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**Mallappa vs the State**

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**SooperKanoon Citation** : sooperkanoon.com/1852924

**Court** : Karnataka Kalaburagi

**Decided On :** Feb-27-2024

**Judge** : Hemant Chandangoudar

**Appeal No.** : CRL.P/201604/2023

**Appellant** : Mallappa

**Respondent** : The State

**Judgement** :

-1- IN THE HIGH COURT OF KARNATAKA, KALABURAGI BENCH DATED THIS THE 27TH DAY OF FEBRUARY, 2024 BEFORE THE HON'BLE MR. JUSTICE HEMANT CHANDANGOUDAR CRIMINAL PETITION NO. 201604 OF 2023 BETWEEN: MALLAPPA, S/O BHEEMSHAPPA BOGONI, AGED ABOUT 32 YEARS, OCCUAPTION: COOLIE WORK, RESIDENT ALLUR (B), TQ. CHITTAPUR, DIST: KALABURAGI - 585 113. PETITIONER (BY SRI. MARTHANDAPPA MALLESHAPPA ALLUR, ADVOCATE) AND: THE STATE THROUGH CHITTAPUR P.S., REPRESENTED BY ADDL. SPP, HIGH COURT OF KARNATAKA, Digitally signed by B KALABURAGI BENCH - 585 103. K MAHENDRAKUMAR Location: HIGH RESPONDENT COURT OF KARNATAKA (BY SRI. ISHWARAJ S CHOWDAPUR, ADVOCATE) THIS CRL.P. IS FILED U/S. 439 OF CR.P.C PRAYING TO ALLOW THE

CRIMINAL PETITION FILED BY THE PETITIONER U/S 439 CR.P.C. AND RELEASE HIM ON BAIL IN CR.NO. 49/2022 OF CHITTAPUR P.S. NOW PENDING ON THE FILE OF IV ADDL. DIST. AND SESSIONS JUDGE AT KALABURAGI, SITTING AT CHITTAPUR IN SC NO. 498(A), 302 OF IPC, IN THE INTEREST OF JUSTICE AND EQUITY.

THIS PETITION, COMING ON FOR ORDERS, THIS DAY, THE COURT MADE THE FOLLOWING: -2- The petitioner-accused is sought to be prosecuted for the offences punishable under Sections 498-(A), 326 and 302 of IPC.

2. The case of the prosecution is that, the deceased

Bhimbai was given in marriage to the petitioner, about 10 years back, and initially the accused looked after her well for a period of one month, and thereafter, he used to come to house consuming alcohol and pick up quarrel stating that she did not prepared the food properly, and abused her in filthy language, and subjected her to mental and physical cruelty. When the same was informed to the parents, they advised the petitioner not to do so. The deceased was 6 months pregnant, and she came to complainant's house, some 5 days before the

unfortunate incident along with her minor child. On 21.04.2022, at about 3.00 pm. the petitioner came to the house of the complainant, and told him that he would take care of his daughter well, and he would not harass her, and asked to send his daughter along with him. The deceased Bhimbai agreed to go with petitioner, and on the same day, at about 5.00 p.m., the petitioner - accused along with deceased and their younger son Devaraj went to matrimonial home. At about 6.30 p.m., the complainant received information from one Durjanappa-CW.18 over phone, that the petitioner assaulted the deceased Bhimbai over her head with the stick and caused her death.

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3. Heard learned counsel for the petitioner, learned HCGP for the State and learned counsel for the de-facto-complainant.

4. CW.18, in his statement, recorded under Section 161

Cr.P.C, has stated that, on 21.04.2022, at about 5-30 p.m, he saw the deceased filling water, and at about 6.00 p.m., when he returned back, he heard petitioner quarrelling with the deceased in his house. Thereafter, he went to his house, and while returning to the house of the accused, he saw the accused taking his minor children, out of the house, and when he reached near the house, he saw the door was locked with the rod, and when he went inside the house, he saw the deceased lying with bleeding injuries on her head.

5. The entire case of the prosecution revolves on the

statement of CW.18, who is said to have seen the accused taking his son along with him and going out of the house. The burden is on the petitioner to give explanation as to what transpired at the time of incident since he was the only person residing in the house along with minor child. The petitioner is in judicial custody since 24.04.2022, and the trial is yet to commence. The prolonged pre-trial detention will be an anathema to the concept of liberty, as stated under Article 21 of the Constitution of India.

6. The petitioner-accused has made out a Prima facie case to enlarge him on bail. Accordingly, I pass the following: Criminal Petition is allowed. -4- Petitioner is enlarged on bail in Crime No.49/2022,

registered by Chittapura Police Station, in SC No.181/2022, pending on the file of IV Additional District and Sessions Judge, Kalaburagi, sitting at Chittapura, for the offences punishable under Sections 498-(A), 326 and 302 of IPC, subject to the following conditions.

(a) Petitioner-accused shall furnish a personal bond for a sum of Rs.1 lakh with one surety for the likesum to the satisfaction of the jurisdictional Court;

(b) He shall appear before the Court as and when required;

(c) He shall not threaten or allure the Prosecution witnesses in whatsoever manner;

(d) He shall not got involved in similar offences;

(e) He shall not leave the territorial limits of the Trial Court without prior permission of the Trial Court. Sd/- JUDGE MKM CT:SNN

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