

(2016) 02 KAR CK 0037

In the Karnataka High Court

Case No : Criminal Petition No. 8747 of 2015

Irfan Mohammad Hussain Kaladgi

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 03-02-2016

Acts Referred:

Citation : (2017) 1 AICLR 382 : (2016) 4 AICLR 177 : (2016) 3 AirKarR 548 :
(2016) ILRKarnataka 3537 : (2016) 3 KCCR 2639

Hon'ble Judges : Aravind Kumar, J.

Bench : Single Bench

Advocate : Sri Diwakara K. and Srinath Kulkani, Advocates, for the Appellant;
Sri R.S. Lagali, Advocate for Sri Sheshadri Jaishankar M, Government Pleader, for
the Respondent

Final Decision : Allowed

Judgement

Aravind Kumar, J.—On the basis of a complaint lodged by Sri. Moiuddinpasha alleging that his son-in-law Sri. Syed Faizuddin was murdered on 08.11.2014, criminal law was set in motion and Crime No. 301/2014 came to be registered by Gandhi Chowk Police Station, Vijayapura against Mohd. Asif and eight others for the offence punishable under Sections 143, 147, 148. 302, 323, 120B, 109, 504, 506 r/w 149, IPC and under Section 27 of Indian Arms Act.

2. On conclusion of investigation, charge-sheet came to be Filed against 23 persons for afore stated offences in S.C.No.44/2015 which is pending on the file of Sessions Judge, Vijayapura. Petitioner has been arraigned as accused No. 19 and he is in custody from 19.12.2014.

3. Petitioner had approached this Court for being enlarged on bail in Criminal Petition No. 200427/2015 which came to be dismissed by order dated 27.04.2015-Annexure-E on the ground of parity namely, on the ground that petitioner's role is similar to the role of accused Nos. 17 and 18 and this Court had already taken a view that accused Nos. 17 & 18 persons were also present

at the spot and they had indulged in similar acts as that of petitioner and their prayer for grant of bail had been rejected. Thereafter, fresh application came to be filed by the petitioner along with accused Nos. 9, 18 and 20 seeking grant of regular bail under Section 439 of Cr.P.C., before District and Sessions Judge, Vijayapura. Said bail petition came to be considered by the Sessions Judge and it was allowed in part namely, bail came to be granted to accused No. 9 and application filed by accused Nos. 18, 19 and 20 came to be rejected by order dated 21.11.2015 -Annexure-C. Hence, petitioner-Accused No. 19 has filed this petition for grant of bail.

4. I have heard the arguments of Sri. K. Diwakara and Sri. Srinath Kulkani, learned Advocates appearing for petitioner and Sri. Sheshadri Jaishankar ML, learned High Court Government Pleader appearing for respondent State. Perused the records.

5. Sri. R.S. Lagali, learned Advocate has filed I.A.No. 1/2016 seeking permission of Court to assist learned Additional State Public Prosecutor. Said application is allowed and he is permitted to assist the learned High Court Government Pleader. Accordingly, he has assisted learned High Court Government Pleader.

6. Facts on hand would indicate that it relates to murder of a person by name Mr. Syed Fayazuddin on the night of 07.11.2014 at about 11.20 p.m. near Datri Masjid, Vijayapura. Complainant is Moinddinpasha Murtuzsab Mushirf of Haveli Galli who is none other than father-in-law of deceased-Syed Fayazuddin. He lodged a report stating that he is a resident of Haveli Galli, Vijayapura (Bijapur) and his grandson Moin Anees S/o. Anees Shaikh had contested for the post of President of Bijapur Youth Congress in the Election held during 2011 against accused No. 1 and in the said election, accused No. 1 as a rival candidate and during said elections, said accused No. 1 and his friends had picked up a quarrel with said Moin Anees and had given life threat and he had fired from his pistol at Moin Anees and he had escaped at that time. In that regard, complainant's son-in-law i.e., deceased Syed Fayazuddin had lodged a complaint against accused No. 1 and his associates before Golgumbaz Police Station. It was alleged that on account of such complaint having been lodged, accused No. 1 had developed animosity and was grinding axe against deceased-Syed Fayazuddin and had threatened that he would get him murdered by hiring contract killers of Indi, Sindagi and Almel.

7. It was further alleged in the complaint that on 07.11.2014 at about 11.20 p.m., after completing prayer, complainant was standing with Mudassar Abdul, Althaf, Fiaz Ahmed, Aiyazuddin, Kashif, Sammed Kureshi and others near the house of one Mr. Bhandari in front of Datri Mosque at Vijayapura and at that point of time, son-in-law of complainant i.e., deceased Syed Fayazuddin came on his Honda Activa motorcycle and was talking to his friends and at that point of time, two cars came from his hind side and stopped near him and from the said car, accused Nos. 1 to 9 along with 3 to 4 others who were from Sindagi, Indi and Almel alighted from the cars and shot Mr. Syed Fayazuddin at close range

with country pistols by pumping several bullets into his body and head and thereafter, some of the accused persons kicked him and after seeing the complainant and others, they fled away from the spot in the very same cars in which they had come. It was further stated that complainant and others shifted the deceased to B.L.D.E. Hospital at Vijayapur and after being administered treatment he was referred to Solapur Hospital for higher treatment and on account of condition of deceased Fiazuddin becoming critical and as such, he was shifted to Yashodhara Hospital, Solapur where Doctors treated him and yet he did not respond to such treatment and succumbed at the hospital on account of injuries sustained. It is on these allegations, complaint was lodged on 08.11.2014 at 7.30 a.m. by Moiudeenpasha Murtuzsab Mushrif before Gandhichowk Police Station and as such, police registered the case.

