

Karnataka High Court

Dattu @ Dattararya S/O Jyotiba ... vs The State Through on 11 May, 2023

Bench: Ramachandra D. Huddar

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CRL.P No. 200289 of 2023

IN THE HIGH COURT OF KARNATAKA
KALABURAGI BENCH

DATED THIS THE 11TH DAY OF MAY, 2023

BEFORE

THE HON'BLE MR JUSTICE RAMACHANDRA D. HUDDAR
CRIMINAL PETITION NO. 200289 OF 2023

BETWEEN:

DATTU @ DATTARARYA
S/O JYOTIBA SHASTRI,
AGE 34 YEARS, OCC AGRICULTURE,
R/O MASHAL, TQ : AFZALPUR,
DIST KALABURAGI.

...PETITIONER

(BY SRI MD. IDRIS JAGIRDAR, ADVOCATE)

Digitally
signed by
SACHIN

AND:

Location:
High
Court of
Karnataka

THE STATE THROUGH

AFZALPUR POLICE STATION,
DIST KALABURAGI.

REP. BY ADDL. SPP,
HIGH COURT OF KARNATAKA,
KALABURAGI - 585 107.

...RESPONDENT

(BY SRI GURURAJ V. HASILKAR, HCGP)

THIS CRL.P. IS FILED U/S. 439 OF CR.P.C., PRAYING
TO RELEASE THE PETITIONER ON BAIL IN CRIME

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No.290/2022 OF AFZALPUR POLICE STATION, DIST.
KALABURAGI, FOR THE OFFENCES PUNISHABLE U/SEC.
143, 147, 148, 341, 323, 324, 307, 504, 506 R/W 149 OF
IPC PENDING BEFORE THE CIVIL JUDGE (J.D) AND JMFC
AFZALPUR.

THIS PETITION, COMING ON FOR ORDERS, THIS
DAY, THE COURT MADE THE FOLLOWING:

ORDER

1. Petitioner/accused No.1 has filed this petition under Section 439 of Cr.P.C., praying to grant him bail in Crime No.290/2022 of Afzalpur Police Station registered for the offences punishable under Sections 143, 147, 148, 341, 323, 324, 307, 504, 506 read with Section 149 of IPC.

2. Brief and relevant facts as set out in the FIR are as under:

On 23.12.2022 one Shrishail lodged a complaint when he was in the hospital against the present petitioner and other accused alleging, that on the same day in the morning hours when he was proceeding on his motorbike towards bus stand of his village, at that time the accused-

CRL.P No. 200289 of 2023 petitioner overtook the vehicle of the complainant rashly. During afternoon when he was returning from his shop at that time also the petitioner overtook his vehicle and when enquired, some objections were raised by the petitioner. It is further alleged, that on the same day at about 5:30 p.m., when the complainant was near bus-stand he noticed the presence of the petitioner - Dattu S/o. Jyotiba Kshatri along with other accused persons forming themselves an unlawful assembly and they started abusing the complainant in filthy language, gave life threat to the complainant and assaulted him with an iron rod on his head and caused grievous injuries on his person. Accused No.3-Jyotiba and accused No.2 - Shrishail made the complainant to fall down and accused No4 - Nirmala and accused No.5 - Neelamma assaulted the complainant. Jyotiba and Shrishail fisted on the stomach of the complainant and made the complainant not to get up. Nirmala tried to caught hold the private part of the complainant. At that time, the father of the complainant by name Nagappa and his uncle Ambarish and the CRL.P No. 200289 of 2023 villagers came to the spot and rescued the complainant from the clutches of the accused persons. As the complainant sustained grievous injuries on his private part and over his abdomen, he was shifted to the Afzalpur Government Hospital. Thus it is alleged that, these accused persons attempted to cause murder of the complainant abused him in filthy language. With these allegations a complaint came to be filed, which was registered for the aforesaid crime. Now the petitioner is seeking bail in this crime on the following grounds:

That the petitioner is innocent and he has not committed any offence as alleged. The victim is already discharged from the hospital. There are no life threat injuries. He is the only bread earner in the family. He hails from a respectable family. He is ready to abide by any conditions to be imposed by this Court. Amongst other grounds it is prayed to grant him bail.

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3. Learned HCGP took notice of this petition and opposed the bail petition by filing a detailed objection statement.

4. It is interalia contended that, there are overt- acts by petitioner-accused No.1. He assaulted the complainant with an iron rod on his head with an intention to kill him. Accused Nos.4 and 5 assaulted the complainant over his abdomen and other parts of the body. They abused him in filthy language. It is further alleged that, severe injuries have been sustained by the complainant in the alleged incident. Therefore, if the petitioner is enlarged on bail, he may flee from the justice and may not co-operate for the investigation. Hence, amongst other grounds, it is prayed to dismiss the petition. In support of his submission, learned HCGP has also produced the copy of the CD.

