

(2014) 11 KAR CK 0236

In the Karnataka High Court

Case No : Criminal Petition No. 200821 of 2014 c/w Criminal Petition No. 200796 of 2014

Nayeem Shaikh

APPELLANT

Vs

The State

RESPONDENT

Date of Decision : 06-11-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 439
Penal Code, 1860 (IPC) — Section 120(B), 201, 302, 396

Citation : (2014) 11 KAR CK 0236

Hon'ble Judges : A.S. Pachhapure, J

Bench : Single Bench

Advocate : Shivasharana Reddy and Nandakishore Boob, Advocate for the Appellant; S.S. Aspalli, Govt. Pleader, Advocate for the Respondent

Judgement

A.S. Pachhapure, J.—The petitioners have approached this Court for grant of bail having been arrested and chargesheeted for the offence punishable under Sections 302, 201, 396 and 120(B) IPC relating to an incident of robbery and murder that took place in the premises of CW8 - Nauman on 25.03.2014 in the night hours.

2. A complaint of this incident was filed by CW1 - Syed Rafat Rahan, the brother of CW8 -Nauman. During the investigation, the petitioner-accused No. 3 was arrested and on recording the confession statement of accused No. 3, the recoveries were done. The dead body of Abdul Nabi, the watchman was subjected to postmortem examination and he is said to have died a homicidal death. On recovery of money, gold ornaments and other articles and on completion of investigation, chargesheet has been filed against these petitioners who are accused Nos. 1 and 2 for the aforesaid offences.

3. Learned Counsel for the petitioners submit that accused No. 3 has been granted bail by the learned Sessions Judge and as the request of petitioners were rejected, these petitions have been filed.

4. Heard the learned Counsel for petitioners and also learned High Court Government Pleader.

5. The point that arises for my consideration is:

"Whether the petitioners who are accused Nos. 1 and 2 are entitled to the bail sought for?"

6. Learned Counsel for the petitioners submit that there is no evidence against the petitioners for the offences charged and as accused No. 3 was granted bail, on the same set of facts, they contend that the petitioners are also entitled to the bail sought for.

7. On the other hand, learned Government Pleader submits that there is a prima facie material for the aforesaid offences against the petitioners and as no exceptional grounds are made out by them, the petitioners cannot be granted bail sought for.

8. The incident of robbery took place on 25.03.2014 in the house premises of CW8. Though in the complaint, there is no mention with regard to the gold ornaments having been looted, as the watchman Abdul Nabi was done to death at the spot, a complaint was filed immediately and it appears that for this reason, there is no mention of the particulars regarding the gold ornaments and money having been looted from his house. The additional statement of complainant and CW8 were recorded within three days thereafter and in the said statement, there is a material to state that gold necklace and many other articles which are described in the complaint were looted from the premises of CW8.

9. So far as accused No. 3 is concerned, he is said to be a conspirator. Except the confession statement, there was no other material, there was no recovery of any articles from the said accused. There was no other circumstances collected during the investigation and it appears that for this reason, accused No. 3 has been granted bail by the learned Sessions Judge.

10. So far as petitioner-accused No. 1 in CrI. P. No. 200821/2014 is concerned, the material collected by the investigating officer reveals that a sum of Rs. 40,000/-, his mobile and his motor cycle have seized from his house. There is no identity of the amount of Rs. 40,000/- by any of the witnesses as belonging to CW8. So far as motor cycle and mobile are concerned, they are not incriminating articles said to have been looted from his premises. So from this recovery made by the investigating officer as against petitioner-accused No. 1, there is no other material placed on record. There are no eye witnesses to the incident. Therefore, so far as petitioner-accused No. 1 is concerned, it stands in par with the circumstances considered for grant of bail of accused No. 3 and on the principle of parity, he is entitled to the bail sought for.

11. So far as petitioner-accused No. 2 in CrI. P. 200796/2014 is concerned, the investigating officer has recovered the gold ornaments. Accused No. 2 was arrested on 22.04.2014. During the interrogation, he volunteered to produce the

stolen gold articles. His voluntary statement was recorded. In pursuance of the voluntary statement recorded, he led the police and attesting witnesses to his own premises and produced the gold ornaments said to have been robbed from the premises of CW8. It is relevant to note that in the statement recorded, CW8 and the members of his family have identified those gold ornaments as belonging to them. The recovery of these articles is within a month of the incident of robbery and murder. This is a strong circumstance, which has been placed on record by the police after investigation.

12. The offence is punishable with imprisonment for life or sentence of death. No exceptional circumstances are made out by the petitioner-accused No. 2 so far as grant of bail is concerned. Though the learned Counsel submits that he has serious ailments, there is nothing in the application. No material is placed on record. In the circumstances, so far as petitioner-accused No. 2 is concerned, I do not think any exceptional grounds to grant the bail under the provisions of Section 439 Cr.P.C. Consequently, Crl. P. No. 200821/2014 is allowed. Crl. P. No. 200796/2014 is dismissed.

The petitioner-accused No. 1 in Crl. P. No. 200821/2014 is ordered to be released on bail on his executing a personal bond for a sum of Rs. 1,00,000/- with two solvent sureties for the likesum to the satisfaction of the Court below, with further following conditions:

"a) Petitioner-accused No. 1 shall attend the concerned police station on every Sunday in between 10.00 a.m. to 11.00 a.m. until further orders.

b) The petitioner shall not tamper with the prosecution witnesses in any manner.

c) He shall not jump bail."

If any of the conditions are violated, the bail granted entails cancellation and the State is at liberty to apply for cancellation of bail.

Intimate the concerned authority.