

(2023) 02 KAR CK 0038
In the Karnataka High Court
Case No : Criminal Petition No. 561 Of 2023

Hari Prasad @ Avinash

APPELLANT

Vs

State Of Karnataka By Shivamogga Rural Police Station Rep.
By State Public Prosecutor High Court Building
Bengaluru-560001

RESPONDENT

Date of Decision : 17-02-2023

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439
Indian Penal Code, 1860 — Section 114, 120B, 201, 395, 397, 448

Citation : (2023) 02 KAR CK 0038

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

Bench : Single Bench

Advocate : Vivek Reddy, Mahesh Shetty

Final Decision : Dismissed

Judgement

H.P. Sandesh, J

1. Heard the learned counsel for the petitioner and learned High Court Government Pleader appearing for the respondent-State.
2. This is a successive bail petition filed under Section 439 of Cr.P.C. seeking regular bail of the petitioner in Crime No.273/2021 of Shimoga Rural Police Station, for the offences punishable under Sections 114, 120-B, 448, 397, 395 and 201 of IPC.
3. This petitioner, earlier had approached this Court by filing CrI.P.No.7567/2021 and the same came to be dismissed on 12.01.2022. Thereafter, this petitioner had approached this Court by filing CrI.P.No.6911/ 2022 and the same was also dismissed on 10.08.2022 and this a third successive bail petition before this Court.
4. Learned counsel appearing for the petitioner would vehemently contend that, accused Nos.2 and 5 have been enlarged on bail by a Co-ordinate Bench and

hence, this petitioner is also entitled for bail on the ground of parity. The counsel also would submit that, incident has taken place on 03.08.2021 and according to the police, they found this petitioner and other accused persons on 15.08.2021. But, before that, notice was given to one Latha stating that, this petitioner made payment of loan out of dacoity amount and when they arrested the accused persons on 15.08.2021, how come they get the information regarding payment made in favour of Smt. Latha and asked her to co-operate for the investigation, since the contention is that an amount of Rs.77,000/- was transferred on 12.08.2021.

5. The learned counsel would further submit that there was a matrimonial dispute between the sister of this petitioner by name Chaitra and her husband, Suresh and his family members, including the original complainant and due the said ill-will, this petitioner has been falsely implicated in the case. The said Chaitra has also filed a D.V. Act proceedings against the complainant-Suresh and others in CrI.Misc.No.56/ 2022 on the file of the Senior Civil Judge and JMFC, Tiptur and the same is still pending for consideration. The counsel also would contend that the conversations between the mother and child is recorded on 18.06.2021 in the mobile of Chaitra at about 19.56 hours and conversation is for a period of one minute, 40 seconds which evidences the act committed by the complainant. The sister of the petitioner, after hearing the recordings has forwarded the message to her husband, Suresh on 18.06.2021 at 20.13 and 20.14 hours and informed Suresh saying that "nan baral kk nan bandu yak jailige hogan" and "yen tappu madidini nanu" and this clearly discloses that there was a prior ill-will against the petitioner. It is also contended that, earlier to the incident i.e., on 14.06.2021, the family members of the petitioner, including the petitioner entered into a sale agreement in respect of the land bearing Sy.No.10/3A measuring 1 acre, 20 guntas situate at Kasavuhalli Village, Nonavinakere Hobli, Tiptur Taluk, Tumakuru District. In the agreement, the family of the petitioner agreed to receive a sum of Rs.26,40,000/- and received a sum of Rs.5,00,000/- by way of cheque and Rs.10,00,000/- by way of cash. Since the property was purchased by the purchaser for more than the market value, the purchaser, in order to avoid the excess registration charges, has entered into two agreements of sale among them and agreement for Rs.6,00,000/- is registered and on the very same day, both have entered into an unregistered agreement, in that, cash of Rs.10,00,000/- was received which shows that the petitioner and the family were having funds in their custody among them and Rs.5,00,000/- was transferred through cheque on 15.06.2021. It is also contended that the Investigating Officer in the instant case has sought the source of income from the complainant for having Rs.25,00,000/- cash in his house, for which the complainant without providing any document has answered in a vague manner that he has received the amount from the income of agriculture.

6. The counsel also would vehemently contend that the petitioner was under the custody of the police on 12.08.2021 and after that only, the police pledged the ornaments which belongs to the complainant through one Sathish on 12.08.2021

at Bengaluru which is shown in PF and only in order to create an evidence against the petitioner, particularly, the Investigating Officer in the instant case, not made the said Sathish as witness, though the ornaments were recovered. Hence, it is a clear case of false implication of the petitioner and the petitioner may be enlarged on bail.

