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Ganesh Rao @ Rao vs the State of Karnataka

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Court : Karnataka

Decided On : Apr-29-2025

Judge : H.P.Sandesh

Appeal No. : CRL.P/2280/2025

Appellant : Ganesh Rao @ Rao

Respondent : The State of Karnataka

Judgement :

-1-

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 29TH DAY OF APRIL, 2025 BEFORE THE HON'BLE MR JUSTICE H.P.SANDESH CRIMINAL PETITION NO.2280 OF 2025 BETWEEN:

1. GANESH RAO @ RAO

S/O LATE SANJEEV RAO AGED ABOUT 43 YEARS R/AT KUKKERA BETTU, PUTTUR TALUK DAKSHINA KANNADA DISTRICT PRESENTLY RESIDING AT NO.46/3, 1ST FLOOR 8TH A CROSS, ANEPALYA, BENGALURU CITY-560 030. PETITIONER (BY SRI.

SUYOG HERELE E., ADVOCATE) AND: Digitally signed

by DEVIKA M 1. THE STATE OF KARNATAKALocation: HIGH

STATE PUBLIC PROSECUTOR HIGH COURT BUILDING BENGALURU-560 001. RESPONDENT (BY SMT. RASHMI JADHAV, ADDL. SPP) THIS CRIMINAL PETITION IS FILED UNDER SECTION 439 OF CR.PC (FILED U/S 483 BNNS) PRAYING TO RELEASE THE PETITIONER ON BAIL IN CR.NO.86/2020 (PENDING ON THE FILE OF THE LRD. LXIX ADDL. CITY CIVIL AND SESSIONS -2-

JUDGE (CCH-70) AT BENGALURU CITY IN SC.NO.604/2021) REGISTERED BY CUBBON PARK POLICE STATION, BENGALURU CITY FOR THE ALLEGED OFFENCES PUNISHABLE UNDER SECTIONS 302, 201, 114, 120B R/W 34 OF IPC AND SECTIONS 3, 4, 25(1B)(b) AND 27 OF ARMS ACT 1959. THIS PETITION COMING ON FOR ORDERS THIS DAY,

ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE H.P.SANDESH

ORAL ORDER

Heard learned counsel for the petitioner and learned Additional SPP for the respondent-State.

2. This petition is a successive bail petition in respect

of accused No.5 and earlier he had approached this court by filing Crl.P.No.3799/2022 and this court vide order dated 31st May 2022 rejected the same, in coming to the conclusion that this petitioner had purchased 5 Sims and used the said Sims for committing the crime and tower location is also collected by the Investigating Officer. C.Ws.40 and 41 have given the statement with regard to purchase of Sims and when these materials are available before the Court with regard to very involvement of accused and also committing heinous offence of murder by using gun, also taken note of parity as contended by counsel appearing

for the petitioner that accused Nos.6 and 7 were

-3- granted bail and also this court distinguished the overt act allegation and observed that very role of the petitioner is distinct from accused Nos.6 and 7 and rejected the same.

3. Now, learned counsel for the petitioner contend that

this petitioner is in custody from 4 years and only one witness is examined before the Trial Court and when the witnesses appeared before the Court, they were bound over without any reasons and when this fact was brought to the notice of this Court, this Court directed the Additional SPP to verify and submit regarding delay in conducting the trial. Hence, produced the order sheet before the Court and in some of the days, when the witnesses appeared before the Court, evidence was not recorded and it is also noticed that learned Public Prosecutor also sought time on certain occasions. Hence this Court also directed the Director of Prosecution to issue show cause notice to the Public Prosecutor why he has not conducted trial. Learned Additional SPP appearing for the State also placed on record the order passed by the Trial Court, wherein it was certified that Cubbon Park Police kept the witnesses C.Ws.1, 2, 3, 5 and 7 before the Court and C.W.1 was examined before the Trial Court and matter adjourned to

-4- today for examination of C.Ws.2, 3, 5 and 7 and also for cross- examination of P.W.1. Now, counsel would contend that in view of delay in trial, the petitioner is entitled for bail.

4. Learned counsel for the petitioner, in support of his argument relied upon the judgment of the Apex Court in

BALWINDEER SINGH VS. STATE OF PUNJAB AND ANOTHER reported in 2024 SCC ONLINE SC 4354 and counsel brought to notice of this court, in the said case also, accused was in the custody and observation is made that 5 months period stipulated by the High Court will expire at the end of this month, but as noticed earlier, the prosecution

proposes to examine 17 more witnesses and also an observation is made that an accused has a right to a fair trial and while a hurried trial is frowned upon as it may not give sufficient time to prepare for the defence, an inordinate delay in conclusion of the trial would infringe the right of an accused guaranteed under Article 21 of the Constitution.