8. It is the contention of learned Advocates appearing for petitioner that accused No. 19 (petitioner) though hailing from Vijayapura city, he was carrying on business at Belgaum and he is not an ordinary resident of Vijayapura and he has been falsely implicated on account of political rivalry, since petitioner had supported the winning candidate i.e., accused No. 1 in Youth Congress Election. They would also elaborate their submission by contending that complaint lodged by father-in-law of deceased is surrounded with suspicion and only in order to implicate innocent persons like that of petitioner, a false complaint came to be lodged. It is further contended that complainant had stated before police that he had been to Datri Masjid to perform prayers at 11.10 p.m. and this itself would indicate that complaint is shrouded with suspicion since no prayers would be held at 11.00 p.m. at Mosque. They would also draw the attention of the Court to order dated 14.09.2015 (Annexure-G) passed by II Addl. Sessions Judge, Vijayapur under Section 91 of Cr.P.C., where under application filed by the petitioner (accused No. 19) seeking direction to Airtel Service Providers to produce call details, Tower locations along with Voice records pertaining to Mobile No. 9741818283 inter alia contending that petitioner had purchased the said mobile from M/s. Rajguru Communications, Vijayapura and on the said date and time i.e., on the date on which the incident in question took place, petitioner (accused No. 19) was not present at Vijayapura and as such to prove alibi said application came to be filed and it came to be allowed by order dated 04.09.2015 vide Annexure-G and as such, it is contended that details of Tower Locations along with voice records pertaining to Mobile No. 9741818283 relating to the period 01.11.2014 to 15.12.2014 has since been provided in a sealed cover by Airtel Service and same is in the custody of jurisdictional Sessions Court and by relying upon said call details, it is contended that petitioner has been falsely implicated and as such they pray for petitioner being enlarged on bail.

9. They would also contend that in the complaint which was filed by none other than father-in-law of deceased who is a retired Police Officer (retired Police Sub-Inspector), has stated the names of only nine persons and on account of political rivalry, petitioner's name has been falsely implicated i.e., in the further statement given by complainant, petitioner has been falsely implicated to settle

political scores. They would also draw the attention of this Court by contending that accused Nos. 2, 6, 7, 9, 10, 15, 16, 20 and 22 have already been enlarged on bail and on the ground of parity, petitioner is also entitled for being enlarged on bail. It is further contended by the learned Advocate appearing for petitioner that in the further statement given by complainant on 08.11.2014, name of petitioner is spelled out, still it did not find a place in the remand applications filed on 13.11.2014, 15.11.2014, 22.11.2014 and 27.11.2014 and this would indicate that further statement of complainant dated 08.11.2014 is engineered and fabricated and is made on account of political rivalry.

10. Per contra, learned High Government Pleader supported by Sri. R.S. Lagali has contended that there is no changed circumstance which has unfolded which would enable the petitioner to seek for grant of fresh bail. He contends, this Court has already noticed that petitioner is not entitled for being enlarged on bail while rejecting his prayer in Cri. P.No. 200427/2015 on 23.04.2015 and question of reconsidering the prayer of petitioner for enlarging him on bail does not arise. He would also submit that complaint filed by Moiudinpasha Murtuzsab Mushrif did not contain name of the present petitioner which was on account of grief and as such, he had not disclosed the names of all the accused persons and in the morning, he was able to recover himself from mental shock and trauma and as such in his further statement, he has narrated actual facts that occurred at the scene of offence indicating the manner in which deceased Fiazuddin was murdered and implicating all those persons who were involved in the murder of his son-in-law and much credence cannot be attached to the fact that name of accused person i.e., petitioner not being mentioned in complaint lodged at the first instance. He would also add that non mentioning the name of accused/petitioner in remand applications has no bearing whatsoever and said contention raised by learned Advocate appearing for petitioner requires to be rejected.

11. Having heard the learned Advocates appearing for parties and on perusal of records including complaint, statements of CWs. 1 and 11 to 19, inquest panchanama and remand applications, it is noticed that in the first instance when complaint came to be lodged by father-in-law of deceased and he had named nine accused persons as having assaulted the deceased. He had also stated that apart from those nine accused persons, about 3 to 4 unknown persons hailing from Sindagi, Almel and Indi were also present along with accused persons. This Court cannot ignore the fact that complainant is a retired Police Officer and as such, he would be conversant as to the manner in which complaint has to be lodged and as such he cannot be heard to contend that all the details of the incident could not be furnished since he was in a state of shock or trauma.. In the instant case, while lodging the complaint on 08.11.2014, at about 7.30 a.m. complainant has specifically stated names of nine accused persons and he has also stated that 3 to 4 unknown persons hailing from Sindagi, Almel and Indi had accompanied nine accused persons and all of them had assaulted deceased Syed Fayazuddin and has committed the murder. Further statement of complainant was also recorded on same day i.e., on 08.11.2014

where under complainant has implicated petitioner and eight other persons by specifying their names and he has also stated that two unknown persons were also there.

