



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 16th DAY OF JANUARY, 2023

BEFORE

THE HON'BLE MR. JUSTICE H.P. SANDESH

CRIMINAL PETITION NO.10830/2022

BETWEEN:

ABDUL MAJEED
S/O LATE ABDUL WAHEED
AGED ABOUT 35 YEARS
R/A NO.253/A, 10TH CROSS
NEAR HYDERALLI PARK
GHOUSIYANAGAR
MYSURU-570019.

... PETITIONER

(BY SRI HASHMATH PASHA, SENIOR COUNSEL FOR
SRI KARIAPPA N.A., ADVOCATE)

AND:

STATE OF KARNATAKA
BY UDAYAGIRI POLICE STATION
MYSURU-570019
REPRESENTED BY LEARNED
STATE PUBLIC PROSECUTOR
HIGH COURT OF KARNATAKA
BENGALURU-560 001.

... RESPONDENT

(BY SRI K.K.KRISHNA KUMAR, HCGP)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 439
OF CR.P.C PRAYING TO ENLARGE THE PETITIONER ON BAIL IN

CR.NO.178/2021 OF UDAYAGIRI P.S., MYSURU CITY FOR THE OFFENCES P/U/S. 143, 144, 147, 148, 341, 342, 323, 324, 364, 307, 302, 506 R/W 149 OF IPC.

THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 06.01.2023 THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

ORDER

Heard the learned counsel appearing for the petitioner and the learned High Court Government Pleader appearing for the State.

2. This is a successive bail petition and earlier, this Court considered the bail petition filed in CrI.P.No.4008/2022 on merits after filing of the charge-sheet and dismissed the same vide order dated 01.07.2022 and now the present successive bail petition is filed contending that the name of this petitioner is not mentioned in the FIR and also in the requisition Form No.146(i) and (ii) sent to doctor for post-mortem which is prepared after inquest. It is also contended that at the earliest point of time when the injured deceased was taken to Narayana Hrudalaya

hospital and got admitted, while giving history, the name of the petitioner is not mentioned as one of the assailant and only this petitioner has been implicated after five days of the incident that is on 20.08.2021. Only one eye-witness i.e., CW19 though his statement alleged to have been recorded on 16.08.2021, there is no reference in any of the remand application in the case diary for having recorded on that day and no details in remand applications dated 16.08.2021 and 20.08.2021 and no overt act of assault is attributed against this petitioner but in the statement of the eye-witness CW19, the alleged overt act is improved and added at the time of filing of the charge-sheet. The improved version is contrary to mobile video recordings which is relied as electronic evidence and presence of this petitioner is not there. When the prosecution relies on the mobile video as one of the document and relied on the pen drive, ought to have been furnished to the accused. But the same has not been furnished. Since this petitioner is the brother-in-law of accused Nos.1 and son-in-law of accused No.2, while implication of accused Nos.1 to 3, at belated stage, this petitioner also has been subsequently added as accused No.5.

This petitioner is in judicial custody since 20.08.2021 and the case of the petitioner is similar to accused No.7, 8 and 4 who have been enlarged on bail and on the ground of parity, this petitioner is entitled for the bail and no any bad antecedents against this petitioner.

3. The learned counsel appearing for the petitioner would submit that in the spot mahazar, no details of presence of this petitioner and in the remand application also not named this petitioner and no overt act as per CC TV mahazar except discloses that he was present at the spot of the incident. These grounds are not urged earlier hence, in the successive bail petition, the same grounds are urged.

4. The learned counsel appearing for the petitioner also filed a memo along with mahazar and pen drive which was drawn on 20.08.2021 regarding seizure of mobile and brought to notice of this Court to paragraph 2 of page 4 to show that no overt act allegation against this petitioner and in the video of 1 minute 30 seconds which was played narrated that what has been found in the said video and no details with regard to this

petitioner except questioning the victim that how many girls were subjected to the harassment and why he had done the same to their girl and contended that no overt act allegation against this petitioner except the presence of the petitioner at the time of committing the murder.

