCOCA.

23. As per the charge sheet material, accused No.16 joined the 'Tiger Gang' of accused No.1 in the year 2013, and continuously involved in various offences and some of the victims, due to the fear, have not filed any complaint, but they are continuously paying Hafta to this 'Tiger Gang'. Some amount is said to be fixed every month payable to this gang and is being paid by the business people which is seen from the statement of witnesses. It is also revealed from the charge sheet material that after the arrest of accused Nos.1 and 14, they called petitioner-accused No.16 and instructed him to shift the material documents and others where they collected hafta and purchased property, and also by threatening the land owners, they got obtained the sale deeds executed and the documents were removed from the house and kept in the car, which was seized by the police. The learned senior counsel for the petitioners has contended that when the house of the accused was searched, nothing was found, but the accused cleverly kept all the documents including the blank signed cheque of various persons in the car and the car was parked a long way from his house, which was seized by the police under the panchanama. It is also revealed from the charge sheet material that this petitioner involved in the commission of offence along with the main accused persons who are the leaders of the 'Tiger Gang' apart from operating & around in Gokak town. They also involved in the committing the murder of Siddappa Arjun Kanamadi. Therefore, the police have invoked the provisions of the KCOCA.

24. As regards the appellant-accused No.10 in Criminal Appeal No.100393/2024, this appellant-accused also colluded with the other accused persons, especially he is said to be joined 'Tiger Gang' and involved in the commission of the various offences. After the commission of the murder of Rohit Patil, who is said to be the witness in the said case, the appellant involved in conspiracy with the other accused for committing the murder of Siddappa Arjun Kanamadi and he also participated in preparing the sketch for committing the murder along with the other accused persons. The appellant was said to be went in auto rickshaw and he was said to be participated in conspiracy that took place in the godown of accused No.1 - Jagadeesh Devaramaji Choudhari. On the date of the incident, the appellant said to be conspired to commit murder. Accordingly, the murder has been executed by the accused persons. On the date of incident, the appellant was involved in the commission of murder and hence, the police invoked Section 302 of IPC apart from the SC/ST ACT, Arms Act and KCOCA.

25. On perusal of the statement of objections and the statement of witnesses produced by the learned SPP-II, it is seen that C.Ws.47, 48, 79, 101, 103, 114 and 140 were also given statement against

accused No.16 who involved in the commission of the offence, robbery, dacoity and collection of Hafta in the name of the 'Tiger Gang'. As per the document produced by the learned SPP-II as against accused No.16, the statement of C.Ws.2 to 10, 20 and 21, apart from the statement given by the complainant, who is an eyewitness to the incident, it clearly reveals that accused No.10 actively participated in the commission of murder of Siddappa Arjun Kanamadi. He is also the member of the 'Tiger Gang' and along with the main accused persons, he also involved in commission of collecting Hafta, etc. Accused Nos.10 and 16 were continuously having telephone contact with the main accused persons as per the copy of the CDR produced by the learned SPP-II, which shows that these accused persons actively participated in the commission of murder of the deceased as well as conspiracy. Apart from that, they are the members of the 'Tiger Gang', collecting Hafta, extracting money from the general public, business men, agriculturists, and by paying the meagre amount, the sale deed was executed in the benami names, which reveals prima facie case made out by the prosecution against both the accused persons. Though the name of accused No.10 is mentioned in FIR, but it was revealed that he was one of the 'Tiger Gang' members and conspired for committing the murder of the deceased, which revealed in the statement of C.Ws.20 and

21. Apart from that, accused Nos.10 and 16 given confession statement before the Superintendent of Police, where they confessed regarding the commission of the offence. The learned SPP-II has contended that the statement made by the witnesses corroborates with the confession statement made by the accused persons which is admissible under Section 32 of KCOCA. The learned SPP-II has also produced confession statement of accused Nos.10 and 16 where both of them have clearly confessed that they involved in the commission of the offence and the members of the 'Tiger Gang' joined and involved in various criminal activities in Gokak town.

