

Appu @ Ashoka Vs. The State By

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Court : Karnataka

Decided On : Sep-23-2020

Judge : K.Somashekar

Appeal No. : CRL.P 3912/2020

Appellant : Appu @ Ashoka

Respondent : The State By

Judgement :

1 R IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE23d DAY OF SEPTEMBER, 2020 BEFORE THE HONBLE MR. JUSTICE K.SOMASHEKAR CRIMINAL PETITION No.3912/2020 BETWEEN: Appu @ Ashoka, Aged 41 years, S/o Murthy, R/at #80, Behind MP Factory, Sujana Nagara, Kavalbailsandra, Bangalore-43. Petitioner (By Sri. Karunakara P., Advocate) AND: The State by P.S.I. of K.R.Pura Police Station, Represented by the State Public Prosecutor, High Court of Karnataka, Bangalor - 560001. ... Respondent (By Smt. Rashmi Jadhav, HCGP) This Criminal Petition is filed under Section 439 of Cr.P.C. praying to enlarge the petitioner on bail in Cr.No.107/2019 (S.C.No.1286/2019) of Hennur P.S., 2 Bangalore for the offence P/U/S302 326, 341, 504, 506, 323 read with 34 of IPC. This Criminal Petition coming on for Orders, through video conferencing this day, the court made the following:

ORDER

Heard learned counsel for the petitioner and learned HCGP for the respondent-State through video conferencing. Perused the records.

2. This petition is filed by petitioner/accused No.2 under Section 439 of Cr.P.C. in SC.No.1286/2019 arose in Cr.No.107/2019 of Hennur police station for the offences punishable under Sections 302, 326, 341, 504, 506, 323 read with 34 of IPC. The accused is in judicial custody since from the date of his arrest. Therefore, the learned counsel for the petitioner is seeking for enlarge the accused on regular bail among the grounds urged therein. 3

3. It is stated in the complaint that on 20.04.2019, the complainants son namely John Rakesh went to the Rajeshwari Bar along with his friend namely Vinod in order to attend plumbing work. When the deceased was doing plumbing work, accused Nos.1, 3 and 4 were having drinks at the Bar and accused No.1 spit to the deceased John Rakesh. When the deceased questioned the accused, accused persons picked up quarrel with the deceased and abused him with filthy language. Thereafter, accused No.1 summoned accused Nos. 2 to 5 to the Bar and accused No.2 came there and assaulted the deceased with beer bottle on the head, as a result, the deceased sustained injuries and fell down unconsciously. Immediately the complainant went to the spot of crime and took him to Vijayalakshmi Hospital, thereafter got admitted the deceased to the Bowring Hospital and on the suggestion of the doctor of Bowring Hospital, the deceased was shifted to NIMHANS Hospital where the deceased died on 4 21.04.2019 while he was on treatment. Subsequent to the death of the deceased, the complainant who is none other than the father of the deceased lodged a complaint against the accused persons before the respondent police. Based upon the complaint, the case in Cr.No.107/2017 came to be registered by Hennur Police for the offences punishable under Sections 302, 326, 341, 504, 506, 323 read with Section 34 of IPC. The police have arrested the accused and produced the accused before jurisdictional court and the accused were remanded to judicial custody. The petitioner has filed bail application in S.C.No.1286/2019 for the aforesaid alleged offences and the same came to be rejected. Hence, the learned counsel for the petitioner has filed this petition seeking for regular bail.

4. Learned counsel for the petitioner during the course of his arguments has contended that there is no specific overt-act attributed against the petitioner. 5 C.W.2 is alleged to have been the eye witness to the incident was a close friend of the deceased and present at the spot of crime while incident was happened. However, the complaint was not registered by the C.W.2 though the incident had taken place around 1.45 pm on 20th April 2019. On the next day morning, the complaint was lodged by the complainant which is within city limits of Bangalore and very near to the police station. The statement given by the eye witness is not voluntary and the same is given at the behest of police. The learned counsel for the petitioner has further contended that the accused is an innocent and he has not committed any offence as alleged in the complaint and he has been falsely implicated by the complainant and the police. The investigation is completed and the charge sheet has been filed and the petitioner is in judicial custody from 22.04.2019, therefore, further custody of the petitioner is not required for the prosecution. The co-accused in S.C.No.1286/2019 have 6 already been enlarged on bail. Those accused as well as this accused stood in the similar footing. Hence, on the parity ground, this accused also deserves for bail. The learned counsel for the petitioner further contends that the petitioner is a permanent resident of Bengaluru and hails from a respectable family. The petitioner is ready to abide by any terms and conditions imposed by this Court. On these grounds, the learned counsel prays for bail.

