

(2013) 11 KAR CK 0025
In the Karnataka High Court
Case No : Criminal P. No. 4846 of 2013

Shri. Gangadhara @ Charsi and Shri Keshavaswamy	APPELLANT
Vs	
State	RESPONDENT

Date of Decision : 26-11-2013

Acts Referred:

Arms Act, 1959 — Section 25, 27
Penal Code, 1860 (IPC) — Section 114, 120B, 143, 147, 148

Citation : (2013) 11 KAR CK 0025

Hon'ble Judges : H.S. Kempanna, J

Bench : Single Bench

Advocate : C.H. Jadhav, for Sri K.B.K. Swamy, for the Appellant; H.M. Thimmarayapa, Spl. PP, for the Respondent

Judgement

H.S. Kempanna, J.—The petitioners, who are arrayed as A34 and A35 in CC No. 1696/2012 on the file of the JMFC, Nelamangala, registered for the offences under Sections, 143, 147, 148, 120B, 341, 323, 324, 302, 307, 427, 506, 114 r/w 149 IPC and u/s 25 & 27 of the Indian Arms Act, 1959, are before this Court praying for enlarging them on bail. It is the case of the prosecution, deceased B.M.L. Krishnappa was a member of the Zilla Panchayat, Bangalore Rural District, Bangalore. There were differences between him and A1 in connection with A1 having murdered one Basaiah in the year 2005, who was a follower of the present deceased B.M.L. Krishnappa. Further, in retaliation to the same, in the year 2009, one Devi-brother of A1 had been murdered by the followers of the present deceased B.M.L. Krishnappa. Apart from this, A1 and his followers had made an attempt on the life of the present deceased in the year 2009. On account of this, they were nursing grudge against each other. It is the case of the prosecution, the accused in the case, on account of the rivalry that existed between A1 and the deceased, hatched a conspiracy to finish off the deceased. Such conspiracy, according to the prosecution, had been hatched by the accused in the case since 10.07.2012. Such being the position, it is the case of the prosecution, on 25.07.2012, the deceased accompanied with C.Ws. 1, 2, 12 and

13 proceeded in a Innova Car driven by C.W. 3 towards his village Arashinakunte, coming within the jurisdiction of Nelamangala Police Station. He was followed by C.Ws. 4, 12 and 13 in another car. Apart from that, C.Ws. 5, 7, 8, 9 and 10 followed the deceased in Pajero car. When the deceased was about to take a deviation to proceed to his village Arashinakunte near the service road junction located at NH4, the accused, who had formed themselves into an unlawful assembly, armed with deadly weapons and were waiting for the deceased at the said place sitting in their respective cars intercepted the car of the deceased at the said place. Thereafter, it is alleged the accused in pursuance of the conspiracy hatched and in pursuance of the common object of unlawful assembly, they hacked the deceased after dragging him out of the car. Further, when C.W. 1 intervened to rescue the deceased, he was also assaulted by the accused and attempted to commit his murder. Apart from this, the other witnesses, who were following the deceased, among whom C.W. 4-gunman, who was in the second car along with C.Ws. 12 and 13, seeing the deceased being attacked and heckled by the accused, opened fire with the SBBL gun, which was provided to him, on the accused. The shot fired by him landed on A9, who died at the spot. Thereafter, it is the case of the prosecution, altercations took place between the two groups in which accused are alleged to have assaulted and caused injuries to C.W. 3-driver of the car. After committing the offence, according to the prosecution, the accused left the spot.

2. The present accused, who are A34 and A35, came to be arrested by the police during the course of investigation on 12.8.2012. They are in custody since that date.

3. Sri C.H. Jadhav, learned Senior counsel appearing for the petitioners contends, the material placed on record reveals that these two petitioners were not present at the time when the occurrence took place. According to the prosecution, after the commission of the offence, A4 called A34 on his cell phone and requested him to provide a hired car and send the same to the hide out place located near Golden Palm Resort, which is situated off to NH4. He further submits, in pursuance of the same, A34 secured an Innova car and directed A35 to go to the place indicated by A4 and accordingly, A35 went to the said place and from there he picked up A6, 11, 18 and dropped them to Yeshwantpur railway station. He further submits names of these persons have figured in pursuance of the further statements made by C.W.-1 on 15.10.2012, C.W.-6 on 15.10.2012 and the statement of C.W.-163 recorded on 28.7.2012, implicating only A35. He also submitted the other connecting material placed by the prosecution to connect these accused with the alleged crime is extra judicial confession made by A4 before C.W.-310. He submits the statements of said witness has been recorded on 18.10.2012. He further submits, insofar as the conspiracy is concerned, it is figured only during the extra judicial confession made by A4 before the aforesaid witness. There is nothing on record to show that these two accused had indulged themselves in hatching conspiracy to finish off the deceased. He, further submits, this Court in CrI.P. Nos. 3698/2013 and 3087/2013 has granted regular bail and

anticipatory bail to A38 and A41 in this case. He submits the case of these petitioners do not stand on a different footing than that of A38, who has been granted regular bail by this Court. He, further submits, having regard to the material that has been placed against these two petitioners as admittedly they were not present at the spot when the occurrence took place and in view of the role attributed to them coupled with the fact that A38 and A41 who are similarly placed as that of these two petitioners have been granted bail, the petitioners also be enlarged on bail.