5. The learned counsel appearing for the petitioner in support of his arguments, relied upon the judgment of the Apex Court in the case of **BABU SINGH AND OTHERS vs STATE OF UP** reported in **(1978) 1 SCC 579** wherein it is held regarding refusing an application for bail does not necessarily preclude another on a later occasion giving more materials, further developments and different considerations. The learned counsel also relied upon the judgment of the Apex Court in the case of **LT. COL. PRASAD SHRIKANT PUROHIT vs STATE OF MAHARASHTRA** reported in **(2018) 11 SCC 458** wherein the Apex Court discussed with regard to though 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. The learned counsel for the petitioner also relied upon the judgment of the Apex Court in the case of **DATARAM SING vs STATE OF UTTAR PRADESH AND ANOTHER** reported in **(2018) 3 SCC 22** wherein the Apex Court held that a fundamental postulate of criminal jurisprudence is the presumption of innocence, meaning thereby that a person is believed to be innocent until found guilty and brought to notice of paragraph 15 of the judgment. The counsel also relied upon the judgment in the case of **UNION OF INDIA vs K A NAJEEB** reported in **(2021) 3 SCC 713** and brought to notice to the principles of law laid down in the judgment as presence of statutory restrictions like Section 43-D(5) of the UAPA per se does not oust the ability of the constitutional Courts to grant bail on grounds of violation of Part III of the Constitution. Indeed, both the restrictions under a statute as well as the powers exercisable under constitutional jurisdiction can be well harmonized. The counsel also relied upon the unreported decision of this Court in **Cri.P.No.3263/2020**

regarding statements of the witnesses are stated to have been recorded on 24.01.2020 and in none of the remand applications dated 28.01.2020, 30.01.2020, 31.01.2020 and 01.02.2020, there is any reference to the recording of the statements of the said eye-witnesses. The counsel also relied upon the unreported decision of this Court in **Cri.P.No.8686/2018** and brought to notice of this Court paragraph 6 wherein observed that taking prima facie view of the matter including the investigation, noticing that there is no mention of recording of statements of CW2 and CW3 and that the charge sheet against the accused rests primarily on the statements of CW2 and CW3, proof of said statements and veracity of the same is a matter for trial, question of identity of the accused is also a matter of trial. The counsel referring these judgments vehemently contend that the principles laid down in the judgments referred supra are aptly applicable to the case on hand.

6. Per contra, learned High Court Government Pleader appearing for the State would vehemently contend that all these grounds which have urged in the present successive bail petition

are already urged before this Court in the earlier bail petition and this Court having considered the material on record in paragraph 6 taken note of the fact that his name was not found in the FRI and implication of the name of this petitioner after five days and also contended that CW19 statement was though recorded on 16.08.2021, the same was not suffering from any infirmities and also taken note that this petitioner has been implicated subsequently not at the first instance but taken note of the fact that blood stain cloth was seized of this petitioner and the same was sent to FSL and FSL report came positive and apart from that an eye-witness statement was taken into account which was recorded on the next date of the incident and also relied upon the mobile video which was seized from accused No.3 and the same discloses the very presence of this petitioner and overt act of each of the accused persons and considered the petition on merits hence, there is no changed circumstances and this Court has given the reasons while rejecting the bail application and there are no fresh grounds of changed circumstances to enlarge the petitioner on bail. Hence, prayed to reject the bail application.

7. Having heard the learned counsel appearing for the respective parties and also on perusal of the material available on record it is not in dispute that this Court earlier rejected the bail petition of this petitioner on merits after filing of the charge-sheet in CrI.P.No.4008/2022 vide order dated 01.07.2022. This petitioner was arraigned as accused No.5. This Court while dismissing the earlier petition taken note of the grounds which have been urged that his name was not found in the FIR at the first instance and the eye-witness-CW19 was also taken along with the victim in the car and CW19 has narrated that the petitioner was very much present at the time of the incident and the manner in which accused persons inflicted the injuries. The complainant also made specific averments in the complaint with regard to inflicting of injuries which he came to know about the incident from eye-witness CW19. The only grounds urged before this Court in the present petition that the remand application does not disclose the involvement of this petitioner and also other grounds that no overt act against this petitioner and mobile seized also not discloses the very presence of the petitioner. The said contention cannot be accepted for the

