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Court : Karnataka

Decided On : Nov-20-2014

Judge : A.V. Chandrashekara

Appeal No. : CRL.P. No.6399 of 2014

Appellant : Gunapala Shetty and Others

Respondent : State Of Karnataka By Manipal Police Station

Judgement :

(Prayer: Crl.Petition Is Filed U/S.439 Cr.P.C By The Advocate For The Petitioners Praying That This Hon'ble Court May Be Pleased To Enlarge The Petrs. On Bail In Crime No.68/14 Of Manipal P.S., Udupi, For The Offences P/U/S 302 R/W 34 Of Ipc And The Prl. S.J., Udupi Has Rejected The Bail Application In Crl.Misc.No.201/14 On 2.8.14.)

1. Petitioners are accused nos.1 to 3 in a criminal case in Crime No.68/14 on the file of Manipal police station, Udupi District. The offences alleged are punishable under Section 302 read with Section 34, I.P.C. They have been in judicial custody and hence they have filed this bail application seeking regular bail under Section 439, Cr.P.C.

2. Learned Govt. Pleader has vehemently opposed the bail application contending that prima facie case is made out about the involvement of these petitioners in the murder of Sridhar Shetty, resident of Herda, Udupi Taluk. It is alleged that these petitioners had assaulted him with long and chopper on the morning of 18.4.2014 near Murattakadi road. When the wife of the deceased who is the 1st informant went there, deceased was still conscious and told her that these petitioners assaulted him. The allegation is that these petitioners were involved in illegally transporting sand and when her husband objected to it, they are said to have murdered him. The case is registered on 18.4.2014 at 3.30 p.m. on the information of the 1st informant who is the wife of the deceased.

3. Learned senior counsel, Mr.Ashoka Harnahalli representing the petitioners has argued that the petitioners had been admitted in Government Hospital, Udupi, on 18.4.2014 at 8.00 a.m. and they were not at all present at the time when the alleged murder took place. It is further argued that the deceased was already dead by the time the 1st informant went near the scene of occurrence and that she is only a hearsay witness and not an eyewitness. It is further argued that the statements of material witnesses came to be recorded belatedly and therefore this is a fit case in which discretion could be exercised under Section 439, Cr.P.C.

4. Perused records inclusive of the case diary.

5. The 1st informant lodged by Leela Shetty, wife of the manager at 3.00 p.m. on 18.4.2014 before the respondent police station that some unknown persons contacted her daughter at 10.45 a.m. on 18.4.2014 and told her that Sridhar Shetty was lying near Murattakadi road and hence he wanted them to go there quickly. Suddenly the 1st informant and her daughter went in an auto to the place and found Sridhar Shetty lying by the side of the said road. On enquiring as to what happened, he is said to have told them that these accused assaulted him in the morning and that he would not survive and wanted them to give him water. She gave him water and while she was treating him, he breathed his last. She has specifically stated that the cause for the murder of her husband was due to the objection raised by him in regard to illegal transportation of sand by these accused.

6. The case of the petitioners as set out in paragraph 6 of the petition is that at 8.00 a.m. on 18.4.2014, when Shalini Shetty, wife of 2nd petitioner, was walking by the side of Swarna river, she was humiliated by Sridhar Shetty and two others; when she cried for help. Sridhar Shetty and his companions kicked and assaulted her, on account of which they had to get themselves admitted in Government Hospital as in-patient. To their shock, they came to know that Sridhar Shetty died near his house as a result of injuries and these petitioners have been falsely implicated for his death. The relevant paragraph at page 3 of the petition is extracted below:

'The petitioners case is that they have not committed any such offence nor assaulted the informant's husband Sridhar Shetty and on the other hand on 18/4/2014 at about 8-00 AM when the wife of second accused Smt. Shalini Shetty was walking on the side of Swarna River, she was humiliated and assaulted by the said Sridhar Shetty and when the 2nd petitioner's wife cried for help the said Sridhar Shetty and two unknown persons have kicked and assaulted petitioner No. 2 and 3. On account of such assault by Sridhar Shetty, they have admitted to Government Hospital, Udupi for medical treatment and they were inpatient in the hospital and to their shock and dismay, the petitioners came to know that the said Sridhar Shetty had died near his house as a result of injury as a result of which, the petitioners was attempted to implicate as responsible for the death of said Sridhar Shetty.

