

(2011) 08 KAR CK 0108
In the Karnataka High Court
Case No : Criminal Petition No. 3958 of 2011

Mallanna Shivarudrappa Teli and Others	APPELLANT
Vs	
The State of Karnataka	RESPONDENT

Date of Decision : 17-08-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 439
Penal Code, 1860 (IPC) — Section 120 (B), 201, 302, 34, 341

Citation : (2011) 08 KAR CK 0108

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

Bench : Single Bench

Advocate : Sharanappa Mattur, for the Appellant; B. Raja Subramanya Bhat, HCGP, for the Respondent

Judgement

K.N. Keshavanarayana

1. In this petition filed u/s 439 of Code of Criminal Procedure, the Petitioners who have been arraigned as Accused Nos. 3 to 3, 5 and 6 in C.C. No. 638/2011 on the file of the Additional Civil Judge (Jr. Dn.) and JMFC, Anekal, have sought for an order to enlarge them on bail. These Petitioners along with others are chargesheeted for the offences punishable under Sections 341, 363, 302, 201, 120(B) R/w. 34 of Indian Penal Code.

2. Accused No. 1. is the son of Accused No. 5, Accused No. 2 is the son of Accused No. 6. Accused Nos. 5 and 6 are brothers.

3. According to the case of the prosecution, the deceased Dayananda and one Shivaganga, Daughter of Accused No. 5 and sister of Accused No. 1 loved each other and they married against the wishes of her parents. It was an inter-caste marriage. Accused Nos. 1 and 5 felt that they are insulted in the community on account of the said Shivaganga marrying the deceased Dayananda. In this background, they were nursing ill-will against the deceased. In spite of Accused Nos. 5 and 6 advising the said Shivaganga to come out from the company of the

deceased Dayananda, she refused to do so. Therefore, the accused persons were waiting for an opportunity to do away with the life of the deceased Dayananda. In this background, it is alleged by the prosecution that on 18.03.2011 at about 6.00 p.m., when the deceased Dayananda came near the V.N.R. Filling Station Petrol Bunk near Yadavanahalli Gate to buy petrol, he was abducted by Accused Nos. 1 to 4 who came there in a tempo traveller and he was taken in the said tempo traveller and near the Guest Line Hotel on Bangalore-Hosur National Highway, he was strangled and done to death and thereafter, as per the directions of Accused Nos. 5 and 6, the dead body was taken near Methagalseema in Koppal District, thrown into a newly dug drainage and was burnt so as to destroy the evidence.

4. Initially the younger brother of the deceased lodged a report about the missing of his brother, based on which, case in Crime No. 67/11 was registered by Attibele police. On noticing half burnt dead body lying in the drainage, one Mukkanna, President of Methagalseema Gram Panchayat in Koppal District, lodged a report to Rural Police Station Koppal and on the basis of the same, case in Crime No. 38/11 came to be registered against unknown persons for the offence punishable under Sections 302 and 201 of Indian Penal Code and the half burnt dead body was subjected to post mortem examination. Thereafter, on the point of jurisdiction the case was transferred to Attibele Police Station, who on completion of investigation laid the charge sheet. During investigation, the Petitioners herein were apprehended and subjected to judicial custody. As their prayer for grant of bail came to be rejected by the learned Sessions Judge, they are before this Court seeking the relief of bail.

5. I have heard the Learned Counsel appearing on both sides and perused the records made available.

6. At this stage, the materials available on record, prima facie indicates that the death of the deceased Dayanand was homicidal. Though the Doctor who conducted post mortem examination has stated that the cause of death and also the time since death cannot be assessed, the very same Doctor in the post mortem report has stated that by examination, the burns most probably appears to be post mortem in nature. The post mortem report further indicates presence of fractures and dislocation of both the horns of hyoid bone. This finding prima facie suggests that the death was on account of strangulation and it is after committing murder, the dead body was sought to be burnt. Therefore, at this stage, there are reasonable grounds to believe that the death of the deceased was homicidal,

7. The materials available on record at this stage, prima facie indicates that the deceased was abducted from near the petrol bunk at about 6.00 p.m. on 18.03.2011 in Tempo Traveller. The materials further would prima facie indicate that Accused Nos. 1 to 3 and another were the persons who abducted the deceased from near the petrol bunk and later strangled him. Having regard to the facts and circumstances of the case, at this stage, there are reasonable

grounds to believe that the Petitioners 1 to 3 who are Accused Nos. 1 to 3 are guilty of the offence punishable u/s 302 of Indian Penal Code. However, even according to the case of the prosecution Accused Nos. 5 and 6 are only conspirators pursuant: to which Accused Nos. 1 to 4 abducted the deceased and committed his murder. At this stage, there are no prima facie materials to indicate that Accused Nos. 5 and 6 are guilty of the offence punishable u/s 302 of Indian Penal Code. Having regard to the facts and circumstances of the case, this Court is of the considered opinion that Accused. Nos. 5 and 6 (Petitioners - 4 and 5) are entitled to be enlarged on bail. However, having regard to the nature and gravity of the offences alleged as well as the punishment prescribed for the same, Petitioners - 1 to 3 (Accused Nos. 1 to 3) are not entitled to be enlarged on bail.

8. In view of the above, the petition is allowed in part. Petitioners - 4 and 5 (Accused Nos. 5 and 6) are ordered to be enlarged on bail in C.C. No. 638/2011 on the file of Additional Civil Judge (Jr. Dn.) and JMFC, Anekal, on each of them executing personal bond for a sum of Rs. 50,000/- (Rupees Fifty Thousand only) with two solvent sureties for the like-sum to the satisfaction of the learned Magistrate/Sessions Judge and subject to farther conditions that,-

- i) they shall not tamper or terrorise the prosecution witnesses in any manner:
- ii) they shall appear before the learned Magistrate/Sessions Judge on all the dates of hearing without fail
- iii) they shall mark their attendance in the jurisdictional Police Station on every 10th and 25th of each calendar month between 10.00 am and 5.00 p.m. till the disposal of the case.

The prayer for bail by Petitioners - 1 to 3 (Accused Nos. 1 to 3) is hereby rejected.