12. This Court by order dated 02.02.2016 had directed the learned High Court Government Pleader to secure the Original Case Diary and Station House Diary for being perused by this Court. Same was made available by learned High Court Government Pleader and it has been perused by this Court.

13. A bare reading of Section 154 of Cr.P.C., which fall under Chapter-XII would indicate that on every information relating to commission of a cognisable offence when given orally to an officer in charge of a police station, should be reduced to writing by him or under his direction same would be read over to the person so informing and where such information is given in writing or reduced to writing shall be signed by the person giving it and the substance thereof should be entered in a book to be kept by such Officer in such form as the State Government may prescribe in this behalf.

14. A "Station House Diary" is a diary required to be maintained to record day-to-day events that take place in a police station. For effective monitoring of day-to-day work schedule in police stations and to monitor such works in a regulated manner and to ensure duties are discharged by the police officer as it would involve balancing rights of people, be that of the accused or that of the victim of crimes or the society in general, said "Diary" is to be maintained at all Police Stations. The Station House Diary is used to record every major and minor incident occurring within the jurisdiction of police station on a daily basis. Station House Diary is the main record of the affairs of the police station and should contain everything of importance relating to the work of the police station. Some of the entries in the general diary are amplified and recorded in other books as well but all the important things must be entered in this book. The general diary is a chronological record of the happenings at the station and for fixing the time of any particular action of the police, the entry in the general diary provides an important source of evidence.

15. Police officials individually as well as collectively will have to keep in mind the fundamental principles enshrined in the constitution and will have to adhere to the code of conduct prescribed under the Karnataka Police Manual. For maintaining standards tint; to achieve this object, Police Manual in 3 volumes has been brought in by the State of Karnataka way back in the year 1998. In order to ensure that Police personnel would up-hold rights of citizens guaranteed and enshrined in the Constitution of India duties they discharge should be in conformity with established law.

16. In this direction, when Section 154 of Cr.P.C., is read, it would indicate that where a report is received by the Station House Officer regarding commission of cognisable offence, concerned officer is required to enter the substance of such information in a diary as the State Government may prescribe. It is in this

background, word "diary" found in subsection (1) of Section of 154 of Cr.P.C., would acquire significance and to ensure that purpose and intent with which subsection (1) has been enacted is achieved. State Government had introduced the Police Manual and amended the same in the year 1998 by Government Order No. OE:214:PSE:98. Bangalore dated 7th August, 1998. To ensure that law enforcing agency like Police promote and preserve order, investigate crimes, apprehend accused, assist the legal proceedings connected therewith, uphold the rights of the citizens as guaranteed by Constitution of India, enforce the law firmly and impartially, create a feeling of security in society, promote amity, ensure protection of human rights. Police Manual introduced by Government of Karnataka will have to be looked into. Chapter-XX of Police Manual describes Station House Diary at paragraphs-970 and 971 and it prescribes the mode, manner and method as well as formal in which Station House Diary is required to be maintained. It reads as under:

"Station House Diary- Contents

970. (i) In the Station House Diary (Form No. 66), should be entered in regular sequenced in point of time, the work done at the Station and the information received. Details of cognisable complaints or investigations already given in the First Information Book and the case diary need not be reported in the Station House Diary, but a gist of the information and a record of occurrences in the Station in connection with those cases, such as the receipt of information, the arrest of persons, the production of prisoner, the effecting of searches, seizures or the departure for or return from, enquiry of investigating officers, particulars such as parades and inspections held or attended, attendance at courts including submission of reports and charge-sheets in the Court, town patrols, assistance to officers of other Police Stations, etc., should be entered. Information received and action taken in non-cognisable cases as well as information received regarding accidents, accidental strikes, deaths, processions, disappearance of persons and fires (where there is no reason to suspect the commission of a cognisable offence), the dispatch and return of Constables on beat duty with a note of the checking of their beat and note books, (a record being made of any information obtained by them), the time of arrival and departure at the Station of Head Constables and Station Writers, should be entered in the Station House Diary.

(ii) The Station House Diary, is, in fact, a diary of daily events which should be entered as they occur and so provide an account of the work done in the Station. When the Station House Officer leaves the Station for whatever purpose, he should make a note of the fact and state on what duty, if any, he is proceeding and who has been placed in charge of the Station during his absence. He must also clearly note to which place he has left, so that it should be possible to locate him without any difficulty. In the absence of the Station House Officer, the senior officer present shall be placed in charge, under Section 2(o) of the Cr.P.C. The latter should enter in the Station House Diary the work done by him at the

Station in the absence of the Police Inspector/Police Sub-Inspector SHO."

Copy To Be Forwarded

(iii) The Station House Diary of a day should cover 24 hours from mid-night to midnight and a copy of it should be dispatched daily at the earliest after being closed, to the Sub-Divisional Police Officer, through the Circle Inspector with an abstract of duty done by the Station Staff (Form No. 26). It should be duplicated by carbon process. The abstract of duty form for use in the Railway Police is Form No. 67.

(iv) "The presence of any outsider in a Rural Police Station between dusk and dawn and in an Urban Police Station between 10 p.m. and dawn should be accounted for in the Station House Diary with reasons for his presence. Supervisory Officers who visit Police Stations by surprise should ensure on the correctness of the entries and record their remarks, if any, for suitable action."

