

Karnataka High Court
Mahesh vs State Of Karnataka on 18 May, 2023
Bench: Rajendra Badamikar

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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 18TH DAY OF MAY, 2023

BEFORE

THE HON'BLE MR. JUSTICE RAJENDRA BADAMIKAR

CRIMINAL PETITION No. 3201/2023

BETWEEN:

MAHESH
S/O VEERBHADRA NAYAK
AGED ABOUT 46 YEARS
R/AT HUSURU VILLAGE
GUNDLUPETE TALUK
CHAMARAJNAGAR DISTRICT-570 019.

...PETITIONER

(BY SRI. KARIAPPA N.A, ADVOCATE)

AND:

STATE OF KARNATAKA
BY GUNDLUPETE POLICE STATION
CHAMARAJNAGAR DISTRICT-571 111.

(REPRESENTED BY LEARNED
STATE PUBLIC PROSECUTOR)
HIGH COURT OF KARNATAKA-560 001.

... RESPONDENT

(BY SRI. H.S. SHANKAR, HCGP)

THIS CRIMINAL PETITION IS FILED UNDER SECTION
439 CR.P.C PRAYING TO ENLARGE THE PETITIONER ON
BAIL IN CR.NO.93/2022 OF GUNDLUPET P.S.,
CHAMARAJANAGARA DISTRICT FOR THE OFFENCES P/U/Ss.
143, 147, 323, 427, 120B, 302 R/W 149 OF IPC, PENDING
ON THE FILE OF ADDITIONAL DISTRICT AND SESSIONS
JUDGE, CHAMARAJANAGARA, SITTING AT KOLLEGALA IN
S.C.NO.5074/2022.

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THIS PETITION HAVING BEEN HEARD AND RESERVED
FOR ORDERS ON 20.04.2023, COMING ON FOR
'PRONOUNCEMENT OF ORDER' THIS DAY, THE COURT
MADE THE FOLLOWING:

ORDER

The petitioner/Accused No.5 has filed this petition under Section 439 of Cr.P.C. for enlarging him on bail in Crime No.93/2022 of Gundlupet Police Station, Chamarajanagar District, for the offences punishable under Sections 143, 147, 323, 427, 120-B, 341, 302 read with 149 of IPC, pending before the Court of Additional District and Sessions Judge, Chamarajanagar District, sitting at Kollegala, in SC No.5074/2022.

2. The brief facts leading to the case are that, the complainant-Vinodraj was in love with CW.9-Sonakshi, who is the sister of Accused No.2. The complainant used to meet CW.9 regularly and in this regard, the accused have warned the complainant not to continue his love relationship with CW.9. The deceased Chikkaraju is the elder brother of the complainant. On 02.04.2022, the deceased Chikkaraju came to his village from Bengaluru and accused were suspecting that he has instigated the complainant. It is further alleged that, on 02.04.2022 at 7.30 p.m., Accused Nos. 1 & 2 approached the complainant and deceased and asked the deceased to come near Gundlupet town to discuss about the love affair of the complainant and CW.9. The deceased along with one have assaulted the deceased with hands and warned him not to encourage the complainant to get involve in love affair with CW.9 viz., sister of Accused No.2. It is the further case of prosecution that the deceased returned home along with said Nandeeshha and narrated the incident. When the complainant along with Nandeeshha and deceased proceeding to Gundlupet Government Hospital to get treatment to the deceased, at 9.30 p.m., the accused intercepted their motor cycle near Aralikatte in Hosur Village and forcibly taken away assaulted him by hands, while Accused No.3 stabbed the deceased, who suffered grievous injuries. Immediately he was shifted to the hospital, wherein he was declared brought dead. In this regard, the complainant has lodged a complaint and on the basis of complaint, the crime was registered in Gundlupet Police Station in Crime No.93/2022 and subsequently, after investigation, charge sheet has been submitted. The petitioner arraigned as Accused No.5. Initially the petitioner has filed anticipatory bail petition in Criminal Petition No.9653/2022 and this Court by Order dated 14.10.2022 dismissed the same. Thereafter, the petitioner surrendered before the learned Magistrate and now he is in Judicial Custody.