5. The counsel also relied upon the judgment of the Apex Court in JAVED GULAM NABI SHAIKH VS. STATE OF MAHARASHTRA AND ANOTHER reported in (2024) 9 SCC -5-

813 and brought to notice of this court discussion made in paragraph No.16, when a crime is committed, a variety of factors is responsible for making the offender commit the crime. Those factors may be social and economic, may be, the result of value erosion or parental neglect; may be; because of the stress of circumstances, or the manifestation of temptation in a milieu of affluence contrasted with indigence or other privations. If the State or any prosecuting agency including the Court concerned has no wherewithal to provide or protect the fundamental right of an accused to have a speedy trial as enshrined under Article 21 of the Constitution then the State or any other prosecuting agency should not oppose the plea for bail on the ground that the crime committed is serious. Article 21 of the Constitution applies irrespective of the nature of the crime.

6. The counsel also brought to notice of this Court the

recent judgment of the Apex Court in TAPAS KUMAR PALIT VS. STATE OF CHHATTISGARH reported in 2025 SCC ONLINE SC 322 and brought to notice of this Court paragraph No.8, 9 and 10. It's been now 5 years that he is in judicial custody. The learned counsel appearing for the State has no -6-

idea as regards the time likely to be consumed to complete the recording of the oral evidence. In such circumstances, we are left with no other option but to order release of the appellant on bail. We do not undermined the seriousness of the crime that has been alleged. However, many times, we have made ourselves very clear that howsoever serious a crime may be the accused has a fundamental right of speedy trial as enshrined in Article 21 of the Constitution. The counsel referring

these judgments would vehemently contend that Article 21 enshrines the speedy trial and in the case on hand, trial has commenced now. Hence, the petitioner may be enlarged and bail.

7. Per contra, learned Additional SPP for the respondent-State would submit that this court already

considered the bail petition of this petitioner in Crl.P.No.3799/2022 and having perused the material on record, it is seen that active role is played by this petitioner in committing the murder. Hence, this Court rejected the bail petition of the petitioner earlier. She also would vehemently contend that already trial has been commenced and witnesses are also present before the Court and today also, case is set

down for evidence of prosecution witnesses and cross- -7-

examination of P.W.1. She also brought to notice of this Court charge sheet allegation made against this petitioner that this petitioner purchased Sims and used the very same Sims for locating of the victim and went along with other assailants in the motorcycle and so also, after committing the murder, he took the assailants in his motorcycle and all of them conspired with each other, in order to eliminate the victim and accused No.1 entrusted the work of supari killing to accused No.2 and all of them conspired with each other and eliminated the victim and after committing the murder also, he had thrown machete and also jerkin and the same was recovered and even the pant which he had concealed in his house was bloodstained which belongs to the victim was recovered at the instance of this petitioner and FSL report also goes against the petitioner. Hence, it is not a fit case to exercise the discretion.

8. Having heard learned counsel for the petitioner and

learned Additional SPP for the respondent-State, it is the case of prosecution that incident has taken place on 15.10.2020 and thereafter, this petitioner was arrested on 17.10.2020 and he is in custody from last 4 years. Having perused the material on record and also the witnesses, who are secured before the Trial -8-

Court, but for some reasons, they could not be examined before the Court and there was a delay. Hence, this Court having perused the order sheet also called for explanation from the Public Prosecutor, who is in-charge of the case as to why he did not examine the witnesses and show cause notice was also issued by the Director of Prosecution to the Public Prosecutor and now the Certificate issued by the Presiding Officer is very clear that C.Ws.1, 2, 3, 5 and 7 were present before the Trial Court and the case is set down for today for examination of C.W.2 and so also for cross-examination of P.W.1. Having taken note of the fact that serious allegation of murder is alleged against this petitioner, this petitioner has actively

participated in committing the alleged murder and he purchased Sims and accused No.2 also purchased weapons, in

order to eliminate the victim and when such material is

available on record and recovery is made at the instance of this petitioner i.e., bloodstained pant which belongs to him and also machete and jerkin and the FSL report is also positive regarding seizure of articles at the instance of this petitioner, the petitioner cannot be granted bail. But, the very contention of learned counsel for the petitioner is that keeping the accused

in custody without conducting the trial is against the Article 21 of the constitution. But in the case on hand, already trial has commenced and also in the case referred by the counsel for the petitioner, the accused was in custody for more than five years, but in the case on hand, the accused is in custody from the past 4 years and when there is an allegation that accused persons joined together and conspired with each other and supari killing was entrusted to accused No.2 by accused No.1 and thereafter, accused Nos.3 to 5 carried the supari killing work and shot the victim by using the gun and when such material is available on record and already Trial has been commenced and witnesses are kept before the Court for leading evidence, not a case for exercising discretion each case facts to be taken note of while exercising the discretion. Hence I do not find any changed circumstances, except delay in commencing the trial and on the ground of delay

only, this Court cannot exercise the discretion and Court has to take note of the manner in which the life of a person is taken away. This petitioner had participated in taking the life of person and each overt act of the accused was also stated in the charge sheet in

- 10 - Cl.No.17. Hence, no ground is made out to exercise the discretion in favour of the petitioner.

9. In view of the discussion made above, I pass the following:

ORDER.

The criminal petition is rejected. Sd/- (H.P.SANDESH) JUDGE ST List No.: 1 Sl No.: 32

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