
(2023) 09 KAR CK 0039
In the Karnataka High Court
Case No : Criminal Petition No. 4993 Of 2023

Shiva @ Shivanna & Others

APPELLANT

Vs

State Of Karnataka

RESPONDENT

Date of Decision : 15-09-2023

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 437, 439

Citation : (2023) 09 KAR CK 0039

Hon'ble Judges : H.P. Sandesh, J

Bench : Single Bench

Advocate : Anuparna Bordoloi, K.Nageshwarappa

Final Decision : Dismissed

Judgement

H.P. Sandesh, J

1. Heard the learned counsel appearing for the petitioners and the learned HCGP appearing for the State.

2. This is a successive bail petition. These petitioners earlier have approached this Court in CrI.P.No.4822/2022 and this Court rejected the said petition vide order dated 13.07.2022. The case of the prosecution is that the deceased was having an illicit relationship with petitioner No.2/accused No.3 and when the relationship strained, the deceased started blackmailing petitioner No.2 stating that he would share the photographs of their intimacy and repeatedly having sex with petitioner No.2 and the deceased also shared the photographs to CW10 and CW12 and hence, petitioner No.1 and petitioner No.2 being the husband and wife planned to eliminate the deceased and called the deceased to their house and committed the murder inflicting injury and thereafter the deceased was thrown out from their house and thereafter the relatives who have seen the deceased took him to the hospital but he succumbed to the injuries on the next day morning. This Court taking into note of the material on record, earlier, rejected the bail petition of these petitioners in coming to the conclusion that there was a

motive for committing the murder since the deceased had shared the photographs of having intimacy along with petitioner No.2 with CW10 and CW12 and also seized the broken teeth which was found in the house of these petitioners and apart from that the hammer and stone also seized which were used to commit the murder wherein found the blood stain and FSL report also positive in this regard. Though the case is rest upon the circumstantial evidence, this Court has taken note of the material which discloses the sound circumstances against the petitioners that these petitioners only secured him to their house and inflicted the injury with an intention to eliminate him.

3. Now the counsel for the petitioners would vehemently contend that the Trial Court already granted bail in favour of accused No.2 and 4 and these petitioners are in custody from more than two years four months and they are illiterate. The counsel brought to notice of this Court by producing two photographs stating that these petitioners are having two children and they become orphans if the petitioners continued in custody. The counsel also produced some of the citations wherein this Court granted bail in favour of the accused persons in a similar set of facts and prayed this Court to grant the bail in favour of these petitioners.

4. The counsel in support of his arguments relied upon the judgment reported in 2021 SCC ONLINE HP 657 in the case of NASRIN VS STATE OF H.P. to invoke Section 437 of Cr.P.C. wherein the accused is a women. The counsel also would vehemently contend that the Court has to take note of the circumstances under which the alleged incident was taken place and hence, the petitioners may be enlarged on bail.

5. Per contra, the learned HCGP appearing for the State would vehemently contend that there is no any changed circumstances and this Court earlier while rejecting the bail petition of these petitioners in detail dealt with the material on record and rightly comes to the conclusion that even though the case is rest upon the circumstantial evidence, there are sound circumstances since the articles which have been used were seized at the instance of these petitioners and even broken teeth of the deceased was also found in the house of these petitioners and seized articles were also stained with blood and FSL report is also positive and hence, the petitioners have not made out any ground to enlarge them on bail. The counsel also would vehemently contend that PM report clearly discloses that there were 14 injuries and the same were caused by these petitioners and CW5, CW6 and CW7 are the recovery witnesses and they have supported the case of the prosecution and also the counsel would vehemently contend that CW8 and CW9 have identified the accused and the witnesses who have been examined are not completely turned hostile and hence, they are not entitled for the bail.

6. In reply to the arguments of the learned HCGP, the counsel for the petitioners would vehemently contend that witnesses were examined and the same is the changed circumstances.

7. Having heard the learned counsel appearing for the respective parties and also on perusal of the material on record it discloses that this is a successive bail petition and earlier this Court rejected the bail petition of these petitioners taking into note of the material on record since the deceased was called upon to the house of these petitioners and thereafter inflicted injury with the hammer and stone and though the body of the deceased was found near the land of the witnesses, broken teeth was found in the house of the petitioners and the motive for committing the murder is that the deceased had shared his photographs having intimacy with petitioner No.2 to CW10 and CW12 and hence, there is a strong motive to eliminate the deceased and also incident was taken place in the house of these petitioners. It is also important to note that broken teeth was also found in the house of these petitioners and also taken note of the fact that the seized articles i.e., hammer and stone were stained with blood and FSL report is also positive in this regard and hence, this Court comes to the conclusion that there are sound circumstances against the petitioners. No doubt, the bail was granted in favour of accused Nos.2 and 4 and the allegation against them is that they only helped them in shifting the injured from the house of the petitioners to the place where they have thrown the injured and hence, the Trial Court has granted the bail in their favour. Merely because these petitioners are in custody from last two years and four months is not a ground to enlarge them on bail when heinous offence of murder was charged against these petitioners.

8. The other ground urged by the petitioners that they are having two small children and no one are there to take care of them and the same cannot be a ground to enlarge the petitioners on bail. The other contention that the some of the witnesses were examined and the same is a changed circumstances. The counsel for the State also brought to notice of this Court that CW5, CW6 and CW7 who are the recovery witnesses have also supported the case of the prosecution and CW8 and CW9 who have been examined also identified the accused persons and also having perused the PM report it discloses that there were 14 injuries on the deceased. When such being the case, this Court, even witnesses were examined, cannot usurp the jurisdiction of the Trial Court by exercising the power under Section 439 of Cr.P.C. and the Trial Court has to appreciate the evidence available on record after the completion of the trial and hence, no changed circumstances and not made out any ground to grant the bail under successive bail petition as contended by the counsel for the petitioners.

9. In view of the discussions made above, I pass the following:

ORDER

The bail petition is rejected.