

Ashoka Vs. State Of Karnataka

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Court : Karnataka

Decided On : Dec-14-2022

Judge : H.P.Sandesh

Appeal No. : CRL.P 10974/2022

Appellant : Ashoka

Respondent : State Of Karnataka

Judgement :

1 R IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE14H DAY OF DECEMBER, 2022 BEFORE THE HON'BLE MR. JUSTICE H.P. SANDESH CRIMINAL PETITION NO.10974/2022 BETWEEN: ASHOKA S/O. LATE BABA, AGED ABOUT44YEARS, R/AT BBC COLONY, HUNSUR TOWN, MYSURU DISTRICT-571 105, PETITIONER (BY SRI HASMATH PASHA, SENIOR COUNSEL FOR SRI KARIAPPA N.A., ADVOCATE FOR M/s.HP UNIQUE & CO.) AND: STATE OF KARNATAKA BY HUNSUR RURAL POLICE STATION, MYSURU DISTRICT-571 105, REPRESENTED BY LEARNED STATE PUBLIC PROSECUTOR, HIGH COURT OF KARNATAKA, BENGALURU. RESPONDENT (BY SRI K.K. KRISHNAKUMAR, HCGP) THIS CRIMINAL PETITION IS FILED UNDER SECTION439OF CR.P.C., PRAYING TO ENLARGE THE PETITIONER ON BAIL IN S.C.NO.76/2022 (CR.NO.313/2021) OF HUNUSUR RURAL P.S, MYSURU CITY FOR THE OFFENCES P/U/Ss.120B, 302, 201 R/W.34 OF IPC. 2 THIS CRIMINAL PETITION HAVING BEEN HEARD

AND RESERVED FOR

ORDER

S ON 30.11.2022 THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

ORDER

This petition is filed under Section 439 of Cr.P.C., seeking regular bail of the petitioner/accused No.2 in Crime No.313/2021 of Hunusur Rural Police Station, Mysuru District, which is numbered as S.C.No.76/2022 on committal and the offences invoked against him under Sections 120-B, 302, 201 read with Section 34 of IPC.

2. This is a successive bail petition. Earlier after filing of the charge-sheet both accused Nos.1 and 2 have approached this Court seeking for regular bail, the same has been considered on merits vide order dated 20.06.2022 in Crl.P.No.4072/2022.

3. The present petition is a successive bail petition filed by accused No.2, wherein, it is contended that the motive is attributed to accused No.1 only that he had illicit relationship with the wife of the deceased. According to CW-5, accused No.1 said to have called the deceased to his land by phone on 27.11.2021 and not by this petitioner. The allegation is also that 3 accused No.1 said to have assaulted with club on head, which is the possible view of cause for death and no overt act is attributed to this petitioner. The recovery of dead body is not at the instance of this petitioner or accused No.1 because the place of burial of dead body was known to the complainant and many villagers, which is mentioned in the FIR. Therefore, the recording of voluntary statements of accused and showing recovery which was already known to many persons and the Police, the same is not admissible. For burial of dead body, there is no material as to presence of this petitioner at the relevant point of time and absolutely no incriminating circumstances against the petitioner. Though previously, the bail petition was considered by this Court, individual role of the petitioner was not considered and therefore, now the petitioner being innocent and no prima facie case, he is entitled for bail.

4. The learned senior counsel appearing for the petitioner reiterated the very same grounds in his arguments and mainly brought to the notice of this Court the mahazar of recovery of dead body. He contended that the same is at the 4 instance of accused No.1 and not at the instance of this petitioner. The learned senior counsel also as directed by this Court produced the missing complaint and placing the same contend that no suspicion in the said missing complaint dated 27.11.2021. Only stated that he left the house at 6 p.m., and not seen. The dead body is also though allegedly recovered but the same was aware where the body was buried prior to arrest of this petitioner. Hence, the petitioner is entitled for bail.

5. Per contra, the learned High Court Government Pleader appearing for the respondent - State would submit that CW.5 lodged a missing complaint. CWs.1 and 2 are the witnesses, who have last seen i.e., on the previous day categorically stated that this petitioner was there along with accused No.1 and deceased Krishna and all of them together consuming alcohol. Apart from that the body is also recovered at the instance of this petitioner and accused No.1, immediately after their arrest. The very contention of the learned senior counsel for the petitioner is that the body was recovered at the instance of accused No.1 only, cannot be accepted. 5

6. The learned High Court Government Pleader appearing for the State brought to the notice of this Court that both this petitioner and accused No.1 led the Investigating Team in the presence of panch witnesses and both of them went in Police Jeep at 4o clock and instructed the Police to stop the vehicle and showed the place where the body was buried and the body was recovered. The chappal and rope were also removed and mahazar was drawn from 16:30 to 18:30 p.m. Hence, it is clear that the discovery at the instance of accused No.1 and accused No.2, and not only at the instance of accused No.1 as contended by the learned senior counsel for the petitioner. The learned High Court Government Pleader also would vehemently contend that there is no any changed circumstance. This Court earlier considered the matter on merits after filing of the charge- sheet and no additional grounds are urged.

