

(2022) 01 KAR CK 0014
In the Karnataka High Court
Case No : Criminal Petition No. 3040 Of 2021

Gokul Kathri @ Gokul

APPELLANT

Vs

State Of Karnataka

RESPONDENT

Date of Decision : 13-01-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439
Indian Penal Code, 1860 — Section 302, 342, 506

Citation : (2022) 01 KAR CK 0014

Hon'ble Judges : H.P. Sandesh, J

Bench : Single Bench

Advocate : Anil, Vinayaka V.S

Final Decision : Dismissed

Judgement

H.P. Sandesh, J

1. This petition is filed under Section 439 of Cr.P.C. seeking regular bail of the petitioner in Crime No.548/2018 (Spl.C.No.481/2019) of Banasawadi

Police Station, for the offences punishable under Section 302, 342 and 506 of IPC.

2. Heard the learned counsel appearing for the petitioner and the learned High Court Government Pleader appearing for the respondent/ State.

3. The factual matrix of the case is that the complainant, who is the wife of this petitioner, had lodged a complaint with the police stating that she gave

birth to a female baby and the husband was not happy since it was a female baby. Hence, he was abusing and assaulting his wife and also making

comments on the chastity of the complainant stating that the baby is not born to him and born to some one else. When the said fact was noticed by

CWs.2, 3, 4, 5 and 6, advised the petitioner and in spite of it he continued the

same. That on 11.10.2018, when the child was crying after urinating, this petitioner started assaulting the baby and when she tried to take the child, this petitioner thrown the child on the wall, as a result, child sustained injury and succumbed to the same. Though she made an attempt to take the child to the hospital immediately, he caused threat and locked the house; as a result, the child succumbed to the injuries. Based on the complaint, the police have registered a case, investigated the matter and filed the charge-sheet.

4. The learned counsel appearing for the petitioner would vehemently contend that the very allegation in the complaint that this petitioner assaulting the baby and the child is hardly 20 days old. A question of beating the child is imaginary. Apart from that, a false allegation is made against this petitioner to implicate him in the case. The learned counsel also would vehemently argued that post-mortem report discloses injury to the extent of 18 cm x 13 cm and the same is reflecting on the scalp, contusion noted over bilateral parieto-occipital region and the Doctor also while giving the report stated that the injuries are fresh, antemortem in nature and caused due to blunt force impact. This petitioner not committed the murder of the child and there are chances of the child fell down from the cot and sustained the injury. In order to avoid taking the blame the complainant has given a false complaint implicating this petitioner.

5. The learned counsel also would submit that from the last 3½ years, this petitioner is in custody and no progress in the trial. Only P.W.1 had been examined and he has turned hostile and other complainant is examined partly and no need of custodial trial and he may be enlarged on bail with conditions.

6. Per contra, the learned High Court Government Pleader appearing for the State not disputes the fact that 20 days old child was murdered. Learned High Court Government Pleader brought to the notice of this Court that the nature of injuries sustained by the baby and also learned High Court Government Pleader brought to the notice of this Court that the nature and cause of death was due to blunt force impact only, 20 days old child succumbed to the injuries. The witnesses also speak with regard to ill-treating the wife since she gave birth to a girl baby. Apart from that, though the witnesses have advised he did not heed to their advice, but brutally committed

the murder. Hence, he is not entitled for bail.

7. Having heard the respective counsel and also on perusal of the material available on record, it is not in dispute that the baby is 20 days old and the

Court has to look into the external appearance, which has been noted by the Doctor. Apart from that skull and vertebra discloses the injury over

bilateral parieto-occipital region over an area of 18 cm x 13 cm. If the arguments of the learned counsel for the petitioner is accepted that the child

might have fell down accidentally from the Cot, the injury to the extent of 18 cm x 13 cm, cannot be occurred. Apart from that, the Doctor has

categorically opined that the injuries are fresh in nature, antemortem in nature and caused due to blunt force impact. The very allegation against the

petitioner is that he had thrown the child on the wall. But no doubt, the learned counsel brought to the notice of this Court that no marks on the wall,

but when the child was thrown on the wall, immediate stains cannot be appeared on the wall. Apart from that, medical evidence available before the

Court is clear that the child had suffered the head injury and on account of the head injury only child succumbed to the injuries. The matter is pending

for trial. No doubt, partial evidence was recorded and according to the learned counsel appearing for the petitioner, P.W.1 was turned hostile, but

Court has to look into the evidence of the prosecution in entirety and unless the witnesses are examined and when the brutal act of throwing the child

on the wall is an alleged act against the petitioner that too his child 20 days old and the allegation is also made by the wife. When such being the case,

it is not a fit case to exercise the powers under Section 439 of Cr.P.C., in favour of the petitioner. The other contention of the learned counsel for the

petitioner is that he is in custody from 3½ years cannot be a ground to enlarge him on bail. Hence, I do not find any merit in the petition.

8. In view of the discussions made above, I pass the following:

ORDER

The bail petition is rejected.