
(2015) 11 KAR CK 0267
In the Karnataka High Court
Case No : Criminal Petition No. 101453/2015

Kishnan Chandrakanth Belagaunkar

APPELLANT

Vs

The State of Karnataka

RESPONDENT

Date of Decision : 20-11-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 439
Penal Code, 1860 (IPC) — Section 279, 304, 304A, 396

Citation : (2015) 11 KAR CK 0267

Hon'ble Judges : Budihal R.B., J.

Bench : Single Bench

Advocate : Shreevatsa Suresh Hegde, Advocate, for the Appellant; Veena Hegde, HCGP, for the Respondent

Final Decision : Dismissed

Judgement

Budihal R.B., J.—This petition is filed by the petitioner-accused No. 8 under Section 439 of Cr.P.C. seeking his release on bail of the offences punishable under Sections 279 and 304A of IPC registered in respondent Police Station Crime No. 69/2014, but during the course of investigation, after collecting some material, the offence under Section 396 of IPC was also inserted in the case.

2. The brief facts of the prosecution case as narrated in the petition are that deceased Prashanth usually would return home by 10.00 p.m. after his business hours. On 22.03.2014, deceased borrowed the vehicle from the complainant and did not return as usual, efforts were made by the complainant to find out the whereabouts of the deceased. On the following day, complainant and few others again went in search of the deceased and found near Jad-Shahapur a motorcycle on the road side and further a dead body nearby ditch. Complainant further expressed that it was a case of vehicular accident the deceased was the victim of a hit and run. After investigation, Investigating Officer collected the materials and also after recording the confessional statement of accused No. 1, then the offence under Section 396 of IPC was inserted in the case. On the basis of the

said complaint, case has been registered and the petitioner has been arrayed as accused No. 8 in the case.

3. Heard the arguments of the learned counsel appearing for the petitioner-accused No. 8 and also the learned HCGP appearing for the respondent-State.

4. Learned counsel for the petitioner has submitted that firstly the case of the prosecution that it was a case of motor vehicle accident in a hit and run case. Learned counsel further submitted that IO recorded the statement of the father of the deceased, who is CW-17 in the case and as per the statement of the said witness, it is clear that deceased was not at all carrying any gold ornaments or cash in the bag on the date of the alleged incident. He has submitted that even according to the complaint averments, there is no claim made by the prosecution that the gold ornaments or the cash has been robbed in the said incident. It is submitted that even some of the gold and silver articles were seized by the IO from the body of the deceased i.e., one gold ring, silver ring and wrist watch. It is also submitted that because some of the gold ornaments were subsequently recovered and as per the voluntary statement said to have been given by the petitioner-accused No. 8, his mobile phone has been seized and only on that basis, now the prosecution come up with the case that petitioner also involved in the offence committed under Section 396 of IPC. He has further submitted that accused No. 9 is already granted bail by the order of this Court, the trial in the case is not yet commenced and since from the date of arrest, petitioner is in jail. Hence, submitted that as investigation is already completed and the charge sheet has been filed, by imposing reasonable conditions, petitioner may be considered for bail.

5. Per contra, learned HCGP has submitted that the submission made by the other side that there was no gold ornaments and cash carried by the deceased is not correct, IO has recorded the statement of the wife of the deceased namely Smt. Amrutha, wherein she has clearly stated that her husband was carrying gold ornaments and cash on the date of incident. She has also submitted that as per the voluntary statement of the petitioner, the mobile phone has been seized. It is also her submission that except accused No. 9, bail petitions of all other accused persons were rejected after considering the merits involved in the case. Hence, submitted that petitioner is not entitled to be granted with bail.

6. I have perused the averments made in the bail petition, FIR, complaint and other materials produced along with the petition.

7. It is no doubt true, at the first instance, according to the prosecution case, it is the case of accident and accordingly, FIR was registered for the alleged offence under Sections 279 and 304 of IPC, but after collecting the materials in the case during investigation, so also recording the voluntary statement of the accused and after recovery of the articles i.e., mobile phone from the petitioner, ultimately, the offence under Section 396 of IPC has been inserted in the case. It is no doubt true, looking to the statement of the father of the deceased, it is

stated by him that generally his son never use to carry gold ornaments and cash in the bags while going to shop or coming from the shop, but the statement of the wife of the deceased shows that the deceased was carrying gold ornaments and cash on the date of the incident. The voluntary statement of the accused is also recorded by the IO during investigation and at the first instance, mobile phone of the petitioner has been seized by the IO.

8. Looking to the orders passed by this Court in respect of other accused persons, this Court has already taken note of the factual aspect that there is prima-facie case made out by the prosecution. Considering these materials on record and since the alleged offence is serious in nature, I am of the opinion that it is not a fit case to exercise the discretion in favour of the petitioner.

9. However, learned counsel for the petitioner during the course of his arguments has also submitted that since from the date of arrest petitioner-accused is in custody and the trial will take long time, hence, he has submitted that on that ground at least bail is to be granted, but when the prima-facie material has been placed by the prosecution, only on that ground he cannot be ordered to be released on bail. Accordingly, petition is rejected.

However, the concerned trial Court dealing with the trial of the matter has already been directed by the order of this Court to conclude the trial within the time limit as mentioned in the respective bail petition, therefore, the concerned trial Court is directed to take up the matter on priority basis and to dispose of the same within the scheduled time as ordered by this Court, in case, if the trial is not concluded within the schedule as ordered by this Court, he will be at liberty to move the Court.