3. The petitioner/Accused No.5 subsequently approached the learned Sessions Judge seeking regular bail and that petition came to be rejected, and hence, he is before this Court.

4. Heard the learned counsel for petitioner and the learned HCGP. Perused the records.

5. Learned counsel for the petitioner submitted that, the anticipatory bail petition of the petitioner was rejected initially and subsequently he surrendered before the learned Magistrate on 11.11.2022 and the matter has been committed to Sessions Court. He would also submit that, the trial has commenced and 09 witnesses have already been examined, who did not support the case of prosecution. He further contended that, there is no specific overt-act alleged against the present petitioner and the overt-act alleged is against Accused No.3. He would further submit that, the petitioner is in custody since last six months and trial is in progress, and as such, there is no chance of he tampering the prosecution witnesses or jumping bail. Hence, he would seek for admitting the petitioner on bail.

6. Per contra, the learned HCGP would contend that, some of the witnesses are yet to be examined and he would assert that there is material evidence against petitioner and hence sought for rejection of the petition.

7. Having heard the arguments and perusing the records, the allegations of the prosecution disclose that, the alleged offence is said to have been committed on 02.04.2022 at about 9.30 p.m. Further, the allegations of prosecution specify that Accused Nos. 1, 2 and 4 to 6 have assaulted the deceased by hands, while Accused No.3 stabbed him with knife. The present petitioner is arraigned as Accused No.5 and the allegation against him is that he assaulted the deceased by hands. However, omnibus allegations have been made as against Accused Nos. 1, 2 and 4 to

6.

8. No doubt, earlier the petitioner has filed anticipatory bail petition and this court has rejected the same on the ground that he was absconding and he did not co-operate during the course of investigation. But, subsequently, he surrendered himself before the learned Magistrate on 11.11.2022 and the matter came to be committed to Sessions Court. The records also disclose that 09 witnesses have been examined in support of the case of prosecution.

9. Learned HCGP would contend that, some of the witnesses are yet to be examined. But the records disclose that the complainant, who is the material eyewitness has turned hostile and other eyewitness, who is examined as PW.3 also did not support the case of prosecution. According to the prosecution they are eyewitnesses, but they did not support the case of prosecution. No doubt, the entire evidence is yet to be concluded, but the fact remains that the allegations against the present petitioner is regarding assault by hands. The major allegation of stabbing is against Accused No.3. The petitioner is in custody since last 06 months.

10. Looking to the above facts and circumstances and considering the fact that the material witnesses have been examined by the prosecution, I do not find any impediment for admitting the petitioner on bail. The other

apprehensions raised by the learned HCGP can be meted-out by imposing certain conditions. Hence, the petition needs to be allowed and accordingly, I proceed to pass the following:-

ORDER I. The petition is allowed.

II. The petitioner/Accused No.5 is ordered to be enlarged on bail in Crime No.93/2022 of Gundlupet Police Station, Chamarajanagar District, registered for the offences punishable under Sections 143, 147, 323, 427, 120-B, 341, 302 read with 149 of IPC, pending before the Court of Additional District and Sessions Judge, Chamarajnagar District, sitting at Kollegala, in SC No.5074/2022, on his executing a personal bond for a sum of Rs.1,00,000/- (Rupees One Lakh only) with one surety for the like-sum to the satisfaction of the concerned Court, subject to following conditions:-

- i) The petitioner shall not allure or threaten any prosecution witnesses directly or indirectly;
- ii) The petitioner shall not involve in any similar criminal activities;
- iii) The petitioner shall appear before the Court on all the dates of hearing, unless he is exempted by a specific order and shall co-operate for speedy disposal of the case.

Sd/-

JUDGE KGR*