Duty of Sub-Divisional Police Officer and Circle Inspector

971. The Circle Inspector is chiefly responsible for checking Station House Diaries. If he has any remarks to make on a diary it should be returned in original to the Station House Officer for his reply. The Station House Officer will copy the remarks of the Inspector together with his reply there to on the copy of the Station House Diary in the Station and return the original received from the Circle Inspector with his reply. The Circle Inspector should make an extract of any facts of importance reported in the Station House Diary, in his own daily diary. After check by the Circle Inspector, the Station House Diary should be submitted to the Sub-Divisional Police Officer, who will scrutinise it daily and send it to the District Police Office on the 20th of every month for record. Where there is no Sub-Divisional Officer, the Superintendent will check these diaries. Superior officers should at their inspections or periodically, call for and peruse the Station House Diary and satisfy themselves whether the check exercised has been adequate. Whenever the Police Inspector is the Station House Officer, the Sub-Divisional Police Officer will scrutinise the diary."

17. On such complaint or information having been received by the Station House Officer and First Information Report is recorded and investigation is taken up. Section 172 of Cr.P.C., comes into play. Section 172 of Cr.P.C., reads as under:

"172. Diary of proceedings in investigation.-(1) Every police officer making an investigation under this chapter shall day by day enter his proceedings in the investigation in a diary, setting forth the time at which the information reached him, the time at which he began and closed his investigation, the place or places visited by him, and a statement of the circumstances ascertained through his investigation.

[(1A). The statements of witnesses recorded during the course of investigation under section 161 shall be inserted in the case diary.]

[(1B). The diary referred to in sub- section (1) shall be a volume and duly paginated.]

(2) Any Criminal Court may send for the police diaries of the case under inquiry or trial in such Court, and may use such diaries, not as evidence in the case, but to aid it in such inquiry or trial.

(3) Neither the accused nor his agents shall be entitled to call for such diaries, nor shall he or they be entitled to see them merely because they are referred to by the Court; but, if they are used by the police officer who made them to refresh his memory, or if the Court uses them for the purpose of contradicting such police officer, the provisions of section 161 or section 145, as the case may be, of the Indian Evidence Act, 1872 (1 of 1872), shall apply."

18. A plain reading of the above provision would clearly indicate that Investigating Officer who makes an investigation under Chapter XII will have to enter day-by-day of his proceedings relating to investigation conducted in a diary, setting forth the time at which information reached him, time at which he began and closed the investigation, the place or places visited by him and a statement of the circumstances ascertained through his investigation. In other words, it is a diary in which the proceedings of investigation by the police are recorded in a chronological order. This pertains to the particular case and is maintained continuously by the different Officers who are in charge of the investigation. Every step taken in investigation should find a place in this diary.

19. Section 172 mandates that even police officer making an investigation shall maintain a diary, which is commonly known and called as "Case Diary". The entries in this diary should be made with promptness, in sufficient detail, mentioning all sufficient facts, in careful chronological order. Section 172 enjoins that investigating officer has to maintain a case Diary and sub-section (2) of Section 172 empowers a Criminal Court to call for Case diary as an aid in its enquiry or trial which is both for the vindication of the law as well as for the protection of those charged with tin offence. Sub-section (3) clearly lays down that neither the accused nor his agents shall be entitled to call for such diaries nor he or they may be entitled to see them merely because they are referred to by the courts. But in case the police officer uses the entries to refresh his memory or if the court uses them for the purpose of contradicting such police officer then provisions of Section 161 or Section 145, as the case may be, of the Evidence Act would apply. The extent to which accused may cross-examine a police officer on case diary entries came up for consideration in the case of Shamshul Kanwar v. State of U.P.. reported in (1995) 4 SCC 430 and has been held to the following effect:

"Case Diary—Section 172- use of right of accused regarding use of case diary - extent of - held, accused gets right to cross-examine the police officer with reference to entries in case diary when the same is used by the police officer to refresh his memory or when the court uses it for the purpose of

contracting the police officer - such right of accused is subject to the limitations of Sections 145 and 161 of Evidence Act. Police officer cannot be compelled to look into the case diary for refreshing his memory - failure of the police officer to keep a diary does not render his evidence inadmissible - entries of police diary are neither substantive nor corroborating evidence- they cannot be used by or against any other witness - evidence.

The right of accused to cross-examine the police officer with reference to the entries in the general diary is very much limited in extent and even that limited scope arises only when the court uses the entries to contradict the police officer or when police officer uses it for refreshing his memory and that again is subject to the limitations of sections 145 and 161 of evidence act and for that limited purpose only the accused in the discretion of the court may be permitted to peruse the particular entry and in case the court does not use such entries for the purpose of contradicting the police officer or if the police officer does not use the same for refreshing his memory, then the question of accused getting any right to use the entries even to that limited extent does not arise."

The following shall not be incorporated in the Case Diaries:

- (1) "Opinion of Investigating Officer, opinion of the Supervisory Officers and Law Officers
- (2) Any conflict of opinion between I.O., Law Officers, SP, DIG and Head Office
- (3) Recommendations made in concluding report of the I.O., comments of Law Officers) and Supervisory Officers.
- (4) Any other facts/circumstances not relating to investigation of the case."

