

M. Krishnappa and Others Vs. State of Karnataka

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Court : Karnataka

Decided On : Sep-23-1991

Reported in : 1992CriLJ2648

Judge : N.Y. Hanumanthappa, J.

Appeal No. : Crl. Petn. No. 1155 of 1991

Appellant : M. Krishnappa and Others

Respondent : State of Karnataka

Advocate for Def. : C.H. Jadhav, SPP

Advocate for Pet/Ap. : M/s B.R. Nanjundaiah and ;M.R. Nanjundegowda, Adv.

Judgement :

ORDER

1. This is an application filed u/S. 438, Cr.P.C. The offence alleged against the petitioners are u/S. 143, 147, 148, 149 and 302, IPC.

Similar application was filed before the Sessions Court, Kolar which was opposed by the State. Accordingly the Sessions Judge passed an order dated 14-8-91 rejecting the same.

2. Subsequent to filing this petition, the petitioner 9 has been arrested by the police in connection with the above crime. Hence, the application filed by him is

rejected as infructuous.

3. The case of the prosecution is that there was some ill-will between A-1 and the deceased Iragappa in respect of boundary dispute of the land. One C. V. Ramesh Gowda, nephew of the deceased (brother's son) filed a complaint before Malur Police on 6-5-91 at 9 a.m. The allegations made are that there was ill-will between A-1 and the deceased. A-1 had encroached Gomal land which was objected by the deceased on the ground that the said Gomal reserved for burial ground. There were cases and counter cases between both the parties, in CC. No. 341/87 and C.C. No. 661/87. They are filed against some of the accused persons. Even proceedings u/S. 107, Cr.P.C. registered in Crime No. 138/86 also initiated.

4. On 6-5-91 at about 7-40 a.m. accused in furtherance of common object of committing the murder of the deceased went armed with deadly weapons such as clubs, choppers, axes etc., and assaulted the deceased Iragappa as a result, he succumbed to the injuries on the spot.

5. Subsequent to lodging the complaint, police took up investigation, and inquest over the dead body was held. Same was subjected to post mortem examination. Opinion of the doctor is that the death of Iragappa is due to shock and haemorrhage as a result of receiving 18 injuries on his person. Police also recorded statements of several eye witnesses to the incident, viz. Ramesh Gowda, Krishnappa, Rajappa, Pillyya and eight others, whose statement according to the prosecution clearly implicate all the petitioners to the offence alleged. The further case of the prosecution is that petitioners 1 to 4 assaulted the deceased with chopper and others with chopper and clubs. Thus, all together 23 persons committed the offence punishable under S. 302, IPC. Whereas, in the complaint only 23 persons were arrayed. Subsequently in view of the statements given by some of the witnesses implicated A-24 also to the offence alleged.

6. Denying these allegations, Sri. B. R. Nanjudaiah, learned Counsel for the petitioners submits that they are all innocent of the guilt alleged.

(2) A false case has been foisted against the petitioners;

(3) The way in which the accused have been implicated goes to show that the main idea of the complainant and the prosecution is to see all the petitioners belong to three families be subjected to hardship and injury.

(4) A-1 is a physically disabled person, i.e. both his right leg up to knee level and right hand up to elbow level are amputated long ago. As such could not have made use of a 'Machhu' and thus assaulted the deceased so as to cause his death. According to him the story of the prosecution including the eye witnesses of prosecution and the complainant taken is a gospel truth. Overt acts attributed are only against A-1 to A-7. In the case of N. M. Narayanappa v. State of Karnataka reported in 1982 Cri. LJ NOC 57 (Kar). While dealing about the scope of S. 438 with reference to absence of overt act attributed to the accused, wherein it is held as follows :-

'There was a long standing dispute between the accused on the one hand and the deceased and injured eyewitnesses on the other, though all of them inter se were related to each other. The eye-witnesses were going along with the deceased to their village. The eye-witnesses deposed that the accused armed with deadly weapons came in a group from opposite direction and waylaid them and inflicted injuries which proved fatal as far as the deceased was concerned. No overt act was attributed to one of the accused who was an elder brother of another accused who was only present at the time of the assault and had accompanied the other accused. He had for about last four years lost all interest in the worldly affairs and was working exclusively as a devotee of a religious sect and was actively associated with its activities.

Held : as no overt act had been attributed to the accused in question and the possibility of his having been implicated due to the fact that he was a brother of an accused could not be ruled out, he could be released on anticipatory bail in the facts of the case.'

7. Causing injuries to the body of the deceased are alleged. In that A-1 after seeing the deceased in the following words :-

'Come my son. He is found alone. No one will come forward to protect him. So saying, he asked all other accused who had come armed with deadly weapons to finish the deceased'.

Then A-1 Munivenkatappa (whose right leg and right hand have been amputated) removed a weapon i.e., sword which was concealed in the shawl and hit on the head of the deceased. Whereas A-4 Patel Muniswamy Gowda and his son A-5 (who is under arrest and not a party to this petition) A-6 Yalase Gowda, A-7 Narayanaswamy, A-2 Krishnappa and A-3 Narayana swamy assaulted the deceased with clubs and choppers on the head, hands, legs and on the body of the deceased thus caused several injuries which resulted in the death of the deceased. Post-Mortem report reveals that death was due to shock and haemorrhage. Police have collected statement of some of the eyewitnesses. Police have also recovered some of the weapons from some of the accused alleged to have been used in the commission of the offence. Investigation is still in progress.

