

(2023) 09 KAR CK 0050
In the Karnataka High Court
Case No : Criminal Petition No. 5239 Of 2023

Adan Ulla Khan Moghar @ Ghori

APPELLANT

Vs

State By Pulakeshinagar Police Station Represented By State
Public Prosecutor, High Court Building, Bangalore - 560001

RESPONDENT

Date of Decision : 20-09-2023

Acts Referred:

Indian Penal Code, 1860 — Section 120(B), 149, 302, 307, 323, 341
Code Of Criminal Procedure, 1973 — Section 439

Citation : (2023) 09 KAR CK 0050

Hon'ble Judges : S Vishwajith Shetty, J

Bench : Single Bench

Advocate : Neelakanthappa Kenchappa Pujar, N. Anitha Girish

Final Decision : Allowed

Judgement

S Vishwajith Shetty, J

1. Petitioner/Accused No.2 in S.C.No.1417/2022 pending before the Court of XXVI Additional City Civil and Sessions Judge at Mayo Hall Unit, Bangalore, arising out of Crime No.104/2022 registered by the Pulakeshinagar Police Station, Bangalore, for offences punishable under Sections 341, 323, 120(B), 302 r/w 149 of IPC, is before this Court under Section 439 of the Code of Criminal Procedure seeking regular bail.

2. Heard the learned counsel for the parties.

3. On the complaint of one Shaik Mohammed Ayub on 09.03.2022, FIR in Crime No.104/2022 was registered by the Pulakeshinagar Police, Bengaluru, against three unknown persons initially for the offences punishable under Section 341, 302 r/w 149 of IPC. During the course of investigation the petitioner was arrested on 09.03.2022. In the complaint it is alleged that on 08.03.2022 at about 11.30 p.m. when the complainant and deceased Mohammed Usman had gone to Om Ganesh Juice Centre for drinking juice, three persons who came in

motor cycle waylaid them and enquired about one Shabaz. When the deceased Mohammed Usman informed that he does not know the whereabouts of Shabas, they asked Mohammed Usman to call Shabas over his mobile phone and when Mohammed Usman called Shabas, one amongst the three who had come in the Motor Bike had asked Shabas to come to the spot. When Mohammed Usman requested the said persons to return his mobile phone, all of them assaulted Mohammed Usman and one of them took the dragger and assaulted Mohammed Usman on his back. As a result he suffered grievous injuries, immediately he was shifted to Meridian Hospital and thereafter to Bowring hospital. It is in this background FIR in S.C. No.1417/2022 was registered against three unknown persons. During the course of investigation, the Police totally arrested five accused persons and after completing investigation, charge sheet is filed and the case is now pending before the XXVI Additional City Civil and Sessions Judge at Mayohall Unit, Bangalore, in S.C.No.1417/2022. Petitioner's bail application filed before the trial Court was rejected on 16.03.2023. Therefore, he is before this Court.

4. Learned counsel for the petitioner has reiterated the grounds urged in the petition and submits that, the allegation of assault with dragger on the back of deceased Mohammed Usman is against accused No.1. Accused Nos.2 and 3 allegedly were along with accused No.1 and there is no allegation of overt act against them. Accused No.3 has been already granted regular bail by the Sessions Court in CrI.Misc.No.25299/2022 disposed of 16.04.2022. He accordingly prays to allow the petition.

5. Per contra, the learned HCGP has opposed the bail application and she submits that the petitioner is a rowdy sheeter and at the time when Police tried to arrest accused Nos.1 and 2, they had assaulted the police and in respect of the said incident, a separate case has been registered against accused Nos.1 and 2 in Crime NO.105/2022 for the offence punishable under Section 307 of IPC by Puakeshinagar Police Station and accordingly prays to dismiss the petition.

6. FIR in Crime No.104/2022 was registered on the complaint of one Shaik Mohammed Ayub, who was present with the deceased at the time of alleged incident on 08.03.2022. The accused persons, who had waylaid the complainant and deceased Mohammad Usman were strangers to the complainant. In the complaint, it is stated that amongst the three accused who had come in Motor Bike, one of them had assaulted Mohammed Usman with a dragger on his back. During the course of investigation five persons were arrested and after completing the investigation, charge sheet has been filed as against all the accused. Petitioner is arrayed as accused No.2 in the charge sheet. As per the charge sheet allegation, accused No.1 allegedly assaulted deceased Mohammed Usman on his back. There is no allegation of assault on the deceased by the petitioner with any weapon, the allegation against the petitioner and accused No.3 are almost identical. Accused No.3 has been already granted regular bail by the Sessions Court in Criminal Misc.No.25299/2022. Though learned HCGP has

submitted that petitioner is rowdy sheeteer and therefore he is not entitled for bail, she does not dispute that except the two cases i.e., Crime No.104/2022 and Crime No. 105/2022, the petitioner was earlier involved only in one case for the offence punishable under Section 307 of IPC. Further accused No.4 is also said to be a rowdy sheeteer. He has been enlarged on bail by the learned Sessions Court in Criminal Misc.No.25299/2022. The petitioner, who is a youngster aged about 20 years is in custody since 09.03.2022, investigation is complete and charge sheet is filed. Under these circumstances, I am of the view that, petitioner has made out a prima facie case for grant of regular bail. Accordingly, the following:

ORDER

The petition is allowed. The petitioner is directed to be enlarged on bail in Crime No.104/2022 of Pulakeshinagar Police Station registered for the offences punishable under Sections 341, 323, 120(B), 302 r/w 149 of IPC, subject to the following conditions:

- a) Petitioner shall execute personal bond for a sum of Rs.1,00,000/- (one lakh) with two sureties for the likesum, to the satisfaction of the jurisdictional Court;
- b) The petitioner shall appear regularly on all the dates of hearing before the Trial Court unless the Trial Court exempts his appearance for valid reasons;
- c) The petitioner shall not directly or indirectly threaten or tamper with the prosecution witnesses;
- d) The petitioner shall not involve in similar offences in future;
- e) The petitioner shall not leave the jurisdiction of the Trial Court without permission of the said Court until the case registered against him is disposed off.