20. Sub-sections (1A) and (1B) of Section 172 of Cr.P.C., came to be inserted by Act 5 of 2009. Prefatory note or in other words, statement of objects and reasons for bringing in such an amendment indicates that Law Commission of India had undertaken a comprehensive review of the Code of Criminal Procedure and in its 154th Report recommendation have been made particularly those relating to provisions concerning arrest, custody and remand, procedure for summons and warrant cases, compounding of offences, victimology, special protection in respect of women and inquiry and trial of persons of unsound mind. This amongst other reasons indicated in the statement of objects and reasons have persuaded the Parliament to amend Section 172 and by Act 5 of 2009, sub-sections (1A) and (1B) of Section 172 of Cr.P.C.. came to be inserted. A bare reading of subsection (1A) would indicate it casts a duty on the investigating officer to record all the statement of the witnesses in a case diary. Subsection (1B) makes obligatory for the investigating officer to keep the case diary in a bound volume and duly paginated. These amendments are salutary in nature and enacted to check interpolation in a case Diary. The proper maintenance of a Case Diary under Section 172 is intended to safeguard not only the accused, but to insulate the investigating agency itself from unjustifying attacks. Failure on the

part of the investigating officer not observing the mandate of Section 172, Cr.P.C. would amount to serious lapse and it results in diminishing the value and credibility of such investigation that may be undertaken. The entries in a Case Diary should be made at its appropriate place indicating the correct date on which it was actually made. The investigating officer cannot make late entries in the diary by way of interpolation.

21. A bare reading of the aforesaid provision in its entirety would indicate that Investigating Officer who records day-to-day proceedings in the diary which is referred to as Case Diary has to insert such statement so recorded under Section 161 of Cr.P.C., in the Case Diary itself. That apart, diary so maintained by Investigating Officer has to be mandatorily paginated.

22. It would be appropriate to note the judgment of Hon''ble Apex Court in the case of Shri. Bhagwant Singh v. Commissioner of Police, Delhi, reported in 1983 Cri LJ 1081, wherein Hon''ble Apex Court has considered purport and intent of Case Diary vis-a-vis Section 172 of Cr.P.C. (unamended) and has observed to the following effect:

"17. The other inference which disturbs us is that the entries in the police Case Diary (set forth in the annexure to the counter-affidavit on the record) do not appear to have been entered with the scrupulous completeness and efficiency which the law requires of such a document. The haphazard maintenance of a document of that status not only does no credit to those responsible for maintaining it but defeats the very purpose for which it is required to be maintained. We think it to be of the utmost importance that the entries in a police Case Diary should be made with promptness. in sufficient detail, mentioning all significant facts, in careful chronological order and with complete objectivity.""

(Emphasis supplied by me)

23. Thus, it can be inferred from the above discussion that when sub-sections (1A) and (1B) of Section 172 of Cr.P.C., are read in conjunction with sub-section (1) of Section 172 of Cr.P.C., the only irresistible conclusion which can be drawn is that to ensure that investigation is not lackadaisical and would go on with mathematical precision so as to apprehend the accused persons and to ensure that investigation so conducted would reach its logical end and to achieve this, Case Diary has to be maintained by the Investigating Officer as indicated in Section 172 and it would protect the innocent persons being made gullible victims of unwarranted arrest or being taken into custody without referring to such arrest in the Case Diary. Hence, Legislature having considered the recommendation of Law Commission has inserted subsections (1A) and (1B) to Section 172 of Cr.P.C., by Act 5 of 2009 and at the cost of repetition, it has to be noticed that Case Diary referred to in sub-section (1) should not only be in volume but also should be paginated.

24. Learned High Court Government Pleader in the instant case has not been

able to demonstrate before this Court that the Case Diary in the instant case has been in volume and paginated. Undisputedly, Case Diary produced in the instant case is neither in volume nor paginated and this would lead to suspicion with regard to investigation.

25. At this juncture itself, it would be apt and appropriate to refer to "Case Diary" as referred to in "Karnataka Police Manual". Chapter XXXIV, Para 1368 to 1373 of Manual refers to Case Diary as prescribed under Section 172 of Cr.P.C. and it reads as under:

Case Diary

"1368. (i) Section 172 of the Code of Criminal Procedure requires that every Police Officer making an investigation should enter day by day his proceedings in the investigation in a diary, setting forth the time at which the information reached him, the time at which he began and closed his investigation, the place or places visited by him and a statement of the circumstances ascertained through his investigation.

(ii) Statements of witnesses examined by the police during investigation should be recorded in Form No. 137 and should be attached to the case diary for the day.

(iii) The case diary proper, which should contain the details mentioned in sub-order(i), should be written in Form No. 138.

(iv) There will be a docket sheet in Form No. 139 for each case file.

1369. As provided in Order 1264 copies of statements of witnesses proposed to be examined during an inquiry or trial should be made available to the accused before the inquiry or trial commences. The case diary proper may be used by the court in inquiries or trials, not as evidence but to aid such inquiry or trial. Neither the accused nor his agents shall be entitled to call for such diaries nor are they entitled to see them merely because they are referred to by the court; but, if they are used by the Police Officer who wrote them to refresh his memory or if the court uses them for the purpose of contradicting the Police Officer, then the provisions of Section 161 or 145 of the Indian Evidence Act, as the case may be, shall apply.

1370. The following instructions shall be observed in writing case diaries: -

(i) Every case diary should contain the following information:

(a) date and hour of taking action

(b) date of report of the case;

(c) name of the complainant or informant;

(d) names of accused known, if any;

(e) property lost;

(f) property recovered;

(g) date and last page of the previous case diary, if the case diary is not the very first one;

(h) name of the deceased, if any, and

(i) names of witnesses examined.