Denying these allegations, Sri. Nanjundaiah, learned Counsel for the petitioner submits that all the petitioners are innocent of the guilt alleged. The theory of the prosecution is a make believe one, because it is impossible to expect a man without a leg and hand to conceal the chopper in his shawl and the moment he saw the deceased he himself attacked the deceased with a chopper on the head of the deceased. All the accused belong to three families who are all inter-related. In that except women folk all other male members of three families have been roped in for the offence which have been taken place on 6-4-91. According to him no motive to cause the death of deceased Iragappa. Injuries caused on the body of the deceased not properly explained even in the post-mortem report. All the accused are agriculturists by profession. However, in view of the allegations made against them in a complaint in Crime No. 120/91 of Malur Police Station. Petitioners apprehend that they may be arrested by Malur Police in connection with the said offence.

According to Sri B. R. Nanjundaiah, since prosecution has not made out a prima facie case, it is not proper to curtail the liberty of these petitioners. Fear of the

prosecution is that in case petitioners are enlarged on bail, they may tamper with the prosecution evidence is quite imaginary. According to him, such fear can be avoided by imposing necessary conditions. For these reasons he submits that application be allowed.

Whereas, Sri Jadhav, learned Government Pleader submits that the application filed by the petitioners cannot be accepted for the simple reason that investigation is still under progress. In support of his contention he relied upon a decision of the Supreme Court decided in the case of Pokar Ram v. State of Rajasthan, reported in : 1985 CriLJ1175 . He further submits that if the petitioners are ordered to be enlarged on bail, they may tamper with the prosecution evidence. Further, it may be difficult for the prosecution to secure the attendance at the time of trial. For these reasons he submits that application be rejected.

8. A perusal of the complaint and the statements of the witnesses discloses that overt acts are attributable to A-1 viz., Munivenkatappa who is in custody. A-2 i.e., petitioner-1, A-3 petitioner-2, A-4 petitioner-3, A-5 who is in custody, A-6 petitioner-4, A-7 petitioner-5 and not others. According to the prosecution the participation of those people was only holding deadly weapons in their hands like clubs, choppers etc. It is as laid down by the Supreme Court in the case of Pokar Ram that the offence punishable u/S. 302 it is not proper to consider the application under S. for anticipatory bail unless a prima facie case has been made out and the reasons given are bald in nature. That does not mean that this court has no power to entertain the application u/S. 438, Cr.P.C. in appropriate cases particularly when prima facie case has not been made out. This position has been clearly explained by the Supreme Court in the case of Gurubaksh Singh Sibbia etc. v. The State of Punjab reported in : 1980 CriLJ1125 . It has been further explained by this Court in the case of Chanda Erappa v. State of Karnataka, ILR 1989 Kant 2882 : (1989 Cri LJ 2405). Secondly overt act according to the prosecution itself is against A-1 Munivenkatappa, and A-5. Then A-2, A-3, A-4, A-6 and A-7. While considering the application u/S. 438, it is not proper to make an elaborated document of materials collected. Court also shall not try to assess evidence collected by the prosecution as if it is holding a pre-trial. All that it has to see is whether accused have got roots in the society. The over riding

considerations in granting bail shall be (1) - Nature and gravity of the circumstances in which the offence is committed;

(2) The position and status of the accused with reference to the victim and the witnesses;

(3) Likelihood of the accused fleeing from justice;

(4) Of repeating the offences of jeopardy is unlike being facing with a crime, proceeding of possible conviction in the case of tampering with the witnesses;

(5) History of the case as well as of its investigation and other relevant grounds, which in view of so many variable factors cannot be exhaustively set out.

9. The two paramount considerations viz., likelihood of the accused fleeing from justice and his tampering with prosecution evidence relating to ensuring a fair trial of the case in a Court of justice. It is essential that due and proper weight should be bestowed on these two grounds upon other factors. Thus, Court shall take into consideration the important circumstance to consider the application for bail whether accused will flee from justice or tamper with the prosecution evidence in the event of bail. These are the two important ingredients which are holding the field of granting bail even today. In the present case viewed from this angle, coupled with overt acts of the accused as narrated by the prosecution, it is too early to say anything against the accused other than A-1 to A-7 and other accused against whom no specific overt act are entitled for bail in the event of a bail.

10. Accordingly, this application is allowed in part.

11. Malur police is directed to enlarge the petitioners 6 to 18 in the event of their arrest by Malur Police except petitioner 9 who came to be arrested and in judicial custody, in connection with Crime No. 120/91 on the file of the Malur Police, Kolar District on the following conditions -

(1) Each petitioner shall execute a self bond in a sum of Rs. 10,000/- and two sureties for the like sum to satisfaction of the Malur Police;

(2) Movements of the petitioners are confined to Malur Town;

(3) The petitioners shall appear before the Malur Police every Sunday between 7 a.m. and 9 p.m.

(4) Petitioners shall not make attempt to tamper with the prosecution evidence;

(5) Petitioners shall appear before the Malur police on or before 3-10-91 to comply with the conditions relating to executing the bond and furnishing the sureties.

12. If the prosecution feels that any one of the conditions imposed in this order in any way violated by all the petitioners or any one of the petitioners, the prosecution will be at liberty to seek for cancellation or modification of this order.

13. Application in respect of petitioners 1 to 5 and 9 is rejected reserving liberty to move the Session Court for bail if they are so advised after their arrest.

All other contentions are left open.

Any observations made in this case shall not have any bearing on the merits of the case.

14. Order accordingly.

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