reason that in the seizure mahazar of mobile which is produced by the petitioner himself, the video of 1 minute 30 seconds was played at the time of the seizure wherein the name of Sarhan's T-shirt was taken and assailants were exchanging the words between them and another person implicated the injury with the stick when the injured was screaming, other persons who were there at the spot also noticed and when the accused-Ajmal Pasha was enquired and he replied that he himself, his father-Almas Pasha, his brother-Kadeer Pasha and Abdul Majeed that is this petitioner and others questioned the victim that how many girls life was spoiled by him and why he had done the same to their girl and he identified his voice. Hence, the seizure mahazar of mobile is very clear that this petitioner was present along with the other assailants and the very contention that the mobile video does not show his presence cannot be accepted. Apart from that the material clearly discloses that this petitioner was very much present at the time of committing the murder and exchanged the words between this petitioner and other assailants with the victim. No doubt, there is no dispute with the principles laid down in the judgments referred supra as the Court

can consider the subsequent bail application when more details are given and also the Court has to presume that in a criminal jurisprudence that he is an innocent and at the same time, the Court has to keep in mind whether there is a prima facie case against the petitioner. This Court while considering the petition on merits taken note of the very presence of the petitioner as well as the eye-witness CW19 and CW19 statement was recorded on the very next date of the incident and merely not mentioning the statement of PW19 in the remand application cannot be a ground and each and everything of statement of CW19 cannot be extracted in a remand application. The main contention that there is no any overt act and also he was not present in terms of the seizure mahazar of mobile but this Court already found that this petitioner was very much present at the time of committing the offence and scolded the victim.

8. The Apex Court in the case of **KUMER SINGH VS STATE OF RAJASTHAN AND ANOTHER** reported in **2021 CRL.L.J. 4244** held that the individual role of the accused is not required to be considered when they are alleged to have been

part of sharing of common intention. It is also further observed that there were 26 injuries found on the dead body of the deceased and 11 injuries on the injured Vikram Singh by blunt and sharp weapons. In the case on hand, it has to be noted that CW19 eye-witness when he tried to prevent assaulting the victim, he was also taken in the car and in his presence only inflicted the injuries and committed the murder, under such circumstances, individual role of each of the accused cannot be considered at the time of considering the bail petition in an offence punishable under Section 302 of IPC and more particularly, when they are party for the offence with Section 149 of IPC.

9. With regard to the parity is concerned, the counsel for the petitioner would vehemently contend that accused Nos.7, 8 and 4 have been enlarged on bail and hence, this petitioner is also entitled for bail on the ground of parity. The Apex Court in the judgment of **RAMESH BHAVAN RATHOD vs VISHANBHAI HIRABHAI MAKWANA (KOLI) AND ANOTHER** reported in **(2021) 6 SCC 230** while considering the bail on the ground of

parity of co-accused held that while applying the principles of parity, the Court cannot exercise its powers in a capricious manner and has to consider totality of circumstances before granting bail, parity while granting bail must focus upon role of accused, and not only on weapon carried by accused, merely observing that another accused who was granted bail was armed with similar weapon is not sufficient to determine whether bail can be granted on the basis of parity in deciding aspect of parity, role attached to accused, their position in relation to incident and to victims is of utmost importance and also held that whether order granting bail can be relied on as a precedent in a matter for future adjudication if and when application for bail is moved on the ground of parity on behalf of another accused. In the event that parity is claimed in such case thereafter, it is for that Court before whom parity is claimed to determine whether case for grant of bail on the grounds of parity is made out. In the case on hand, it is very specific that this petitioner is the relative of accused Nos.1 to 3 and while committing the murder, all of them joined together and went in a vehicle and when CW19 tried to prevent the act of the accused persons, he was also taken in

the said vehicle and CW19 narrated how the incident was taken place. I have already pointed out that even the pen drive regarding seizure of mobile of one accused also discloses that this petitioner was very much present at the time of committing the murder and also scolded the victim asking that how many girls he had spoiled and why he had done the same to their girl and the same is evidenced in the document produced by the petitioner itself regarding seizure of mobile and when the pen drive was also discloses that he was very much present along with other accused persons at the time of committing murder, the very contention of the counsel for the petitioner that no overt act and CC TV discloses only his presence and same is only for 1 minute 30 seconds and the eye-witness stated the same cannot be accepted and the counsel further contended that subsequently, improvement was made in the statement of CW19 while filing the charge-sheet and the said fact is a matter of trial and prima facie material discloses against this petitioner. Hence, I do not find any merit in the contention of the learned counsel for the petitioner to exercise the discretion in favour of this

petitioner in a successive bail petition when there is no changed circumstances.

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

ORDER

The bail petition is rejected.

**Sd/-
JUDGE**

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