

(2017) 01 KAR CK 0215
In the Karnataka High Court
Case No : 201345 of 2016

Randhir S/o. Sharanappa

APPELLANT

Vs

The State through Market Police Station

RESPONDENT

Date of Decision : 10-01-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 439](#) - Special powers of High Court or Court of Session regarding bail
[Indian Penal Code, 1860](#), [Section 302](#) - Punishment for mu

Citation : (2017) 01 KAR CK 0215

Hon'ble Judges : B.A. Patil

Bench : SINGLE BENCH

Advocate : Anil Kumar Navadagi, Prabhugouda S. Patil

Final Decision : Allowed

Judgement

1. This petition is filed by the petitioner/accused No.2 under Section 439 of Cr.P.C., seeking regular bail in Crime No.118/2016 of Market Police Station, Bidar, registered for the offences punishable under Section 302 of IPC and also for the offences punishable under Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2. Brief facts leading to filing of the complaint are that, the deceased Basawaraj happens to be the younger brother of the complainant Shivaraj. On 09.09.2016 at about 12.00 p.m. when deceased Basawaraj was in the house, his friends came to his house and took him with them to participate in the procession of immersion of Ganesh idol. When they were so watching the procession, the accused persons were passing through and at that time, the shoulder of accused No.1 brushed to the shoulder of the deceased, thereby there was some altercation and as a result of the same, accused No.1 assaulted with bamboo stick on the head of the deceased, accused No.2 assaulted with hands on the nose and front portion of the face of the deceased and accused No.3 also

assaulted the deceased with hands; as a result of the same, the deceased sustained injuries; thereafter he was shifted to Government Hospital, Bidar in an ambulance and thereafter the said fact was informed to the complainant; when the complainant along with others went to the hospital, there they came to know that the said Basavaraj has already dead. On the basis of the complaint lodged by the complainant, a case has been registered against the unknown persons and subsequently, during the course of investigation they came to know that accused were the cause for the incident, now accused Nos.1 to 3 have been arrested and they are in custody.

3. I have heard the learned counsel for the petitioner and the learned High Court Government Pleader appearing for respondent-State.

4. The main grounds urged by the learned counsel for the petitioner are that petitioner is innocent, he has not committed any offence alleged against him and he has been falsely implicated in this case in collusion with the respondent-police with a bad motive by making a false accusation against the petitioner. It is contended that there is no serious overt-act is made against the petitioner, already the charge-sheet has been filed and hence, the petitioner is not required for further interrogation and investigation. It is also contended that the petitioner is the permanent resident of Bidar Town and he has got both movable and immovable properties, therefore, there is no chance of he being absconded. It is further contended that if the petitioner is released on bail, he is ready to abide by the conditions to be imposed by this Court and he is ready to offer sureties. On these grounds, he prays for allowing the petition.

5. On the contrary, learned High Court Government Pleader appearing for the respondent-State vehemently contended that there are eyewitnesses to the alleged incident and they have been specifically stated that accused No.1 and other accused persons actually participated in the alleged crime and they have been seen the accused persons assaulting the deceased and the deceased has died due to the injuries caused by the accused. He has also contended that the petitioner has committed a serious offence, which is punishable with death or imprisonment for life. He further contended that at this juncture, if the petitioner is released on bail, there is likelihood of he being absconded and he may not be available for trial. On these grounds, he prays for dismissal of the petition.

6. I have gone through the copy of the FIR, complaint and other material produced along with the petition.

7. Even though on perusal of the records it discloses the fact that a case has been registered against the unknown persons, the accused persons have been arrested and they are in custody. On keen observation of the further statement of the complainant Shivaraj which has been recorded on 13.09.2016, he has specifically stated how the alleged incident has taken place on 09.09.2016 at about 12.00 p.m. As per the contents of the statement, the alleged incident took place when the accused and the deceased were passing by and at that time the

shoulders of each of them have been brushed and it is without there being any intention. Leave apart this, as could be seen from the further statement of the complainant, it discloses the fact that only accused No.2 has assaulted the deceased on the nose with hands and has caused bleeding injuries. Be that as it may, if we peruse the post mortem report, only one injury has been shown and it is a lacerated wound over the left parietal area of the deceased and no other injuries were found on the other parts of the body. In that light, if the entire prosecution documents have been perused, it discloses the fact that the present petitioner has suddenly assaulted on the nose of the deceased in a heat of moment and as a result of the same the alleged incident has taken place and he has not directly involved in assaulting the deceased on his head. In that light, when already the charge-sheet is said to have been filed, then, under such circumstances, by imposing some stringent conditions if the petitioner is enlarged on bail, it is going to meet the ends of justice and also the objections raised by the learned High Court Government Pleader.

8. For the above reasons, the petition is allowed and petitioner/accused No.2 is ordered to be released on bail, subject to the following conditions:

- i. The petitioner shall execute a personal bond for a sum of Rs.2,00,000/- (Rupees Two Lakhs Only) with two solvent sureties for the likesum to the satisfaction of the jurisdictional Court;
- ii. The petitioner shall not indulge in hampering the investigation or tampering the prosecution witnesses directly or indirectly;
- iii. The petitioner shall make himself available to the Investigating Officer as and when required;
- iv. The petitioner shall appear before the concerned Court regularly for facing the trial.