

(2015) 06 KAR CK 0339

In the Karnataka High Court

Case No : Criminal Petition No. 100407 of 2015

Irappa Ramappa Kottappagola and Others

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 02-06-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 438, 439
Penal Code, 1860 (IPC) — Section 307, 324, 34, 504, 506

Citation : (2016) 1 AKR 475 : (2015) 5 KarLJ 128

Hon'ble Judges : G. Narendra, J

Bench : Single Bench

Advocate : S.B. Deyannavar, for the Appellant; K.S. Patil, High Court
Government Pleader, Advocates for the Respondent

Judgement

G. Narendra, J—The petitioners are before this Court being aggrieved by the order of the Court in Principal and Sessions Judge, Belgavi dated 20-2-2015. The learned Judge has been pleased to reject the bail application preferred under Section 439 of Criminal Procedure Code, 1973 praying to enlarge them on bail in Crime No. 355 of 2014 of Yamakanamaradi Police Station. The prosecution version is that one Yallappa Shettappa Patil of Bidrewadi is the complainant and that one Ningappa Maruti Konakeri is the nephew of his wife and they had planned to open a pan and tea shop near Aladal Cross. In furtherance of the same, they assembled on 3-12-2014 and his wife's nephew the said Ningappa (deceased) had brought some tin sheets and poles for erecting the shop. That at about 8.00 p.m., the complainant, deceased Ningappa and one Gajanana had gone to Nisarga Dhaba. When they reached the said Dhaba, the petitioners were also present there. In the course of discussions, an altercation ensued between the petitioners herein and the complainant. As a result of the altercation, the accused 1 is alleged to have used abusive language against the complainant. Agitated by the same, the deceased Ningappa is said to have assaulted the petitioners herein with a sword in return the petitioners have assaulted Ningappa with the poles, which were lying there. The deceased was assaulted on his head.

Consequent upon which he suffered sever head injury and passed away ten days after hospitalization.

2. It is submitted on behalf of the petitioners that they are innocent and were totally unarmed at the time of incident. The petitioners' Counsel would further point out that it is the petitioners who were assaulted with deadly weapons and they have suffered deep cut injuries which have been opined to be grievous injuries by the doctor and that they had also registered a counter complaint which has been registered as C.C. No. 356 of 2014. The said complaint is registered against the complainant and other including the deceased who is stated to be the prime accused in the crime. The complaint has been registered for the offence punishable under Sections 324, 307, 504 and 506 read with Section 34 of Indian Penal Code, 1860.

3. It is argued on behalf of the petitioners that the very narration of the complaint would clearly demonstrate, that, it is the petitioners who were unarmed while the deceased was armed with a deadly sword. He would further state that the petitioners have suffered grievous injuries in the quarrel. The Counsel would further submit that the incident was neither premeditated nor was there any enmity between the parties and that it was a result of a quarrel which occurred at the spur of moment and he would state that if the petitioners have to made any attempt to defend themselves, the deceased would have murdered the petitioners and there was a threat to the petitioners' lives. They were forced to resort to physical violence to protect and safeguard themselves. The petitioners' Counsel would further submit that the petitioners were assaulted without any provocation and the deceased and the complainant committed the dastardly act of assaulting with deadly weapons.

4. Per contra, learned Government Pleader would submit that there cannot be any justification for the Criminal Act committed by the petitioners. He would submit that it is true that the petitioners have suffered deep cut injuries as a result of the assault by the deceased and complainant. He would further submit that the charge-sheet has already been filed and hence, the petition be rejected as the petitioners have been committed a grave offence. Learned Government Pleader has also produced before the Court wound certificates issued by the Rajeev Gandhi Rural Hospital wherein it has been detailed that the first petitioner has suffered a grievous injury and a simply injury. In respect of second petitioner, it is certified that he has suffered two grievous injuries and three simple injuries. The wound certificate details the injuries suffered by the petitioners and is issued on 3-12-2014 itself.

5. In the above circumstance, the point that arise for consideration by this Court is:

"Whether the petitioners are entitled to be enlarged on bail?"

6. A perusal of the complaint and the documents placed before this Court demonstrate that a quarrel ensued between the complainant and petitioners

herein and both the petitioners and the complainant have lodged a complaint and a counter complaint. In the said quarrel, unfortunately a life has been lost. From the records, it appears that the deceased has been arrayed as prime accused in the complaint lodged by the petitioners. It is also not in dispute that the deceased had been armed with a sword and assaulted the petitioners with the deadly weapon, as a result of which both the petitioners have suffered grievous injuries. The Court below though aware of the said facts has been pleased to reject the bail application only on the ground that no new developments or any new facts have come to light in the interregnum. The District Court has arrived at the decision to reject the petition only on the ground that the successful bail petitions are not entitled to be considered unless there is substantial change in the situation. The Court below has simply extracted the order passed on the earlier applications filed by the petitioners under Section 438 of Cr.P.C. praying for release on bail in the event of their arrest by the respondent-Police. The Court below though aware of the facts has not applied its mind in the manner it ought to have been done. On the contrary, it has relied upon the injuries suffered by the deceased to reject the bail petitions. The Trial Court ought to have relied upon the injuries suffered by the petitioners and also surrounding circumstances which reveals that the quarrel was on the spur of the moment and there was no previous enmity between the parties neither the attack was premeditated. This Court appreciates the fact that the petitioners were rendered to a situation where they were forced to defend as they were attacked without any grave provocation. The contentions of the petitioners' Counsel that, but for the counter aggression by the petitioners they would have been murdered by the deceased, merits consideration. The person being attacked with the deadly weapon apparently would resort to any method to safeguard himself and in this case, they had taken up the poles lying around to defend themselves against the deceased. It is not a case that the deceased was alone or helpless. In fact he was accompanied by others, which is also an admitted fact. In the above circumstance, this Court is of the considered opinion that the petitioners are entitled to be enlarged on bail. It is also considered that the charge-sheet has already been filed. In that view of the matter, it cannot be gainfully argued that the petitioners would attempt to influence the witness or threaten the witness or tamper with the evidence. It is also submitted that the complainant and others in the present case who are accused in Crime No. 356 of 2014 are already enlarged on bail. In that view of the matter, the present petitioners are also entitled to be enlarged on bail. Accordingly petition is allowed:

(i) Petitioners are directed to enlarged on bail in Crime No. 355 of 2014 of Yamakanamardi Police Station on executing bond for a sum of Rs. 1,00,000/- each and furnishing two sureties for the likesum to the satisfaction of the jurisdictional Court.

(ii) Petitioners shall not leave the jurisdiction of this Court without prior permission of the jurisdictional Court.

(iii) Petitioners shall not attempt to influence the witness or tamper with the evidence.

(iv) Petitioners shall attend the Court on all hearing dates.

In the event of violation of any of the above conditions, the prosecution is at liberty to move for cancellation of the above order.

The observations made hereinabove are made only for the purpose of consideration of this bail petition. The Trial Court shall hear and dispose off the case uninfluenced by any of the observation made hereinabove and in accordance with law.

Ordered accordingly.