

Mahadeva Vs. The State of Karnataka

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Court : Karnataka

Decided On : Oct-07-2014

Judge : A.V. Chandrashekara

Appeal No. : Criminal Petition No.4583 of 2014

Appellant : Mahadeva

Respondent : The State of Karnataka

Judgement :

(Prayer: Crl.P Filed U/S. 439 Cr.P.C By The Advocate For The Petitioner Praying That This Hon'ble Court May Be Pleased To Enlarge The Petr. On Bail In Crime No.252/13 Of K.R.Pet Town P.S., K.R.Pet, Mandya, For The Offences P/U/S 302, 212, 324 R/W 34 Of Ipc.)

1. Present petition is filed under Section 439 of Cr.P.C. seeking regular bail by accused No.3-Mahadeva and a case came to be registered against five persons in Crime No.252/2013 on the file of K.R.Pet Police Station for the offences punishable under Sections 143, 147, 148, 302 IPC read with Section 149 of IPC.

2. The present petitioner is in judicial custody. Bail application filed by him before the jurisdictional Sessions Court at Srirangapatna, has been rejected by a considered order dated 02.06.2014 in Crl. Misc. No.5248/2014. Hence present petition is filed under Section 439 Cr.P.C.

3. Perused the petition papers.

4. Learned High Court Government Pleader has vehemently opposed the bail application on the ground that prima facie evidence is available against this petitioner relating to his participation in the alleged crime. It is his case that incriminating materials have been recovered by the Investigating Officer from this petitioner and this additional circumstance has to be taken into consideration.

5. Having heard the learned counsel appearing for the petitioner and the learned HCGP, following point arises for consideration of this Court:

"Whether the petitioner is entitled to be released on bail under Section 439 Cr.P.C. at this stage ?"

6. On the basis of a complaint lodged by one Kumara S/o Shivanne Gowda, a case came to be registered against five persons inclusive of the present petitioner for offences punishable under Sections 143, 147, 148 and 302 IPC read with Section 149 of IPC in Crime No.252/2013 on the file of K.R.Pet Town Police Station of Mandya District. On completing the investigation, the Investigating Officer has filed chargesheet against all the five accused whose names find a place in the First Information Report.

7. The case of the prosecution is that at about 8.30 a.m. on the morning of 08.09.2013 in front of the electrical shop of Ramdev in KBC Complex of K.R.Pet Town police Station, the petitioner along with other four accused assaulted Bhaskar. It is specifically alleged that the assault was done with sickles and iron rod. The said assault is stated to have been done in the light of a criminal case being registered against the deceased Bhaskar in Crime No.191/2011 for the offences punishable under Sections 143, 147, 148, 504, 324, 407 IPC read with Section 149 IPC.

8. It is specifically alleged that one Koushik @ Putta was waiting with his Hero Honda Passion bearing No.KA-05/E-3654. At that time, accused Nos.1 and 3 came there in an Omni Car bearing No.CTO-9995 holding knife and they assaulted the deceased Bhaskar on his left chest, stomach and other vital parts of

the body. Accused No.1 is stated to have assaulted the deceased with a chopper on his hand. The deceased Bhaskar tried to rescue himself by barging into the shop of Ramdev. At that time, CW2 who was looking after the said shop tried to rescue Bhaskar from being assaulted by the accused, but accused No.1 is stated to have assaulted CW2 with a chopper and thereby CW2 sustained injury on his left palm. As a result of the assault done by accused Nos.1 to 3, Bhaskar sustained severe injuries on his neck, hands and other parts of the body and there was severe bleeding. Thereafter, the accused person fled from the spot in the Maruti Car and the Hero Honda bicycle was taken by accused No.5.

9. Learned counsel for the petitioner has vehemently argued that accused Nos.4 and 5 against whom similar allegation of assault is made have already been released by the jurisdictional Sessions Court and applying the principle of parity, the present petition is to be allowed and accused No.3 is to be enlarged on bail.

10. Learned Government Pleader has vehemently argued that the case on hand discloses about the clear participation of accused No.3 in assaulting Bhaskar and that the incriminating materials i.e., blood stained cloth and weapon have been recovered from accused No.3 under Section 27 of the Evidence Act and the said recovery is stated to be based on a confessional statement made under Section 27 of the Evidence Act.

11. The first information lodged by Swamy who was working in Ramdev Electric Shop discloses the participation of all the accused. The first information was lodged at about 11.15 a.m. on 08.09.2013 and the first information report was lodged before the Jurisdictional Magistrate without undue delay at about 12.30 p.m. on 08.09.2013.

12. What is argued by the learned Counsel for the petitioner is that the statement of the eye witness does not disclose about the names of persons who actually assaulted the deceased. But there is consistency in the statements of other witnesses insofar as the participation of accused Nos.1 to 3 is concerned. It is too premature to disbelieve the statements of those witnesses who have named this accused.

13. Taking into consideration the circumstances under which the alleged incident is stated to have taken place and the ghastly incident that took place in the broad day light in a town, this Court is not inclined to exercise the discretionary power vested under Section 439 Cr.P.C.

Accordingly, the bail petition is rejected.

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