
(2015) 04 KAR CK 0011

In the Karnataka High Court

Case No : Criminal P. Nos. 100535, 100506 and 100507 of 2015

Fakirapa and Others

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 15-04-2015

Acts Referred:

Evidence Act, 1872 — Section 9

Citation : (2015) 04 KAR CK 0011

Hon'ble Judges : G. Narendra, J.

Bench : Single Bench

Advocate : S.B. Deyannavar, Advocate, for the Appellant; K.S. Patil, High Court Government Pleader, for the Respondent

Judgement

G. Narendra, J.—The petitioners are before this Court being aggrieved by the order of the learned Prl. Sessions Judge, Belgaum in rejecting the petitions filed praying to enlarge them on bail.

2. The facts in brief are as follows:

It is the case of the prosecution that the complainant, his uncle, his father and one Mallikjan Davalsab Yakkundi, the driver of Tata Ace vehicle were travelling to Ranebennur Cattle Shandy in order to effect purchase of cattle. That they had sold about six she-buffaloes and had collected sale proceeds. They were proceeding to Ranebennur with the said sale proceeds. That at about 10.00 p.m. they set out from the village to proceed to Ranebennur at about 10.30 p.m., when they reached M.K. Hubli road, the accused persons taking advantage of the slow movement of the vehicle, attacked the vehicle breaking the wind shield glass and they also attacked occupants of the vehicle. One of the accused held a sickle to the neck of the driver Mallikjan Davalsab Yakkundi. The complainants tried to hide the cash which they were carrying by throwing it to the floor of the vehicle. Accused abused and assaulted and took away in all about Rs. 1,70,000/- cash and mobile handset of the driver.

3. It is submitted on behalf of the accused Nos. 2 to 7 that they are innocent and not concerned with the offences for which they have been implicated.

4. Learned H.C.G.P. would submit that the first accused was apprehended on 16.10.2014 and after his apprehension, the other accused had fed away from their villages and hence, considerable time was consumed in tracing them. It is seen that accused Nos. 2, 3, 4 and 5 were secured on 17.10.2014, accused No. 6 was secured on 21.10.2014 and accused No. 7 was secured only on 10.11.2014.

5. The petitioners' counsel would also rely upon the provisions of Section 9 of the Evidence Act to submit that the extraordinary delay in conducting the identification parade has vitiated the same and the Court below has erroneously relied upon the same to reject the petition and passed the impugned order.

6. As it is seen that the complainant and the other persons who were assaulted by the accused have identified the accused on 10.11.2014. It cannot be stated that there is any extraordinary delay in conducting identification parade. It is also submitted that accused No. 1 who is a cattle agent, facilitating sale and purchase of cattle for commission, had observed the complainants collecting money in view of the purchase of she-buffaloes in the morning and also learnt about they proposed to proceed to Ranebennur cattle Shandy and thereafter he has conspired with the other accused and has executed a robbery. It is also submitted that accused No. 1 is already an accused in a similar case and has been enlarged on bail and the case is pending trial.

7. Petitioners' counsel would submit that the other accused have no criminal antecedents and that charge sheet is filed on 02.01.2015, that being the case, there is no opportunity for the accused to tamper with the witness or the evidence. The counsels would further submit that the petitioners are behind the bars from the last 4 to 5 months and they are the only bread winners of their respective families.

8. Learned H.C.G.P. would submit that the petitioners had organized themselves as a gang and committed heinous crime of robbery on the highway and put threat to the lives of the complainants. It is also contended by the learned H.C.G.P. that accused No. 1 was holding a sickle and had caused injury on the neck of the driver. He would submit that all other injuries suffered by the complainants and occupants of the vehicle have been opined to be simple injuries and substantial damage has been caused to the vehicle and that if the accused are enlarged on bail, they likely to abscond.

9. It is seen that the petitioners are villagers residing in different villages and accused No. 1 is alleged to be the brain and he has already been arrested and enlarged on bail in respect of the similar offence. The other petitioners are stated to be innocent coolies and they have no criminal antecedents nor any cases pending against them. In that view of the matter and also taking into consideration of the fact that the accused Nos. 2 to 7 were not wielding dangerous weapon and also the fact that they have alleged to have inflicted

simple injuries, this Court is of the opinion that it would serve the ends of justice, if the accused Nos. 2 to 7 are enlarged on bail. Accordingly, accused Nos. 2 to 7 are enlarged on bail subject to the following conditions:

(i) Accused Nos. 2 to 7 shall execute a bond for a sum of Rs. 25,000/- each and furnishing two like sureties to the satisfaction of the jurisdictional Court. Out of the two sureties, one of them shall be a close relative who will vouch for the regular attendance before the Court.

(ii) They shall not leave the jurisdiction of this Court without permission of the trial Court.

(iii) They shall appear before the trial Court on all hearing dates without fail. In the event of they fail to appear on any of the hearing date, with this order the respondents are at liberty to move for revocation of the order.

(iv) They shall not indulge in any criminal activities.

(v) They shall deposit a sum of Rs. 15,000/- each with the jurisdictional Court. This deposit is made voluntarily by the petitioners only in order to demonstrate their bona fides. Hence, this deposit cannot be construed as an admission of their guilt and shall not be construed so.

The trial Court shall not be influenced by the deposit of money or the observations made herein as the same is done for the purpose of consideration of this petition only and the trial court shall consider and dispose off the cases on an independent consideration of the merits and in accordance with law.

However, the trial Court is directed to expedite the disposal of the above case on or before 31.10.2015.