(ii) The first case diary should commence with a brief summary of the First information Report, the time of receipt of the complaint, delay, if any, in starting for the scene, the time of departure for and arrival at the scene, and description and plan of the scene.

(iii) In it will also be noted the place or places visited by the Investigating Officer, a statement of circumstances ascertained through the investigation and the date and hour of closing the investigation. Every step taken by the Investigating Officer should be mentioned as concisely as possible. Every clue obtained, even if at the time it appears likely to be of no value, houses searched with reasons for the search and the names of witnesses to the search, property recovered, its description and place where it was found, arrests, information obtained which is likely to prove of value, and methods adopted by the culprits are among the things to be mentioned in the case diary. The Investigating Officer shall separately record in Form No. 137, the statements of persons examined by him and attach them to the case diary.

(iv) In addition to copies of statements of persons recorded in Form No. 137, copies of Panchanamas and sketches of scenes of offences will be attached to the case diary.

(v) The case diary shall be invariably written up embodying the investigation done on each day. Statements of witnesses should be reduced to writing on the spot in Form No. 137. If it is not possible to reduce to writing the statement of a witness on the spot, it should be taken down in the Investigating Officer's notebook, and transcribed in the prescribed form as soon as possible on the same day the witness is examined. If, for any unavoidable reason, notes have to be taken on separate sheets of paper, these should not be destroyed after the case diary is written but preserved in the case file.

(vi) Case diaries and statements of witnesses will be written by carbon process, one copy being filed in the Police Station and the other sent to the Circle Inspector who will forward it to the Sub-Divisional Police Officer with his remarks, if any. Where case diaries are required to be forwarded to the Superintendent, an extra copy of the case diary and the statements of witnesses will be made. The Sub-Divisional Police Officer will dispose them off according to orders. Where the SHO is a Police Inspector he will forward the diaries to the Sub-Divisional Police Officer and the Superintendent of Police.

(vii) The names of informers need not be entered in the diary and no court can

compel an Investigating Officer to disclose the name of an informer.

(viii) (a) When a case is transferred from one Investigating Officer to another, the office taking over the investigation shall take charge of the diary, noting therein the date of assuming charge of the investigation of the case.

(b) (i) The question, whether it is necessary to re-examine the witnesses already examined and record their statements when a subsequent investigation is taken up by an other officer, is often raised. Ordinarily, such further investigation is taken up in the following instances:

(A) When a case was first investigated by a Head Constable or a Sub-Inspector and is later taken up by his superior, i.e., the Sub Inspector or the Inspector;

(B) When an Investigating Officer is transferred in the middle of the investigation of a case and the case is taken up by his successor; and

(C) When a case is reinvestigated by the Corps of Detectives, C.I.D.

(ii) In such cases, mentioned at (A) and (B) above, it is incumbent on the succeeding Investigating Officer to re-examine all the important witnesses already examined, as the object of an investigation into a case is to ascertain the facts and circumstances. But, as regards the recording of their statements, law does not require the Investigating Officers to reduce such statements into writing. It is enough if the second Investigating Officer, reexamines witnesses with reference to their previous statements already on record and certifies to their correctness of the previous statements. If any additional facts are spoken to by any witness, the second Investigating Officer will have to record those facts and note such other facts as may be necessary in clarification of the facts and omissions in the statement already recorded. However, in a case where the statement recorded by the first Investigating Officer is bare of essential details or has omissions or defects, it is advisable for the second Investigating Officer to record the statement once again in detail.

(iii) In a case taken up by the C.O.D., the Investigating Officer of the C.O.D. is expected to re-investigate the entire case and not to continue the investigation already done by the local Police Officer. To that end, it is necessary that he should not only re-examine the witnesses but also record their statements in full. The fact that the recording of such statements may lead to multiplicity of contradictions and deviation in the statements of witnesses and may cause inconvenience to the police in furnishing copies to the accused cannot be a valid and lawful ground for evading it.

(iv) Those who, under the orders of the Investigating Officer, assist him by making any enquiries they are directed to make, do not thereby become Investigating Officers under Chapter XII of the Cr.P.C. Therefore, it is not necessary for them to write case diaries under Section 172, Cr.P.C. The result of any enquiries such officers make or action they take, pursuant to the orders or instructions of the Investigating Officer, will be communicated by the former to

the latter by means of a special report. Head Constables and Constables will also make necessary entries in their notebooks. The Investigating Officer shall embody the gist of such special reports in his case diary under Sections 172, Cr.P.C.

(v) In investigation under Section 174, Cr.P.C. relating to suicide and accidental deaths, statements of witnesses examined during the investigation will be recorded separately and attached to the investigation report. No case diary need be written incorporating the statements of witnesses. But, if any important witness is examined subsequent to the investigation, a brief case diary should be written giving therein the reasons for not examining the witness during the investigation and other cognate details, and the statement of the witness recorded separately should be attached to the case diary. However, in a case where it has not been clearly established that it is a suicidal or accidental death, though the panchayatdars at the investigation have so opined, a case diary should be written discussing the evidence let in during the investigation and the arguments for treating the case as an accidental or a suicidal death. When a Head Constable holds an investigation, the Sub-Inspector should sub-sequently verify the investigation and such verification and the result thereof should be embodied by the Sub-Inspector in a case diary. A case diary should also be written embodying the results of the post-mortem examination, if one is conducted on the same day the postmortem report is received.