7. On a pleading of the contents of paragraph 6 of the petition, it is evident that the petitioners want to rely on the plea of alibi. Such plea is a special plea which requires to be probablized by the accused at the time of trial. At the time when the alleged murder took place, CW5-Sampathkumar Shetty and CW6-Basavaraj were present. Their statements have been recorded not only under Section 161, Cr.P.C. but also under Section 164, Cr.P.C. Statements recorded before the magistrate disclose that on 18.4.2014 at 7.00 a.m., he, i.e. Sampathkumar Shetty went near the house of his owner- Prashantha Shetty and informed him that some stones had been put on the road leading to the river. Prashantha Shetty is said to have asked him to bring the lorry. Santhosh was driving the lorry in which Sampathkumar Shetty was travelling with loaders-John and Basavaraj and one

Ashoka Shetty, a friend of Prashantha Shetty. When they reached the spot where the road was blocked by keeping stones, there was exchange of words between Sridhar Shetty and his owner-Prashantha Shetty. At that time, Prashantha Shetty took out a chopper kept in his vehicle and Ashoka Shetty took an iron rod and got down from the lorry and both of them started assaulting Sridhar Shetty. By that time, Gunakar, another friend of Prashantha Shetty also came there. Because of the assault by Prashantha Shetty and Sshok Shetty, Sridhar Shetty fell down and after some time, these witnesses brought the lorry back to the house of the owner-Prashantha Shetty. He came to know at about 2.00 p.m. that Sridhar Shetty was dead.

8. The statement of CW6-Basavaraj who was also working under Prashantha Shetty discloses that his owner-Prashantha Shetty had told him to bring a tipper near the river. Loader-John told Prashantha Shetty that a few stones had been kept across the road to which the latter replied that he would remove them and asked John to bring the tipper. The driver of the vehicle-Santhosh drove the vehicle near the river along with John, Sampathkumar Shetty and Ashoka Shetty. When they reached the spot where the road was blocked, there was exchange of words between Sridhar Shetty and Prashantha Shetty. Prashantha Shetty took out a katti kept beneath the driver's seat and Ashoka Shetty took out an iron lever and both of them started assaulting him. Being afraid of the same, these witnesses ran towards the house of Prashantha Shetty and Santhosh parked the vehicle. According to him, the incident took place at 8.10 a.m. Later John, Sampathkumar Shetty and Ashoka Shetty went back to their respective houses. Later he learnt that Sridhar Shetty was dead.

9. What is argued before this court by the learned senior counsel for the petitioners is that the statements of these material witnesses have been recorded almost four days after the alleged incident and therefore much credence cannot be attached. This court is unable to accept the contention for the simple reason that the credibility or otherwise of these witnesses could be considered during the course of hearing arguments after conclusion of trial. The fact is that these material witnesses are none other than persons working under accused Prashantha Shetty. It is too premature to disbelieve the contents of the statements

given by them under Section 164, Cr.P.C. before a responsible judicial magistrate.

10. Medical records would disclose that the death was due to homicide and that deceased had sustained as many as 30 injuries inclusive of severe head injury. On internal examination, the doctor who conducted post mortem found multiple petechial haemorrhages in the white matter of the brain on cut section; he had sustained a wound measuring 9 cm. x 2 cm. over the head and forehead on the left side situated 7 cms. above and 1 cm. away from the root of the nose. He had sustained several injuries on different parts of the body. The doctor who conducted post mortem has opined that death was due to complications (haemorrhage) as a result of blunt force trauma secondary to assault. He has opined that all the injuries were ante mortem and weapons could cause such injuries.

11. Taking into consideration the totality of the case, it is too premature to disbelieve the prosecution case at this stage. Hence petitioners are not entitled to be released on bail at this stage.

12. In the result, the bail petition filed under Section 439, Cr.P.C. is dismissed. Whatever observation is made shall not influence the judge dealing with the case on merits and the observations made in this order is to the limited extent of disposing of the bail application.

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