7. In reply to the arguments of the learned High Court Government Pleader appearing for the respondent - State, the learned senior counsel for the petitioner relied upon the judgment in the case of Lt. Col. Prasad Shrikant Purohit v. 6 State of Maharashtra reported in (2018) 11 SCC458 wherein, the Apex Court observed that an accused has a right to make successive applications for grant of bail, the Court entertaining such subsequent bail applications has a duty to consider the reasons and grounds on which the earlier bail applications were rejected. In such cases, the Court also has a duty to record the fresh grounds which persuade it to take a view different from the one taken in the earlier applications.

8. The learned senior counsel for the petitioner also relied upon the judgment in the case of Babu Singh and others v. State of U.P. reported in (1978) 1 SCC579 wherein, the Apex Court held that, an order refusing an application for bail does not necessarily preclude another on a later occasion giving more materials, further developments and different considerations.

9. The learned senior counsel for the petitioner also in respect of the discovery is concerned brought to the notice of this Court referring the judgment of the Apex Court in the case of Vijender v. State of Delhi reported in (1997) 6 SCC171 7 wherein, the Apex Court observed in paragraph No.17 that under Section 27 of the Evidence Act if an information given by the accused leads to the discovery of a fact which is the direct outcome of such information then only it would be evidence but when the fact has already been discovered as in the instant case - evidence could not be led in respect thereof.

10. The learned senior counsel also relied upon the judgment in the case of Dataram Singh v. State of Uttar Pradesh and another reported in (2018) 3 SCC22 wherein, the Apex Court observed even if grant or refusal of bail is entirely upon discretion of Judge, it must be exercised in a judicious manner and in a humane way as such remanding hampers dignity of accused howsoever poor he might be. A fundamental postulate of criminal jurisprudence is the presumption of innocence, meaning thereby that a person is believed to be innocent until found guilty.

11. The learned senior counsel also relied upon the judgment of the Apex Court in the case of Sukhvinder Singh and others v. State of Punjab reported in (1994) 5

SCC152 8 and brought to the notice of this Court paragraph Nos.14 and 16 and held that, once the fact has been discovered, Section 27 of the Evidence Act cannot again be made use of to rediscover the discovered fact.

12. The learned senior counsel also relied upon the judgment of the Apex Court in the case of Dinubhai Boghabhai Solanki v. State of Gujarat and others reported in (2014) 4 SCC626 wherein, the Apex Court held that keeping in view the fact that CBI., has submitted the supplementary charge-sheet and that the trial is likely to take a long time, deem it appropriate to enlarge the petitioner/appellant on bail.

13. The learned senior counsel also relied upon the judgment of the Apex Court in the case of State of Haryana v. Jagbir Singh and another reported in (2003) 11 SCC261 wherein, while discussing Section 27 of the Evidence Act comes to the conclusion that the dead body was recovered on the basis of information already known to Police. Hence, Section 27 of the Evidence Act is not applicable in such a case. 9

14. The learned senior counsel also relied upon the judgment of the Apex Court in the case of Makhan Singh v. State of Punjab reported in AIR 1988 SC1705 and brought to the notice of this Court paragraph No.14, regarding recording of statement, since the exclusive knowledge to the appellant cannot be attributed, the evidence under Section 27 also cannot be said to be circumstance against the appellant.

15. The learned senior counsel referring to these judgments would vehemently contend that no material is collected against this petitioner and there is no incriminating material against him. He is also suffering from some medical problem. To substantiate the same, he produced the document at Annexure F.

16. Having heard the respective counsel and also on perusal of the material available on record, the Apex Court held in the judgment, the Court has to see the earlier reasons assigned and also subsequently new grounds are set out has to be considered. If possible to take a different view from the one taken in the earlier petition. It is also not in dispute that if 10 earlier petition was rejected, the Court can consider further developments on different considerations in a successive bail

petition.

17. This Court earlier rejected the bail petition on the ground that the motive for committing the murder that accused No.1 was having illicit relationship with the wife of the deceased. The dead body has been recovered at the instance of accused No.1 and accused No.2, the same is a discovery under Section 27 of the Evidence Act. This Court also has taken note of the statements of CWs.1 and 2, who have last seen witnesses. Apart from that, CW.6, who had dug the pit at the instance of accused No.1 and his statement, was also recorded. Further, it is observed that merely because petitioners are in judicial custody for more than six months cannot be a ground to enlarge them on bail in a heinous offence of committing the murder and taking the life of a person.