(vi) Applications for remands should be made on the case diary form mentioning the grounds justifying the remand applied for and should be accompanied by a copy of the entries made in the case diary, up to the stage the accused is sent for remand.

(vii) case diary forms should be used for applying to Magistrates for warrants of arrest or search, proclamations and other orders connected with investigation and for forwarding search lists provided these communications refer to registered cases. Otherwise, the memorandum form will be used.

(viii) Case diaries should also be written in cases which have been referred by a Magistrate to the police for investigation under Section 202 of the Code of Criminal Procedure and in all non-cognisable cases which are required to be investigated by an order of a Magistrate under sub-section (2) of Section 165 of the Code of Criminal Procedure.

1371. After completion of the investigation, the Investigating Officer shall record in the concluding diary, a brief summary and the reasons which have guided his final decision in the case. If he considers that there is no case, his reasons will, of course, be fuller, than if he sends the case for trial. A copy of the charge sheet and the final report, as the case may be, will be attached to such concluding diary. A copy of such concluding case diary together with a copy of the charge-sheet or final report, as the case may be. should be sent in all cases to the Superintendent through the Inspector and the Sub-Divisional Police Officer. The

PI SHO will submit to the Superintendent of Police through the SDPO.

1372. In order to show the progress of trials in courts, court case diaries shall be written in Form No. 140, reporting hearings and adjournments, the witnesses examined on each hearing, how each of them fared, and other matters of interest, if any.

1373. As and when a case is decided by the court, court case diaries in Form No. 141 shall be written. A copy of such court case diary in all cases should also be sent to the Superintendent through the Inspector and Sub Divisional Police Officer. The PI SHO will submit to the SP through the SDPO."

Hence, to allay such apprehension or to ensure that guilty persons are not let off the hook, it would be necessary and incumbent upon State to specify in the Police Manual itself as to purpose and intent of sub-Sections (1A) and (1B) of Section 172 of Cr.P.C., namely, statement of witnesses recorded during the course of investigation under Section 161 shall be inserted in the Case Diary and such Case Diary should be in volume and it should be paginated. Till such steps are taken by the State prescribing the manner and method in which Case Diaries are to be maintained, rigour of Section (1B) of Section 172 of Cr.P.C. would be lost when the language of Section 172 is clear, explicit and unambiguous, every Investigating Officer is required to maintain the Case Diary in volume with pagination as prescribed thereunder.

26. Keeping above legal aspects in mind, when facts on hand are examined, it would indicate that incident in question had occurred on 07.11.2014 at about 11.20 p.m. Complainant-CW.1 has alleged that deceased after being shot and injured was shifted to B.L.D.E. Hospital, Vijayapura for treatment. Complainant also states that treatment was extended to deceased in the same hospital. However, no records are forthcoming in this regard from the charge-sheet materials. Complainant also states that for higher treatment deceased was shifted to Yashodhara Hospital at Solapur and at the said hospital, he was declared dead since deceased did not respond to treatment. However, it is made clear that no opinion is expressed in this regard as it is likely to prejudice the case of prosecution or defence and same will have to be thrashed out during the course of trial.

27. Be that as it may, overt act alleged against the petitioner (A-19) is that he had brought to the notice of accused No. 1 that deceased was not dead despite several bullets having been pumped to his head and he had instigated accused No. 1, to yet again shoot at the deceased and accordingly, A-1 shot at deceased. In the complaint lodged by father-in-law of deceased on 08.11.2014 at 7.35 a.m. he has narrated the manner in which his son-in-law came to be murdered. On perusal of said complaint, it would indicate that deceased was surrounded by nine persons along with 3 to 4 unknown persons who were said to be hailing from Indi, Sindgi and Almel and deceased is said to have made attempts to run away from the spot and at that point of time, accused No. 1 is said to have fired

at the deceased and on account of said firing, deceased-Syed Fayazuddin is said to have fallen down and again started running and at that point of time, accused Nos. 3 and 5 are said to have fired at the deceased and thereafter, deceased is again said to have fallen down and at that point of time, remaining accused persons were said to have kicked and thrashed the deceased and at that juncture, complainant claims to have rushed to rescue the deceased and on seeing the complainant, accused persons are said to have sped away in the vehicles in which they had come or in other words, fled away from the scene of occurrence. However, in his further statement recorded on 08.11.2014, complainant has implicated petitioner and other 8 accused persons by name and also two other unknown persons. There is inconsistency between these two statements.

28. Undisputedly, accused No. 20 came to be enlarged on bail by Sessions Court, Vijayapur in S.C.No.44/2015. Fact as to the role of present petitioner and his overt act of alleged instigation to accused No. 1 to fire at the deceased is not indicated in the complaint which was lodged after about 8 hours from the time of incident and same is required to be thrashed out during the course of trial.

29. It is no doubt true as rightly contended by learned High Court Government Pleader, applications for remand should be made in the prescribed form indicating thereunder grounds justifying such remand of accused and it should be accompanied by copies of entries made in the Diary up to the date such accused is sent to remand and it also has to contain the details of Diary available on the said date. Name of accused persons who have been implicated by the complainant not finding a place in such remand application, has to be explained by prosecution during the course of trial.