5. Heard arguments of both the sides and meticulously perused the records.

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6. The alleged incident has taken place on 23.12.2022 at about 5:30 p.m. As per the say of the counsel for the petitioner, now the victim has been discharged from the hospital and his life is not in danger. To prove the said fact he relied upon the copy of the CD wherein it is stated by the Investigating Officer that, victim having sustained head injuries was admitted to Sollapur Hospital and after treatment he was discharged from the hospital and he was directed to take treatment in the house. It means, the victim is not in the hospital and already been discharged from the hospital. According to the counsel for the petitioner, as there is no life threat, since the petitioner is ready to abide by the conditions imposed by this court, he is entitled for bail.

7. Learned High Court Government Pleader submits that, there is an attempt to cause murder. Therefore, the petitioner is not entitled for bail. It is contended that, if the petitioner is granted bail, he may tamper with the prosecution evidence and it will cause CRL.P No. 200289 of 2023 hindrance to the investigation. On these grounds, he prayed to reject the bail petition.

8. It is submitted by the counsel for the petitioner that the petitioner is innocent and has not committed any offence; he has been falsely implicated in the present case. He submits that the investigation is almost complete. He further submits that, if the petitioner is enlarged on bail, he undertakes to abide by any conditions imposed by this Court. The presence of petitioner in judicial custody is not required.

9. As against this submission, the High Court Government Pleader submits that investigation is yet to be completed. He further submits that during the course of investigation, statement of the various witnesses have been recorded. Therefore, he is not entitled for grant of regular bail.

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10. The offence alleged to have been committed by the accused/petitioner is under Sections 143, 147, 148, 341, 323, 324, 307, 504 and 506 reads with Section 149 of IPC. Evidently, it is not punishable with death sentence. The punishment prescribed for the said offence may be either imprisonment for life or rigorous imprisonment up to ten years and also liable to fine. No capital punishment is prescribed to the said offence.

11. The law is that bail is a rule, rejection is an exception. Granting of bail does not amount to acquittal and rejection does not amount to conviction.

12. Law with regard to grant of bail is very much settled in the judgment of the Hon'ble Apex Court in the case of Dattaram Singh v. State of Uttar Pradesh reported in (2018) 3 SCC 22.

"A fundamental postulate of criminal jurisprudence is the presumption of innocence, meaning thereby that a person is believed to be CRL.P No. 200289 of 2023 innocent until found guilty. However, there are instances in our criminal law where a reverse onus has been placed on an accused with regard to some specific offences but that is another matter and does not detract from the fundamental postulate in respect of other offences. Yet another important facet of our criminal jurisprudence is that the grant of bail is the general rule and putting a person in jail or in a prison or in a correction home (whichever expression one may wish to use) is an exception. Unfortunately, some of these basic principles appear to have been lost sight of with the result that more and more persons are being incarcerated and for longer periods. This does not do any good to our criminal jurisprudence or to our society."

13. Yet in another judgment of the Hon'ble Supreme Court in Arnesh Kumar v. State of Bihar reported in (2014) 8 SCC 273, which makes it mandatory that in any case where the offence is punishable with imprisonment for a term which may extend to 7 years, the accused may not be automatically

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CRL.P No. 200289 of 2023 arrested and the Magistrate may not authorize the detention casually and mechanically.

14. On perusal of the statement of objection filed by the prosecution, they are the formal objections being filed by the prosecution to every bail petition. It is submitted that as per the case made by the petitioner, victim is not in the hospital, he has already discharged from the hospital. As per his statement, there is no life threat. Petitioner has undertaken to abide by the conditions to be imposed by the Court. Objections raised by the prosecution could be satisfied by imposing strict conditions on him while granting bail. Hence, if the petitioner is granted bail, by imposing conditions, it would meet the ends of justice. Therefore, it is held that, the petitioner is entitled for bail.

15. Resultantly, I pass the following :

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CRL.P No. 200289 of 2023 ORDER The bail petition filed by the petitioner under Section 439 of Cr.P.C is allowed.

Petitioner is directed to be enlarged on bail in Crime No.290/2022 of Afzalpur Police Station, Kalaburagi pending on the Civil Judge and JMFC, Afzalpur, Kalaburagi registered for the offences punishable under Sections 143, 147, 148, 341, 323, 324, 307, 504 and 506 read with Section 149 of IPC, subject to following;

CONDITIONS

1. The petitioner shall execute a personal bond for a sum of Rs.1,00,000/- with two sureties for like sum to the satisfaction of the jurisdictional Court;
2. The petitioner shall not threaten or tamper the prosecution witnesses;
3. The petitioner shall mark his attendance before the respondent's police once in a week preferably on Sunday between 8.00

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CRL.P No. 200289 of 2023 a.m. and 4.00 p.m. and sign in the register maintained by the Station House officer to that effect;

4. The petitioner shall not involve in similar offences;
5. The petitioner shall appear before the Investigating Officer as and when called upon for the purpose of further investigation and co-operate for investigation;

Breach of any of these conditions would entail cancellation of bail.

Sd/-

JUDGE SBS/SN