

(2014) 03 KAR CK 0132
In the Karnataka High Court
Case No : Criminal Petition No. 100381/2014

Heenakousar, Abubakar and Shoutakabanu

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 12-03-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 438
Penal Code, 1860 (IPC) — Section 201, 302, 34

Citation : (2014) 03 KAR CK 0132

Hon'ble Judges : K.N. Phaneendra, J

Bench : Single Bench

Advocate : Anand R. Kolli, Advocate for the Appellant; V. Mbanakar, Addl. S.P.P, Advocate for the Respondent

Final Decision : Partly Allowed

Judgement

K.N. Phaneendra, J.—One Smt. Mehaboobi Kutabuddin Kotwal lodged a complaint before the Police Sub Inspector, Banahatti police Station, stating that the deceased Mousin married the first accused by name Smt. Heenakousar. About four months after the marriage, it appears the said Mousin and the first petitioner started living separately, at Terdal. Thereafter, they started living at Banahatti in a rented house. In the said house, the deceased Mousin, his wife and one child were all living together. It is alleged that the said Heenakousar was not happy with the complainant and his family members. In this back ground, it is alleged that on 12/12/2013, at about 2.00 a.m., in the night, the complainant received a telephone call from one Yakub, the brother of the complainant stating that the son of the complainant died due to burn injuries. Immediately, the complainant and her husband went to Banahatti and seen the dead body of the deceased. They also observed that the petitioner Nos. 1 and 2 were there near the house, but, they did not disclose anything as to how the death of the deceased occurred. The Doctor who has conducted the PM examination also has not yet given the final opinion. However, it is stated that the deceased suffered 90% of the burn injuries. It is an undisputed fact that on that particular day, the

petitioner Nos. 1 and 2 were there in the said house and the incident had happened in the night hours and it has to be ascertained by the police, how that particular incident happened. The circumstances, goes to show that the petitioner Nos. 1, 2 and the deceased were there inside the house. The police have to investigate what exactly transpired between the deceased and the petitioners 1 and 2 on that particularly day. The learned Addl. State Public Prosecutor also brought to my notice that two witnesses examined by the police disclosed that on the said night, there was a quarrel between the petitioners 1 and 2 and as well as the deceased. Therefore, when such strong circumstances are there, in my opinion, the petitioners 1 and 2, who are arrayed as accused Nos. 1 and 3 are not entitled to be enlarged on anticipatory bail. The custodial investigation is necessary so far as these two petitioners are concerned.

2. So far as petitioner No. 3 arrayed as accused No. 4 is concerned, it appears she was not there in the house, on that particular day. She is the mother of accused No. 1. Though the learned counsel for the petitioner tried to persuade this Court that the accused No. 1 i.e. petitioner No. 1 is having a small child aged about one year and there is no one to look after the said child, but, nevertheless, the records disclose that the petitioner No. 3 is the mother of petitioner No. 1, and she will definitely take care of the said child.

3. Under the above said circumstances, the petition so far as petitioner Nos. 1 and 2 are concerned deserves to be dismissed and the petitioner No. 3 deserves to be allowed.

4. Hence, the following order is passed:-

ORDER

The petition filed by petitioner Nos. 1 and 2 is hereby dismissed. The petition filed u/s 438 of Cr.P.C. is hereby allowed in so far as petitioner No. 3 is concerned. Consequently, the petitioner No. 3 shall be released on bail in the event of her arrest in connection with Crime No. 187/2013 for the offences punishable under Sections 302, 201, r/w Section 34 of IPC, subject to the following conditions:

i) The petitioner No. 3 shall surrender herself before the Investigating Officer within one week from the date of receipt of copy of this order and execute a personal bond for a sum of Rs. 50,000/- with one solvent surety for the likesum to the satisfaction of the Investigating Officer as the case may be.

ii) The petitioner No. 3 shall not indulge in tampering the prosecution witnesses and he should assist the police in further investigation, if any, and for any interrogation in this regard.

iii) The petitioner No. 3 shall make herself available to the Investigating Officer as and when required for the purpose of investigation, interrogation etc.

iv) The petitioner No. 3 shall not leave the jurisdiction of the Bagalkot District,

without prior permission till the case registered against her is disposed of.
Accordingly, the petition is partly allowed.