30. Under Paragraph 1370 of Chapter XXXIV of Karnataka Police Manual, the Investigating Officer will have to follow the instructions prescribed thereunder while writing Case Diaries and Case Diaries should contain the information prescribed thereunder namely;

- (a) date and hour of taking action
- (b) date of report of the case;
- (c) name of the complainant or informant;
- (d) names of accused known, if any;
- (e) property lost;
- (f) property recovered;
- (g) date and last page of the previous case diary, if the case diary is not the very first one;
- (h) name of the deceased, if any, and
- (i) names of witnesses examined.

Clause (i)(d) mandates that names of accused known if any has to be entered into Case Diary. Clauses (viii)(b)(vi) mandates that application for remands should be made on the case diary form mentioning the grounds justifying the remand applied for and "should be accompanied by a copy of the entries made in the case diary, up to the stage the accused is sent for remand". The mandate of Section 172 as well as instructions contained in Karnataka Police Manual not being followed by Investigating Officers scrupulously and meticulously, it requires immediate attention of the concerned. Hence, Registry is directed to forward a copy of this order to the Principal Secretary, Home Department and Director General and Inspector General of Police, State of Karnataka to ensure due compliance of this order by issuing appropriate directions or circular in this regard to all the Station House Officers in the State of Karnataka for being followed by Investigating Officers.

31. In the instant case, complainant has tendered his further statement on 08.11.2014 implicating petitioner and other accused persons. However, it is to be noticed that the name of petitioner does not find a place either in the remand applications filed on 13.11.2014, 15.11.2014, 22.11.2014 and 27.11.2014 or in any other part of Case Diary indicating thereunder that petitioner has been implicated as accused and steps taken to apprehend him. However, name of present petitioner (accused No. 19) finds place for the first time in the remand application filed on 19.12.2014 on which date petitioner is said to have been apprehended and was sought for being remanded to custody. On account of Case Diary not being paginated and petitioner not being implicated in the first instance by the complainant despite he being a retired Police Officer and well conversant as to the manner in which complaint is to be lodged and also name of the petitioner not finding place in the remand applications or in any other part of case diary till 19.12.2014 are all factors which would cumulatively sway in the mind of this Court to accept the prayer of the petitioner for being enlarged on bail. It is an undisputed fact that accused No. 20 has also been enlarged on bail by the Sessions Court by order dated 14.12.2015-Annexure-N. It is explicitly made clear that any observation or opinion expressed herein above is for the limited purpose of considering the application for grant of bail to the petitioner (accused No. 19).

32. Learned High Court Government Pleader has expressed apprehension that petitioner is likely to terrorise the witnesses or indulge in similar activity if enlarged on bail. This Court is of considered view that if stringent conditions are imposed on the petitioner it would allay such fears and to ensure that petitioner does not indulge in similar activity or indulge himself in threatening or terrorising the prosecution witnesses stringent conditions can be imposed. Petitioner is claiming to be a resident of Belagavi and carrying on his business at Belagavi. Incident in question has occurred at Vijayapura. Witnesses C.W.1 to C.W.3, C.W.6 to C.W.27, C.W.29, C.W.31 to C.W.42 are all from Vijayapura. Hence, if a condition is imposed on petitioner not to enter the municipal limits of Vijayapura town except on hearing dates, till conclusion of trial, it would allay the

apprehension expressed by the prosecution.

33. Hence, I proceed to pass the following:

ORDER

(a) Criminal Petition is hereby allowed.

(b) Petitioner is ordered to be enlarged on bail in S.C.No.44/2015 pending on the file of II Additional District and Sessions Judge, Vijayapura (Crime No. 301/2014 registered by Gandhi Chowk Police Station, Vijayapura), on executing a personal bond for a sum of Rs. 1,00,000/- (Rupees One Lakh Only) with two independent solvent sureties for the likesum to the satisfaction of jurisdictional Sessions Court and subject to following conditions:

(i) Petitioner shall not enter Vijayapura Town Municipal limits till conclusion of trial except for attending in S.C.No.44/2015 on the hearing dates;

(ii) Petitioner shall not either directly or indirectly indulge in threatening or terrorising or inducing the prosecution witnesses in any manner whatsoever and if he indulges in same, prosecution by placing relevant material on record would be entitled to seek for cancellation of bail;

(iii) Petitioner shall appear before Station Bazar Police Station at Belgavi on every alternate day between 5.00 p.m. to 8.00 p.m. and mark his attendance and said jurisdictional SHO shall send a report to Sessions Court, Vijayapura in S.C.No.44/2015, about compliance of said condition i.e., report relating to marking of attendance by petitioner and said report shall be sent once in a month till conclusion of trial;

(iv) Petitioner shall not leave Municipal limits of Belgavi till conclusion of trial without express permission from jurisdictional Sessions Court i.e., Sessions Court, Vijayapura;

(v) Petitioner shall appear before Sessions Court, Vijayapura on all the dates of hearing without fail;

(vi) Petitioner shall surrender his Passport before Sessions Court, Vijayapura on the next date of hearing or within one month whichever is earlier;

(vii) In the event of any of the conditions imposed herein above are violated by petitioner jurisdictional Sessions Court on being satisfied with such violation would be at liberty to order for petitioner being taken into judicial custody;

(viii) Registry is directed to issue operative portion of this order.