26. This criminal petition is filed by the State for cancellation of bail of the accused Nos.11 and 14 in Crl.P.No.102842/2024 wherein the learned SPP has contended that the accused Nos.11 and 14 were released on bail by granting bail by the co-ordinate bench of this Court vide order dated 02.07.2021. The accused persons said to be threatened the wife of the deceased for withdrawing the complaint and filing application before the Hon'ble Supreme Court for cancellation of bail, though State has moved the application. It reveals from the records, on the arguments of learned SPP a case in Crime No.13/2022 has been registered against the accused Nos.11 and 14 along with the two other accused, where this accused Nos.11 and 14 said to be sent some two persons for threatening the witnesses and thereafter it was came to know this accused persons are abated the accused Nos.1 and 2 in the said crime No.13/2022 for threatening the witness. The said accused as well as the accused No.11 and 14 have approached the High Court for quashing the FIR, which came to be dismissed. Now charge sheet is filed pending before the court in CC No.6685/2023, this is one of the main ground urged by the SPP for cancelling the bail as the accused Nos. 11 and 14 violated the terms and conditions of the bail granted by this court. Another contention raised by the learned SPP that while granting the bail the co-ordinate bench of this court has granted bail holding that there are no previous criminal cases registered against the accused No.11, as required under Section 2(d) of KCOCA Act, and he has only harboured the accused No.2. It is also contended that, an amount of Rs.30,00,000/- has been seized from the accused No.11 under the panchanama. The accused is not income tax payee. Hence, this court has held that mere income tax is not paid, it cannot be said the money collected by him is hafta. On that ground, bail has been granted to the accused No.11. It is also revealed that while

granting the bail to the accused No.14, where it is found that he has amassed money worth of Rs.1.8 crore on a deed writer, a title documents, cheque leafs, and other documents were found in the car of the accused No.14. However, some of the cases registered against accused No.14 where he has been acquitted, therefore there is no incriminating evidence were found on the confession statement of accused No.14 and bail has been granted.

27.Now it is brought to the notice of this court by the learned SPP and from the records it is seen, Rs.30 lakh has been recovered from the accused No.11, he said to be harboured the accused No.2 by keeping in his house and conspiracy was held in his godown and the confession statement made by him is admissible under Section 32 of KCOCA Act. Apart from that as per the grounds urged by the learned SPP there was several cases registered against the accused Nos.11 and 14 and they also said to be in 'Tiger Gang'. As against the accused No.11 a case in 1) Crime No.72/2020 registered by the Gokak Town Police, for the offence punishable under section 504, 506 of IPC, 24(A) of Arms Act, and 2) Crime No.79/2020 where a special case has been registered in Special case No. 202/2020. 3) The crime No.126/2020 in CC.No.8875/2020 registered by the Gokak Town P.S. for offence of 384 of IPC, and other offences were registered 4) A case in crime No.128/2020 registered for the offences 504, 506, 507 of IPC, in Gokak Town Police. 6) Crime No.11/2021 has been registered for 307, 364, and other offences, where kidnap and demanding ransom amount and attempting to commit murder. Therefore it is seen from the record, that the gang belonging to the 'Tiger Gang', where this accused person also involved in the crimes along with other accused persons, where the KCOCA Act, has been invoked by the police.

28.As regards to the seizer of the huge cash from the accused No.11, documents, title deeds, cheque leafs, promissory notes, all records from the accused No.15. The involvement of the accused persons in the various criminal cases registered against their gang, they are part of organized group. They involved in various activities like robber, murder, attempt to murder, kidnap, extortion, theft and other cases where is found the gang is operating in the Gokak Town called as 'Tiger Gang', it is revealed from the prosecution witnesses. The statement of witnesses especially CW.55, CW.185, CW.186, CW.187, CW.188, CW.189, CW.190, CW.191, CW.192, CW.193 all reveals the extortion made by the accused persons collecting hafta from the business people and the said documents was seized from the car of the accused No.14.

29.Some of the accused persons also approached the co-ordinate bench of this court by filing the 482 petition for quashing the proceedings under KCOCA Act, by taking the grounds that accused No.6 - Vinod filed W.P.103607/2021 (GM-RES), where the police challenged the invoking of KCOCA Act, which came to be dismissed by the co-ordinate bench vide order dated 23.02.2022. Another accused also challenged the same which came to be dismissed in Cri.P.No.100682/2021 dated 23.02.2022.