7. Per contra, learned High Court Government Pleader appearing for the respondent-State would submit that complaint was given on the same day and mahazar was conducted on next day and two persons have sustained grievous injuries. It is also submitted that PF is also very clear that recoveries are made at the instance of this petitioner i.e., an amount of Rs.88,000/-, 32 grams of one pair ear-rings, 3 rings, mobile and silver articles and the same is also taken note of by this Court earlier and several recoveries were made at the instance of this petitioner i.e., gold ornaments and silver articles and this Court, considered the material on record twice earlier. It is also submitted that, granting bail in favour of accused Nos.2 and 5 cannot be a ground to grant bail in favour of this petitioner. The accused No.2 was granted bail on the ground that there was a ligament fracture on account of assault made by the jail authorities and the accused No.5 was enlarged on bail, only on the ground that specific allegations are made against the accused Nos.1 to 4 and not against the accused No.5 and this petitioner is the architect of the crime and at his instance only, the accused persons have conspired with each other and he himself secured all the other accused persons and committed dacoity and thereafter, shared the cash, gold and silver articles and recovery was also made at the instance of this petitioner. Hence, not made out any changed circumstance to grant bail in a successive bail petition.

8. Having heard the respective counsel and also on perusal of the material available on record, admittedly, the incident has taken place on 03.08.2021 and this petitioner was arrested on 15.08.2021. The main contention of the learned counsel for the petitioner is that there was a matrimonial dispute between the sister of this petitioner and one Suresh, wherein the complainant is also an accused. No doubt, this Court can exercise the discretion only if any additional grounds are urged while considering the successive bail petition, this Court, earlier rejected the bail petition of this petitioner twice at the first instance, during the crime stage and comes to the conclusion that this petitioner is the master mind and recovery of Rs.1,88,000/- is made out of Rs.10,00,000/- which was taken by him and 79 grams of gold was recovered apart from the silver articles and the eye witnesses also sustained injuries when they tried to prevent dacoity and taking note of the gravity of the offence, dismissed the bail .

9. In a subsequent bail petition filed after filing of the charge-sheet, this Court, in detail discussed the material available on record that this petitioner is the master mind and he only took the other accused persons in a car belonging to C.W.14 and given instructions to other accused to commit dacoity and accordingly, committed dacoity and snatched an amount of Rs.25,00,000/- and

also gold and silver articles and out of that, 79 grams of gold was recovered at the instance of this petitioner and apart from silver and bronze articles, 3 mobiles were seized which were used for committing dacoity. Some of the subject matter of dacoity articles are pledged by the petitioner with financier and the same is also seized and C.Ws.1 and 2 have also sustained injuries while committing the offence of dacoity. The records also disclose that C.W.1-complainant had sustained six grievous injuries and the victims have also identified the petitioner, hence, rejected the bail petition of this petitioner.

10. It is important to note that the only changed circumstance urged by the learned counsel for the petitioner in this petition is that, there was matrimonial dispute between the sister of the petitioner and one Suresh, who is the husband of sister of the petitioner and complainant is also an accused and the same cannot be a ground to enlarge the petitioner on bail. Further, even assuming that there was a matrimonial dispute, when the dacoity was committed knowing fully well that they are the relatives and having the knowledge of the status of the complainant and having capacity to keep the gold articles and money in the house, this petitioner is the master mind and architect of dacoity and he himself secured the accused persons in a car belonging to C.W.14 and conspired with them and given instructions to commit dacoity. Apart from that, after committing dacoity, shared both gold and silver articles as well as the cash and cash of Rs.1,88,000/- and 79 grams of gold and silver article are recovered at the instance of this petitioner. Further, this Court also comes to the conclusion that false implication is a matter of trial and the petitioner cannot be enlarged on bail, when a serious offence of dacoity is alleged against him. No doubt, he is not having any other criminal antecedents, but, this petitioner is the architect of the crime.

11. Learned counsel appearing for the petitioner also brought to notice of this Court that accused No.2 is already enlarged on bail. On perusal of the order passed by this Court earlier, it is seen that the accused No.2 is granted bail only based on the medical grounds since, he had sustained ligament fracture on account of assault made by the jail authorities. The Co-ordinate Bench also granted bail in favour of accused No.5 and made an observation that the main allegation is against the accused Nos.1 to 4 and they committed dacoity. Hence, not a case for considering the successive bail petition of the petitioner on the ground of parity also and no changed circumstance is made out to enlarge the petitioner on bail in a third successive bail petition.

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

ORDER

The bail petition is rejected.