

(2024) 07 KAR CK 0020
In the Karnataka High Court
Case No : Criminal Appeal No. 733 Of 2024

Dileep Kumar S

APPELLANT

Vs

State Of Karnataka Byatarayanapura Police Station Rep. By
State Public Prosecutor High Court Of Karnataka High Court
Buildings Bangalore ? 560001 & Others

RESPONDENT

Date of Decision : 01-07-2024

Acts Referred:

Indian Penal Code, 1860 — Section 120B, 143, 147, 148, 149, 201, 212, 302
Scheduled Castes And The Scheduled Tribes (Prevention Of Atrocities) Act, 1989 —
Section 3(2)(v)

Citation : (2024) 07 KAR CK 0020

Hon'ble Judges : Shivashankar Amarannavar, J

Bench : Single Bench

Advocate : Narayanaswamy K N, Lakshman B

Final Decision : Allowed

Judgement

Shivashankar Amarannavar, J

1. This appeal is filed by accused No.5 praying to set-aside the order dated 28.03.2024 passed in CrI.Misc.No.2009/2024 by the LXX Additional City Civil and Sessions Judge, Bengaluru, whereunder, the bail petition of this appellant – accused No.5 sought in respect of Crime No.474/2023 of Byatarayanapura Police Station registered for the offences punishable under sections 120B, 143, 147, 148, 302, 201, 212 r/w Section 149 of the Indian Penal Code, 1860 (for short hereinafter referred to as 'IPC') and Section 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short hereinafter referred to as "the SC/ST Act"), came to be rejected.

2. Heard learned counsel for the appellant – accused No.5 and learned High Court Government Pleader for respondent No.1 – State. In spite of service of notice, respondent No.2 has remained absent and unrepresented.

3. Case of the prosecution is that; on 05.12.2023 at about 9.50 pm, the complainant had been to hand over his two wheeler to his friend along with his cousin brother Sri.Arun. After handing over the two wheeler, the complainant along with his cousin brother Sri.Arun standing along with his friend Sri.Selva, all of a sudden, they heard massive sound of the vehicles coming behind them, all of a sudden three to four, two wheelers arrived to the spot and all of them surrounded them, found equipped with the deadly weapons attempted to assault. Apprehending the danger, all of them started running, but the accused persons surrounded Sri.Arun and assaulted him with the deadly weapon and killed him and they went from the spot on their bikes. The charge sheet came to be filed against the appellant – accused No.5 and the other accused for the offences under Sections 120B, 143, 147, 148, 302, 201, 212 r/w Section 149 of IPC and Section 3(2)(v) of the SC/ST Act. The appellant – accused No.5 came to be arrested on 07.12.2023 and he is in the judicial custody. The appellant – accused No.5 filed the bail petition in CrI.Misc.No.2009/2023 and the same came to be rejected by the impugned order, which is challenged in this appeal.

4. Learned counsel for the appellant – accused No.5 would contend that there is no serious overt-act alleged against this appellant – accused No.5. The accusation against him is that he went along with the other accused to the spot on the bike. There is no overt-act of assault on the deceased by this appellant – accused No.5. The accusation against this appellant – accused No.5 is that he took accused No.3 on his bike and assisted to reach the spot. As the charge sheet is filed, this appellant – accused No.5 is not required for the custodial interrogation. With this, he prayed to allow the appeal and grant bail to the appellant – accused No.5.

5. Per contra, learned High Court Government Pleader for the respondent No.1 – State would contend that this appellant – accused No.5 was present on the spot and he came with accused No.3 to the spot on the bike along with the other accused. The appellant – accused No.5 is having criminal background and he is involved in the criminal cases. If the appellant – accused No.5 is granted bail, there is a threat to the prosecution witnesses. With this, he prayed to dismiss the appeal.

6. Having heard the learned counsels, the Court has perused the impugned order and the charge sheet records.

7. Upon perusal of Column No.17 of the charge sheet, the accusation leveled against this appellant – accused No.5 is that he reached the spot along with the other accused on the bike and accused Nos.1 to 4, 6 to 9 and 11 assaulted the deceased with weapons and killed him. There is no overt-act alleged against this appellant – accused No.5 assaulting the deceased. As the charge sheet is filed, this appellant – accused No.5 is not required for the custodial interrogation. The appellant – accused No.5 has made out a case for setting aside the impugned order and grant of bail, with conditions. In the result, the following;

ORDER

The appeal is allowed. The impugned order dated 28.03.2024 passed in CrI.Misc.2009/2024 by the LXX Additional City Civil and Sessions Judge, Bengaluru is set-aside. The appellant – accused No.5 is granted bail in Crime No.474/2023 of Byatarayanapura Police Station, subject to the following conditions;

- (i) The appellant-accused No.5 shall execute a personal bond for a sum of Rs.1,00,000/-(Rupees One Lakh only), with one surety for the likesum to the satisfaction of the jurisdictional Court.
- (ii) The appellant-accused No.5 shall not threaten the prosecution witnesses.
- (iii) The appellant-accused No.5 shall attend the Court on all the dates of hearing unless exempted and co-operate in speedy disposal of the case.