

(2017) 02 KAR CK 0191
In the Karnataka High Court
Case No : 200110 of 2017

Gudusab S/o Hajisab Ajeejmiya

APPELLANT

Vs

The State through Rural Police Station

RESPONDENT

Date of Decision : 09-02-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 439](#) - Special powers of High Court or Court of Session regarding bail
[Indian Penal Code, 1860](#), [Section 302](#),
[Section 34](#) Se

Citation : (2017) 02 KAR CK 0191

Hon'ble Judges : B. A. Patil

Bench : SINGLE BENCH

Advocate : Ashok Mulage, Sheshadri Jaishankar M.

Final Decision : Dismissed

Judgement

1. This petition is filed by the petitioner/accused No.2 under Section 439 of Cr.P.C., seeking regular bail in Crime No.251/2016 of Rural Police Station, Gulbarga, registered for the offences punishable under Sections 302, 504, 506, 109 r/w Section 34 of IPC.

2. Brief facts of the case as per the complaint are that, the complainant had two wives. His first wife Kamalabai died about 10 years back leaving behind her two male and one female child. The complainant and his second wife along with their children were residing at Pandith Deen Dayal Colony. Accused No.1 being the son of first wife was running a pan shop and was quarreling with second wife of the complainant, as she was having illicit intimacy with other person of that area. In that light, accused No.4 used to instigate accused No.1 not to leave his step mother Yallamma, as she was brining bad name to their community and the same was informed to the complainant and his family members by accused No.1. In that context, on 19.06.2016 at about 9.00 p.m., the complainant had been to the pan shop of accused No.1 and there, he saw accused Nos.2 and 3 and

others. At that time, accused Nos.1 to 3 went by the side of the pan shop and were talking in a low voice and he heard that they intended to finish him in the night. Thereafter, all the three persons went away saying that they have got some work and thereafter Akash and Shivappa who were present there, went to their house. At about 11.45 p.m., the complainant heard voice from the house of S.M. Krishna Colony, he went there and saw that three persons were assaulting a lady near a tower, accused No.1 was abusing the lady, accused Nos.2 and 3 have caught hold Yallamma and made her to fall on the ground and accused No.1 assaulted on her forehead and head with stone. Further, it is alleged in the complaint that the complainant told them not to assault Yallamma, but the accused continued to assault and committed the murder of Yallamma. By seeing the incident, one Asha, the daughter of the deceased came there to rescue her. At that time, all the three accused caught hold and took her to some distance, accused No.2 assaulted her with a stick, accused No.3 made her to fall on the ground and thereafter accused No.1 slit her neck with a knife by sitting on her chest. On the basis of the complaint lodged by the complainant, a case has been registered against the accused persons.

3. I have heard the learned counsel for the petitioner and the learned High Court Government Pleader appearing for respondent-State.

4. The main grounds urged by the learned counsel for the petitioner are that already accused No.4 has been released on bail by this Court in Criminal Petition No.201083/2016 and even on the ground of parity, the petitioner is entitled to be released on bail. It is contended that the petitioner is innocent and there are no overt-acts on the part of the petitioner. It is also contended that accused No.1 has assaulted the deceased on her head with stone and he has slit the neck of Asha with knife. It is further contended that already the investigation has been completed and charge-sheet has been filed, therefore, the petitioner is not required for the purpose of investigation or interrogation. On these grounds, he prays for allowing the petition.

5. On the contrary, learned High Court Government Pleader appearing for the respondent-State vehemently contended that there are eyewitnesses to the alleged incident. There is prima facie material to show that the petitioner is involved in a heinous offence of causing the death of two persons. He has further contended that at this juncture, if the petitioner is released on bail, he may tamper with the prosecution witnesses, he may abscond and he may not be available for trial. On these grounds, he prays for dismissal of the petition.

6. I have gone through the copy of the FIR, complaint and other material produced along with the petition.

7. As could be seen from the complaint and other material, it disclose that the alleged offence has taken place at about 9.00 p.m. on 19.06.2016. At that time, the petitioner caught hold the deceased and accused No.1 has assaulted on the forehead and head of the deceased with stone. The complainant has also stated

that thereafter when the daughter of deceased Asha came there to rescue the deceased, the accused persons caught hold and took her to some distance and there accused No.2 assaulted her with stick and accused No.3 has also made her to fall on the ground. At that time, accused No.1 sat on her chest and slit her with knife. By going through the said material and the statement of the witnesses, in the statement, they have specifically stated about the overt-acts of each of the accused persons. In that light, there appears to be prima facie case made out against the petitioner. As such, I feel that it is not just and proper to release the petitioner on bail, that too when the petitioner has involved in a serious offence like causing the murder of two persons.

Accordingly, the petition is dismissed.