18. Now, the main contention of the learned senior counsel for the petitioner is that no recovery at the instance of this petitioner and the body was recovered at the instance of 11 accused No.1 and accused No.2. As rightly pointed out by the learned High Court Government Pleader that the body was recovered at the instance of accused Nos.1 and 2. Though mahazar discloses that accused No.1 led after stopping the vehicle at that time both accused Nos.1 and 2 i.e., this petitioner along with the Police, accused Nos.1 and 2 both led the Police and Panchas in the jeep belongs to the Police and the body was recovered. The main contention of the learned senior counsel for the petitioner is that only body was recovered at the instance of accused No.1 and he led the Police Team. But the very presence of this petitioner along with accused No.1 is also found on perusal of recovery of the body mahazar.

19. The other contention is that Section 27 of the Evidence Act not attracts and already it was aware to the general public as well as the Police in terms of the contents of FIR. In this case, at the first instance, wife had lodged a missing complaint. Subsequently a complaint was lodged by the uncle of the deceased, wherein, also he has suspected the role of this petitioner since he had witnessed this petitioner and accused 12 No.1 since the deceased was also along with this petitioner and accused No.1 on the previous day since all of them are consuming alcohol together. Both CWs.1 and 2, had spoken to accused No.1, at that time.

They have searched him, but he has not found. But suspected that he might have been murdered and buried due to the previous ill-will as there was people known to the illicit relationship of accused No.1 and the wife of the deceased, whose statement was also recorded as CW.5. Twice panchayaths were held and there was a motive to commit the murder. After committing the murder they might have buried the body.

20. Having read the contents of the complaint also, it is very clear that this petitioner was there along with accused No.1 and also the deceased in the previous day and this aspect also has been considered in the earlier bail petition and this Court taken note of the statement of CWs.1 and 2, who have last seen this petitioner along with deceased and accused No.1. Whether it was in the knowledge of others or not and not in the exclusive knowledge of this petitioner is a matter of trial. When the case 13 is rests upon the circumstantial evidence, CWs.1 and 2, who have witnessed this petitioner along with deceased and accused No.1 that both of them were consuming the alcohol in the previous day and within two days of the same, the body was recovered at the instance of this petitioner and accused No.2. The principles laid down in the judgments referred supra are considering the material on record after the evidence while considering the matter on merits with regard to whether it was in an exclusive knowledge or not. Now, the prima facie material discloses that the body was discovered at the instance of this petitioner and accused No.2. Apart from that, CWs.1 and 2 have last seen this petitioner along with the deceased as well as accused No.1, the material is also placed before the Court. In addition to that, CW.6, who dug the pit at the instance of accused No.1 to bury the body, also, given the statement. It is also emerged in the material that during the course of investigation that the deceased was called by accused No.1 and accused No.1 in turn called this petitioner and instructed him to bring the alcohol in furtherance of conspiracy which both of them have conspired to eliminate the deceased. When such materials 14 are available before the Court and when accused No.1 hatched a plan along with accused No.2 to eliminate the husband of CW.5, with the help of JCB machine, dug the pit near the land of accused No.1 and removed the mud from the pit and liquor was also secured through this petitioner and after committing the murder this petitioner and accused No.1 cremated the dead body

in the pit which was dugged through P.W.6. Hence, there is prima facie material to invoke Sections 120-B, 302, 201 read with Section 34 of IPC.

21. This Court would like to rely upon the judgment of the Apex Court in the case of Kumer Singh v. State of Rajasthan and another reported in 2021 CrI.L.J.

4244, wherein, the Apex Court while dealing with the bail matter with regard to sharing of common intention and common object particularly in paragraph No.14 of the judgment held that, it is required to be noted that all the accused are charged for the offences punishable under Sections 302 and 307 read with Section 149 of IPC. At this stage, the individual role of the accused is not required to be considered when they are alleged to have been the part of the unlawful assembly. Merely because they were armed with lathis cannot be a ground to release them on bail, in the facts and circumstances of the case, more particularly when they are charged for the offences punishable under Sections 302 and 307 read with Section 149 of IPC as well as Sections 147 and 148 of IPC.

22. Hence, I do not find any merit in the petition to grant bail in favour of this petitioner in a successive bail petition. No further development has been made out and no different considerations also found to exercise the discretion.

23. In view of the discussions made above, I pass the following:

ORDER

The bail petition is rejected. Sd/- JUDGE cp*

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