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Mohan Vs. State of Karnataka

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Court : Karnataka

Decided On : Nov-07-2016

Judge : R.B. Budihal

Appeal No. : Criminal Petition No. 6399 of 2016

Appellant : Mohan

Respondent : State of Karnataka

Judgement :

(Prayer: This Criminal Petition is filed under Section 438 Cr.P.C Praying to Enlarge the Petitioner on bail In the event of his Arrest In Cr.No. 128/2016 of Yesalur P.S., Hassan for the offence P/U/S 114, 143, 147, 148, 341, 427, 324, 302 R/W 149 of IPC and Section 3(1)(X) of SC/ST (POA) Act.)

1. This petition is filed by the petitioner / accused No.11 under Section 438 of Cr.P.C. seeking anticipatory bail, to direct the respondent-police to release the petitioner on bail in the event of his arrest for the offences punishable under Sections 114, 143, 147, 148, 341, 427, 324, 302 read with Section 149 of IPC and Section 3(4)(X) of Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989, registered in respondent police station Crime No. 128/2016.

2. Brief facts of the prosecution case are that accused No. 15 indulged in extracting and transporting the sand illegally from Hemavathi River bed. In this regard, accused Nos. 1 to 14 suspecting that victim-Ajay Sathpal, Manjunath and

Santhosh might have given information to the Police, came and stating that accused No.15 has sent them to commit murder, stopped the vehicle bearing No.KA-18-B-5322, in which victim-Ajay Sathpal, Manjunath and Santhosh were traveling. Thereafter, dragging victim Ajay Sathpal out of the vehicle, committed his murder by assaulting with club and chopper on his neck and other parts of the body and also assaulted Santhosh, who went for his rescue. On the basis of the said complaint, case came to be registered for the above said offences against the present petitioner along with other accused persons.

3. Heard the arguments of the learned counsel appearing for the petitioner/accused No.11 and also the learned High Court Government Pleader appearing for the respondent State.

4. Learned counsel for the petitioner during the course of his arguments has submitted that looking, to the materials there is no allegation against the petitioner that he had assaulted the deceased with deadly weapon and caused his death, He has further submitted that for the similar set of allegations, accused No. 10 has already been granted bail by the order of this Court. Now the investigation is completed and charge sheet has been filed, hence, he has submitted that by imposing reasonable conditions, petitioner may be granted with anticipatory bail.

5. Per contra, learned High Court Government Pleader, during the course of his arguments has submitted that, though there is no allegation that the petitioner assaulted the deceased with deadly weapon, but the two witnesses i.e., C.Ws.2 and 3 i.e., Santhosh and Manjunath, have stated in their statements that along with other accused persons, present petitioner had also dragged the deceased Ajay Sathpal from the vehicle and thereafter, the other accused persons assaulted him with lethal weapons and committed his murder. Therefore, he has submitted that prosecution placed prima-facie material even against the present petitioner also and hence, the petitioner is not entitled for grant of anticipatory bail.

6 I have perused the grounds urged in the bail petition, FIR, complaint and the statement of C.Ws.2 and 3, who are said to be the eye-witness, who said to have travelled along with Ajay Sathpal in the vehicle.

7. Since this petition is filed under Section 438 of Cr.P.C and as one of the alleged offence is under the provisions of SC/ST (POA) Act, I have examined the materials. It is no doubt true that in the complaint it is mentioned that the accused abused the complainant taking the name of the caste by using the word 'Holeya'. There is no specific allegation or averment in the complaint that out of all the accused persons, which accused used the abusive words and hence, the allegations are vague and bald in nature. Therefore, I am of the opinion that the said allegation will not constitute the offence under the provisions of SC/ST (POA) Act as against the petitioner herein. Hence, Section 18. of the, said Act is no bar to entertain the petition for grant of anticipatory bail.

8. Looking to the statements of C.Ws.2 and 3, the only allegation as against the present petitioner is that he along with other accused persons dragged Ajay Sathpal from the vehicle. Except the said allegation, there is no other allegation against the present petitioner. Even there is no allegation against the petitioner that he was possessing any lethal weapon and he assaulted the deceased with such weapon:

9. For the similar set of allegations, when accused No. 10 approached this Court, this Court after considering entire merits of the case, granted bail to accused No. 10. Now the investigation is completed and charge sheet, has been filed. Hence, on the ground of parity, present petitioner is also entitled for grant of anticipatory bail.

10. Accordingly, petition is allowed. The respondent-Police is directed to enlarge the present petitioner on bail in the event of his arrest for the alleged Offence punishable under Sections 114, 143, 147, 148, 341, 427, 324, 302 read with Section 149 of IPC and Section 3(1)(X) of Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989, registered in Crime No. 128/2016, subject to the following conditions:

i. Petitioner has to execute a personal bond for Rs. 1,00,000/- and has to furnish one solvent surety for the like sum to the satisfaction of the arresting authority.

ii. Petitioner shall not tamper with any of the prosecution witnesses, directly or indirectly.

iii. Petitioner has to make himself available before the Investigating Officer for interrogation, as and when cooperate with the further investigation.

iv. The petitioner has to appear before the Concerned Court within 30 days from the date of this order and to execute the personal bond and the surety bond.

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