4. Per contra, Sri H.M. Thimmarayappa, learned Special Public Prosecutor contends, the presence of these two persons at the spot is spoken is to by C.Ws. 1, 6 and 163, wherein they have specifically stated that these two persons were present at the time of occurrence and in fact the statement of C.W. 6 reveals that A34 tried to close the door of the Innova Car in which the deceased had come near the spot in order to see that he does not escape from the clutches of the accused, which would indicate the clear participation of A34 in commission of the offence. He, further submits, the statements of C.Ws. 23, 24, 25 and 26 clearly reveals that all the accused in this case including these petitioners had hatched conspiracy on different dates to commit murder of the deceased and in pursuance of the said conspiracy, the accused have committed the offences alleged against them. He further vehemently contended as the statements of C.Ws. 228 and 310 reveal that A4 has made extra judicial confession implicating these petitions as the culprits in the case, by virtue of Section 30 of the Evidence Act, 1872, at this stage it has to be taken that the petitioners have participated in the crime and they have indulged in committing a barbarous act of murder by waylaying the deceased. Having regard to the background in which the occurrence has taken place and taking into account that they are all influential both politically and financially, if they are granted the relief there is every possibility of they tampering with the prosecution witnesses, which would effect the main case. Therefore, he submitted, the petitioners are not entitled to be released on bail, at this stage.

5. On perusal of the entire material i.e., the prosecution papers placed before the Court u/s 173 of Cr.P.C. would reveal that these two petitioners were not present at the spot. They have been implicated on the basis of further statement of C.Ws. 1 and 6, which is recorded on 15.10.2012 i.e., nearly about three months after the occurrence. Insofar as C.W.-163 is concerned, his statement is recorded on 28.07.2012. In his statement, except implicating A35, he does not mention the name of A34. Therefore, having regard to the fact that these witnesses have come out with the involvement of these two petitioners after a lapse of more than three months and having regard to the role that has been attributed to these petitioners, that is on the instructions of A4, A34 has hired an Innova Car and has sent to a hide out place to transport A6, 11 and 18 through A35 and A35 has carried out the instructions of A34 in shifting A6, 11 and 18 from hide out place to Yeshwantpur Railway Station and further taking into consideration that A38 and A41 have been granted regular bail and anticipatory bail by this Court,

in the circumstances, I do not find any justification now to reject the prayer of these petitioners. Insofar as extra judicial confession relied upon by the prosecution at this stage made by A4 in the presence of C.W.-310, it has to be noted that the statement of C.W.-310 has been recorded by the police on 18.10.2013 nearly about an year and five months after the occurrence. Though the learned SPP vehemently submitted by virtue of Section 30 of the Evidence Act, the said extra judicial confession could be acted upon which would implicate these petitioners as being present at the spot, since the words used in the said Section is "may" and not "shall", in my opinion, extra judicial confession by itself being a weak type of evidence it does not lend any credence unless there are other incriminating circumstances pointing towards the guilt of the accused in order to place reliance on the same. Insofar as conspiracy that is hatched out by the petitioners, though learned SPP pointed out various dates on which conspiracy was hatched, there is nothing on record to show at what time, in which place the petitioners hatched conspiracy. However, having regard to the background in which the occurrence has taken place, the position in which the present petitioners are placed, as they are in custody since 12.08.2012, as the final report has been filed in the case, in my view, the accused are entitled for regular bail, subject to imposing severe conditions on them. Accordingly, I proceed to pass the following

ORDER

The petitioners are ordered to be released on bail on each of them executing a personal bond in a sum of Rs. 2,00,000/- with two sureties for the likesum to the satisfaction of the Committal Magistrate OR to the Sessions Judge, if the case is committed to the Court of Sessions, subject to the following conditions:--

- 1) They shall not tamper with the prosecution witnesses;
- 2) They shall not leave the jurisdiction of the Committal Court without his express permission till the case is committed and if the case is committed, without the express permission of the Sessions Judge till the conclusion of the trial in the case except for attending to the Court in Bangalore City;
- 3) They shall also mark their attendance before the Nelamangala Police between 10.00 a.m. and 3.00 p.m. on every Wednesday and Sunday till the conclusion of the trial;
- 4) If any of these conditions are violated by any of the petitioners, the bail granted to them stands automatically cancelled and the Court concerned shall take them to custody forth-with.