30.Though the counsel for the respondent Nos.1 and 2 has seriously contended that the bail has been granted, they enjoyed bail for 4 years, the trial yet to be commence, it take much time for disposal of the case and it is also stated there is no violation of condition of bail but the contention of the counsel for the accused Nos.11 and 14 cannot be acceptable, since these accused persons involved in threatening the wife of the deceased, a case was registered in crime No.13/2022 and they

have also challenged for FIR which came to be dismissed and now the case is pending before the court, now they sent two persons for threatening the witness. That apart it is also seen from the records that the accused No.20 the jail warden, who helped the accused by giving his mobile phone for contacting these accused persons, where these accused persons are trying to destroy the evidence, misplaced the documentary evidences. Therefore it cannot be said they have not violated any conditions of the bail order. And looking into the fact of the case, where the offences alleged against the accused persons are very serious, where they involved in various cases almost more than 40 cases by this 'Tiger Gang'. And after the arrest and registering the case against them, the crime rate in the Gokak Town came down to 50%, which reveals most of the crimes were committed by this petitioners/accused persons.

31.As per the submission made by the learned SPP-II the witnesses having fear giving statement against this accused and in order to conduct the fair trial, this accused persons shall be kept in jail, otherwise none of the witnesses come forward for giving evidence in favour of the prosecuting case. That apart it is also seen from the record, when accused Nos.1 and 2 were arrested, the other accused persons once again went to the business people, they have threaten the business people, collected Rs.5 lakh for the purpose of getting the accused Nos.1 and 2 release on bail, which reveals in respect of arrest of accused persons they involved in committing the offence, collecting the haftas by threatening the witnesses. Therefore most of the Gokak Town business people were afraid of this accused persons and this 'Tiger Gang'. Such being the case though this court has granted bail on earlier occasion, in view of the changing circumstances where the accused were violated the bail condition and misused the liberty granted to them therefore bail granted to the accused Nos.11 and 14 is said to be set aside.

32.That apart the accused Nos.10 and 16 also involved in the offences, they not only harboured but they have also involved in conspiracy and committed murder, and whole gang is involving in various cases in the Gokak Town and surrounding areas. This court is aware about the bail is a rule and rejection is an exception and this case is not only one murder case and various other 307 cases, extortion cases, robbery cases, registered against them and they are collecting the hafthas from the business people regularly. Therefore the Police have invoked the KCOCA Act, against them. If they released on bail there is every possibility of tampering the witnesses and that apart though the police can give protection for the some of the witnesses for some particular time but most of the business people were running business in the Gokak town, if they release on bail definitely they will commit offences and threaten those witnesses, who was given statement to the police. Therefore in the interest of protecting the witnesses and protecting the public at large in the Gokak Town. The bail of the accused Nos.11 and 14 deserves to be set aside, and accused Nos.10 and 16 also not entitle for the bail.

33.Though it is submitted before the Hon'ble Supreme Court, the trial not yet commenced, the charges were not framed, however Trial Court already framed charges, the P.W.1 was partly examined, the case was adjourned on the request of the accused persons. Therefore I am of the view without going to the citations relied by both the side and very fact of the case this court hold it is not a fit case for granting bail to the accused persons. This court also aware that criteria for granting bail is one thing and the cancellation is another thing, the court is always slow in cancelling the bail until

the material placed on record. If the accused persons for having misused the bail and committing the offences, it is a special case, where the KCOCA Act, has been invoked, the accused persons having organized gang called 'Tiger Gang', they involved in the various offences. Therefore it is not fit case for granting bail to the accused persons.

34. According, I proceed to pass the following order:

(i).The petition filed by the accused No.16 in Crl.P.No.103679/2023 and Crl.A.No.100393/2024 filed by the accused No.10 is hereby dismissed.

(ii).The petition filed by the State under Section 439(2) of Cr.P.C. (U/S. 483(3) of BNSS) in Crl.P.No.102842/2024 is allowed.

(iii).The bail granted by this court as against accused Nos.11 and 14 in Crl.A.No.100093/2021 and 100089/2021 dated 02.07.2021, is hereby cancelled.

(iv).The police is directed to arrest them and committed to judicial custody by producing before the Trial Court.

Sd/-

(K.NATARAJAN) JUDGE CS/AKV/SRK CT:SK