

(2017) 02 KAR CK 0163
In the Karnataka High Court
Case No : 200134 of 2017

Hanumanth S/o Yallappa Gadi Waddar	APPELLANT
Vs	
The State through University Police Station	RESPONDENT

Date of Decision : 07-02-2017

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,
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Citation : (2017) 02 KAR CK 0163

Hon'ble Judges : B. A. Patil

Bench : SINGLE BENCH

Advocate : Shivasharana Reddy, Sheshadri Jaishankar M.

Final Decision : Allowed

Judgement

1. This petition is filed by the petitioner/accused No.4 under Section 439 of Cr.P.C., seeking regular bail in Crime No.52/2015 of University Police Station, Kalaburagi, registered for the offences punishable under Sections 143, 147, 148, 109, 302 r/w 149 of IPC and Sections 3(1)(x), 2(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short "the Act").

2. Brief facts leading to filing of the complaint are that one Mr.Praveen, brother of the deceased Yashwant of Hagaraga village on 26-2-2015 was proceeding on his motor cycle towards Kalaburagi. When he reached near a country road near Ajadpur, he found the dead body of his brother and his motor cycle near the said road. He suspected that the accused persons by name Laxman Kori, Vithal s/o Malappa, Mallu S/o Ramanna Gogi, Basappa s/o Ranappa Komban and Ravi s/o Ramanna Kori have committed the murder of the said deceased by assaulting with deadly weapons. The name of the petitioner is not forthcoming in the FIR and the complainant has not even suspected him having joined the hands with the other accused. Subsequently, on the next day, further statement of the

complainant was recorded, wherein he exonerated some of the accused persons whose name found in the FIR i.e. by name Vithal and Ravi but implicated the present petitioner and some other accused persons. The records also disclose that there are two eye witnesses to the incident by name Anil and Guru. Their statement was recorded on the next day, i.e. on 27-2-2015. They have stated about the overt-acts of the petitioner and other accused persons. It is the case that accused by name Mallu Singh, Mallu Gogi, Basavaraj have assaulted with Talwar and knife but the present petitioner was standing on the spot along with Chota Santosh and Sharanu. They also assaulted the deceased with their hands and stones. These two eye witnesses were standing away from the said spot and watching the same.

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 the other accused persons have already been released on bail. Even the trial has already commenced and the alleged eyewitness Guru has been examined before the Trial Court as PW.1 and he has not supported the case of the prosecution and he has been treated as hostile. He has further contended that the only allegation against the accused- petitioner is that he was holding the deceased and at that time other accused persons have assaulted the deceased and caused the grievous injuries. He has further contended that if the petitioner is released on bail, he is ready to abide by the conditions to be imposed by this Court and he is ready to offer sureties. 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 the trial has commenced and witnesses have already been summoned and the Court has recorded the statement of the witnesses. He has further contended that at this juncture, if the petitioner is released on bail, there is likelihood of he being absconded 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. As could be seen from the complaint, it reveals that the earlier complaint was registered against unknown persons and subsequently on the basis of the statement of eyewitnesses, the other accused persons have been apprehended. They have stated that the accused-petitioner was holding the deceased and at that time, it is accused Nos.2, 3 and 10 who have assaulted the deceased with talawar i.e. the only allegation which has been made in the statement of two witnesses. When there is no overt acts on the part of the accused- petitioner and other accused persons have already been released on bail and trial has already been commenced and the alleged eyewitness who is said to have seen the incident has been examined as PW.1 and has not supported the case of the prosecution. In that light, I am of considered opinion that, if the accused - petitioner is released on bail by imposing some stringent

conditions and by taking adequate security, it would meet the ends of justice.

7. For the aforementioned reasons, the petition is allowed and petitioner/accused No.4 is ordered to be released on bail, subject to the following conditions:

- i) The petitioner shall execute a personal bond for a sum of Rs.2,00,000/- (Rupees Two Lakhs Only) with two solvent sureties for the likesum to the satisfaction of the jurisdictional Court;
- ii) The petitioner shall not indulge in hampering the investigation or tampering the prosecution witnesses;
- iii) The petitioner shall make himself available to the Investigating Officer as and when required;
- iv) The petitioner shall appear before the concerned Court regularly.