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Court : Karnataka Kalaburagi

Decided On : Mar-09-2017

Judge : B.A. Patil

Appeal No. : Criminal Petition No. 200868 of 2016

Appellant : Devappa and Others

Respondent : The State of Karnataka, Represented by SPP

Advocate for Pet/Ap. : Sri. Chaitanya Kumar Chandriki

Judgement :

(Prayer: This Criminal Petition is filed under Section 439 of Cr.P.C., praying to release the accused petitioner on bail in Crime No.273/2014 of Shahapur P.S. pending on the file of Sessions Judge at Yadgir in S.C.No.22/2015, which is registered for the offences P/U/Sec. 143, 147, 148, 504, 506, 302, R/W 149 of IPC.)

1. This petition is filed by the petitioners/accused Nos.3, 4 and 7 under Section 439 of Cr.P.C., seeking regular bail in Crime No.273/2014 of Shahapur Police Station, registered for the offences punishable under Sections 143, 147, 148, 504, 506, 302 r/w Section 149 of IPC.

2. Gist of the complaint lodged by one Mr. Subhash father of the victim was to the effect that his son deceased-Venkoba was married to one Smt. Rajeshwari,

daughter of Lalayya Guttedar on 22.03.2014 and prior to his marriage he had a love affair with one Miss. Bhagyashree (CW.12) and complainant had assured members of CW.12's family that marriage of his son Venkoba (deceased) would be performed with CW.12 and on account of their disagreement due to caste differences, said Venkoba had taken CW.12 to Bengaluru and had stayed with her for about one month and had returned back to the village and as such, panchayat came to be convened wherein the family members of CW.12 did not agree to perform marriage of CW.12 with Venkoba and demanded a sum of Rs.11,00,000/- towards marriage expenses and maintenance of CW.12 since she had eloped with Venkoba. It was further stated that though the family members of Venkoba had agree to pay a sum of Rs.11,00,000/- to accused No.1 namely, elder brother of CW.12 in the presence of witnesses, said amount was not paid and family members of CW.12 were posing threats to take away the life of Venkoba as he demoralized them by eloping with CW.12. It was further stated by the complainant that on 23.10.2014 at about 8.00 a.m., CW.10-Sangappa and CW.11-Kantappa had gone to their land for the purpose of sprinkling pesticides and at about 8.30 a.m., they saw deceased- Venkoba along with CW.7-Rangappa and CW.8-Eranna proceeding to the said land by informing the complainant who was standing near Tirumala Krushi Kendra. It is further stated that he saw all accused Nos.1 to 8 proceeding towards his land and when enquired, they informed that they were proceeding to celebrate Deepawali festival and at about 9.30 a.m. he heard screaming voice emerging from his land and noticed that CW.7 and CW.8 who were accompanying Venkoba were running back towards him and on enquiry, he came to know that accused persons with an intention to murder Venkoba had stabbed him with knives. All these amongst other material facts, complaint came to be lodged by the father of the deceased. After conclusion of investigation, jurisdictional Investigating Officer has submitted charge sheet against accused Nos.1 to 8 for the offences punishable under Sections 143, 147, 148, 504, 506, 302, 447 r/w Section 149 of IPC.

3. I have heard the learned counsel for the petitioners and the learned High Court Government Pleader appearing for respondent-State.

4. It is the contention of Sri Chaitanya Kumar Chandriki, learned counsel for the petitioners that the petitioners are innocent, they have been falsely implicated in this case because of the earlier hitch. He would contend that already accused No.8 has been released on bail by this Court vide order dated 12.07.2016 in Criminal Petition No.200779/2016. Accused Nos.4 and 7 also stand in a similar footing. Even on the ground of parity the petitioners are entitled to be released on bail. He would also contend that there is no overt-act attributed against accused No.4. He would further contend that there are 8 injuries over the body of the deceased and the complaint was also against 8 persons. It indicates that all the family members have been falsely implicated in the case. Further, he would contend that so far as petitioner No.2/accused No.4 is concerned, earlier he has filed the bail petition, but the same came was withdrawn by order dated 13.10.2015. Therefore, he prays for allowing the petition by releasing the petitioners on bail.

5. On the contrary, learned High Court Government Pleader appearing for the respondent-State vehemently contended that there are reasonable grounds to believe that the petitioners have taken active part in committing the murder of the deceased. They also stabbed the deceased along with other accused. There are eyewitnesses to the alleged incident. He has also contended that the offences levelled against the petitioners are punishable with death or imprisonment for life. He has further contended that accused No.4 hold the deceased tightly and at that time accused No.2 has chopped his neck. He has contended that there are overt-acts on the part of each of the accused persons, as such this petition is not maintainable. He has also contended that already the previous bail applications filed by the petitioners have been dismissed on merits. No good grounds are made out by the petitioners to release them on bail. On these grounds, he prays for dismissal of the petition.

6. Learned counsel for the petitioners made available the charge sheet material and I have gone through the said material.

7. It is not in dispute that the deceased died due to the injuries sustained in the said galata. It is also not in dispute that earlier, petitioner No.1/accused No.3

approached this Court in Criminal Petition No.201121/2015 and the same was dismissed on 06.01.2016. Under the above circumstances, let me consider whether the petitioners have made out any grounds so as to grant the bail.

8. On perusal of the charge sheet material, especially the statement of Rangappa S/o Ashappa Kalal, who is an eyewitness to the alleged incident, he has specifically stated about the overt-acts of accused Nos.3 and 7. He has stated that accused Nos.3 and 7 assaulted the deceased with knife on the chest and abdomen only with an intention to take the revenge. Even the post mortem report also indicates that the deceased has died because of the said injuries. Be that as it may, so far as petitioner No.2/accused No.4 is concerned, the only allegation is that he has caught hold the deceased tightly and at that time accused No.2 has slit the neck of the deceased with knife. When there is specific overt-act on the part of accused Nos.3 and 7 and their bail applications have been already considered on merits and stand dismissed, under such circumstances, reconsidering the evidence in case of those two persons does not arise. As such, the bail petition so far as petitioner Nos.1 and 3/accused Nos.3 and 7 is liable to be dismissed. So far as petitioner No.2/accused 4 is concerned, the only allegation is that he has tightly hold the deceased. Except that no other over-act has been attributed against him. As such, there is no serious overt-act committed by him. Under such circumstances, I feel that by imposing some stringent conditions if petitioner No.2/accused No.4 is released on bail, it would meet the ends of justice.

9. For the above reasons, the petition against petitioner Nos.1 and 3/accused Nos.3 and 7 is dismissed and the petition in respect of petitioner No.2/accused No.4 is allowed and he is ordered to be released on bail, subject to the following conditions:

i) Petitioner No.2 shall execute a personal bond for a sum of Rs.2,00,000/- (Rupees Two Lakhs Only) with two solvent sureties for the likesum to the satisfaction of the jurisdictional Court;

ii) Petitioner No.2 shall not tamper with any of the prosecution witnesses directly or indirectly;

iii) Petitioner No.2 shall make himself available to the Investigating Officer as and when required;

iv) Petitioner No.2 shall appear before the trial Court on all the dates of hearing without fail.

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