5. Per contra, learned HCGP appearing for the State has taken me through the role made by this petitioner in respect of the crime and specifically contends that this accused alleged to have assaulted the deceased by means of beer bottle by choosing vital part of the head of the deceased. He further contends that when the deceased was doing plumbing work in the Rajeshwari Bar, accused No.1 spit at the table and the same was spreading on the table of deceased. When the 7 deceased objected for the same, there was some altercation took place between them and accused No.1 secured accused Nos. 2 to 5 to the Bar. Then, this accused assaulted the deceased with beer bottle on the head and caused injuries and other accused also alleged to have trampled the deceased. As per the charge sheet, it is alleged that due to the head injuries which is said to have been caused by the accused No.2, the deceased died due to fracture of skull bone resulting in

hemorrhage. Hence, the petitioner is not entitled for bail. If the accused is to be released on bail, certainly he would come in the way of the prosecution case and destroy the evidence. Hence, the learned HCGP seeks for dismissal of the bail petition.

6. Having regard to the facts and circumstances of the case and the strenuous contention taken by learned counsel for the petitioner as well as learned HCGP, it is relevant to state that on filing of the 8 complaint by the complainant, the case in Crime No.107/2019 came to be registered against the accused for the offences punishable under Sections 302, 326, 341, 504, 506, 323 read with 34 of IPC. On perusal of the charge sheet materials, it is alleged that on 20.04.2019, the deceased John Rakesh went to the Rajeshwari Bar along with his friend namely Vinod in order to attend plumbing work. When the deceased was doing plumbing work, accused Nos.1, 3 and 4 were having drinks and accused No.1 spit on the table and the same was spreading towards the table of deceased. When the deceased objected for the same, there was some altercation took place between them and accused No.1 secured accused Nos. 2 to 5 to the Bar and accused No.2 came there and assaulted the deceased with beer bottle on the head, as a result, the deceased sustained head injuries and fell down unconsciously. On 21.04.2019, the deceased died at NIMHANS hospital while he was on treatment. It is relevant to note here 9 that C.W.2-Vinod who is none other than the friend of the deceased being an eye witness to the incident, was present at the time of incident and he informed about the crime to the father of the deceased over phone. But he did not make any endeavours to file a complaint before the police though the police station is within the city limits and nearest. Further, neither the manager of the Rajeshwari bar nor any other person who were present at the spot of crime have lodged a complaint against the accused. The only allegation against this accused is he was called by the accused No.1 over phone to the Rajeshwari Bar and he came there and assaulted the deceased by means of beer bottle. It is important to note here that, when the altercation took between the accused No.1 and the deceased, he was not present at the spot of crime, later allegedly he came there and assaulted the deceased by means of beer bottle. As such, there is no specific overt-act attributed against the petitioner as contended by the counsel. It is 10 true that the complaint has been filed by the father of the deceased on the

next day but this accused is in custody since from the date of his arrest. The statement of C.W.2 have been recorded and cited him as an eye witness in the charge sheet but at this stage, it cannot be taken in detail in respect of the fact narrated in the statement during investigation before the IO. But in the instant case, the co-accused has already been released on bail by the concerned Court imposing certain stringent conditions. Therefore, on the ground of parity, this accused is also deserving for bail as this accused stands on the same footing as that of other accused persons. Moreover, the investigation has already been completed and the charge sheet has been filed. The petitioner is in custody from 22.04.2019. Therefore, at this stage, it does not require any detailed discussion while considering the bail petition filed by the petitioners, as there are substances in the contention of 11 the learned counsel for the petitioners seeking for the relief of bail.

7. Whereas, the learned HCGP submits that if the petitioner is supposed to be released on bail, certainly he would come in the way of prosecution case and would destroy the evidence. However, this apprehension expressed by the learned HCGP could be curtailed by imposing certain suitable conditions to safeguard the interest of the prosecution. Therefore, keeping in view the aforesaid reasons as well as facts and circumstances of the case, I am of the considered opinion that the petitioner deserves for bail. Hence, I proceed to pass the following:

ORDER

The petition filed by the petitioner under Section 439 of Cr.P.C. is hereby allowed subject to the following conditions: i) The petitioner shall execute a personal bond in a sum of Rs.1,00,000/- (Rupees 12 One Lakh only) with like sum surety to the satisfaction of the trial Court where the case in S.C.No.1286/2019 arose in C.C.No.55368/2019 is pending on the file of City Civil and Session Judge, Bengaluru. ii) The Petitioner shall not tamper or hamper the case of prosecution witnesses. iii) The petitioner shall not indulge with any other criminal activities henceforth. iv) The petitioner shall co-operate with the IO during the course of investigation. v) The petitioner shall mark his attendance once in a month in the first week of Sunday as per English monthly calendar between 10.00 a.m. and 5.00 p.m. before the concerned SHO pending disposal of the entire case i.e.,

S.C.No.1286/2019. 13 vi) The petitioner shall appear before the Court of law on all the date of hearing without fail. vii) The petitioner shall not leave the jurisdiction of Bengaluru City without prior permission from the competent court of law. If the petitioner/accused No.2 violates any of the above conditions, the bail order shall automatically stand ceased. Sd/- JUDGE JS/-

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