

(2021) 09 KAR CK 0005

In the Karnataka High Court

Case No : Criminal Petition No. 101564 Of 2021

Shrinivas S/O Fakkirsa Dalananjan

APPELLANT

Vs

State Of Karnataka

RESPONDENT

Date of Decision : 06-09-2021

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439

Indian Penal Code, 1860 — Section 34, 109, 302, 307, 326

Citation : (2021) 09 KAR CK 0005

Hon'ble Judges : Rajendra Badamikar, J

Bench : Single Bench

Advocate : A.P. Murari, Ramesh B.Chigari

Final Decision : Allowed

Judgement

Rajendra Badamikar, J

1. The petitioner has filed this petition under Section 439 Cr.P.C. seeking regular bail in Crime No.77/2021 of Keshwapur Police Station, Hubballi registered for the offences punishable under Sections 109, 326, 307 and 302 R/W Section 34 of IPC.

2. The factual matrix leading to the case are that, mother of the deceased Veeresh was the owner of the land measuring 1 acre 16 guntas of Tarlagatta village in Kundagol Taluk. That accused No.4-Javeed is the friend of the deceased and indebted to accused No.2-Munna Bepari. As accused No.2 all along demanding accused No.4 for repayment of amount, accused No.4 requested the deceased to help him financially. Then the deceased by mortgaging his mother's land financially assisted accused No.4. Later on, the deceased and his mother got information that one Arun Miskin has purchased the said land through the mediation of the present petitioner accused No.3. On enquiry by the deceased, the petitioner disclosed that Rs.5,30,000/- was paid to accused No.2 at the time of purchase and if the said amount is returned, the land would be re-conveyed.

When the deceased has enquired with accused No.2, he has demanded Rs.5,00,000/- with interest from 2015 and in this regard, regularly dispute was going on. As such, enmity was developed and the deceased was threatened by the accused in this regard. It is alleged that on 08.07.2021 at 7.30 p.m., the deceased went out of the house reporting that accused Nos.1 and 2 are calling him to discuss about the land issue. When his wife called him at 8.30 p.m., he did not receive the phone call and later, it is revealed that deceased was badly assaulted and admitted in the hospital. In this regard, she lodged the complaint for the offence punishable under Section 307 of IPC and FIR came to be issued. During the course of treatment, the deceased died and as such, the offence under Section 302 of IPC is incorporated.

3. According to the prosecution, the petitioner along with accused Nos.4 and 5 abated accused Nos.1 and 2 in committing the murder of the deceased. Hence, the petitioner was arrested and he was produced before the Magistrate and he was remanded to judicial custody. The petitioner moved bail petition before the I Additional District and Sessions Judge, Dharwad sitting at Hubballi and the learned Sessions Judge by order dated 07.08.2021 rejected the bail petition. Hence, the petitioner has approached this court.

4. Heard the arguments of the learned counsel for the petitioner and the learned HCGP for the respondent- State. Perused the records.

5. The learned HCGP has also filed statement of objections wherein he has contended that the present petitioner is also involved in another crime between the same parties.

6. The learned counsel for the petitioner would contend that allegation against the present petitioner is only regarding he abating the deceased. It is alleged that no specific overt act is alleged against the present petitioner, who is arrayed as accused No.3 and only allegation is regarding he instigated accused Nos.1 and 2 in committing the offence. He would also contend that petitioner is only a mediator who has mediated regarding sale transaction of the year 2015. He would also contend that earlier complaint alleged in this regard ended in submitting 'B' final report, stating that the matter is civil in nature. He would also contend that nothing is required to be recovered from the possession of the present petitioner. He would contend that petitioner is in custody and the presence of the petitioner is no more required by the investigating agency and he would undertake to abide by the terms and conditions to be imposed by this court. Hence, he would seek for admitting the petitioner on regular bail.

7. Per contra, learned High Court Government Pleader has seriously objected the bail petition contending that present petitioner is part of conspiracy in committing the offence under Section 302 of IPC and instigated accused Nos.1 and 2 in assaulting the deceased. The matter is still at the stage of investigation and the petitioner is involved in similar offence between the same parties. Looking to these facts and circumstances, he would seek for rejection of the bail

petition.

8. Having heard the arguments and perusing the records, it is evident that allegation does establish that the dispute between the parties is regarding transfer of 1 acre 16 guntas belonging to the mother of the deceased. Further, as per the allegations, at the request of accused No.4, the deceased has financially assisted him by mortgaging the said land and later on it is revealed that the said land was transferred in the name of one Miskin. However, the records produced by the prosecution does disclose that initially the mother of the deceased had filed a private complaint regarding forging her signature and kidnapping her son etc. in respect of the same transaction. The said private complaint was registered in crime No.24/2016 of Ashoknagar Police Station. Later, it is submitted that the police have submitted 'B' final report. Hence, prima facie it is evident that dispute between the parties is regarding land and allegations does establish that accused No.3 alleged to have instigated accused Nos.1 and 2. The main allegations were against accused Nos.1 and 2 only. No specific overt act is alleged against the present petitioner. Further, the present petitioner was arrayed as accused No.5 in the earlier complaint in crime No.24/2016 wherein 'B' final report came to be submitted. It is submitted that, 'B' final report is already accepted by the court on 24.07.2018.

9. It is prima facie evident that dispute between the parties is of civil in nature. The allegation of the prosecution as against the present petitioner is that he mediated for sale of land. Whether the sale deed was executed by the deceased or it was forged is required to be established in civil dispute. No specific overt act is alleged against the present petitioner who is arrayed as accused No.3. Under these circumstances, I do not find any impediment to admit the petitioner on regular bail. The other apprehensions raised by the learned HCGP could be meted out by imposing certain conditions. Accordingly, I proceed to pass the following:

ORDER The criminal petition is allowed.

The petitioner is ordered to be released on bail in Crime No.77/2021 of Keshwapur Police Station, Hubballi registered for the offences punishable under Sections 109, 326, 307 and 302 R/W Section 34 of IPC on his executing personal bond for a sum of Rs.1,00,000/- with two sureties for the likesum, subject to the following conditions:

- i. The petitioner shall co-operate in the investigation.
- ii. The petitioner shall mark his attendance before the S.H.O. on every Monday between 9.00 a.m. to 5.00 p.m. until final report is submitted.
- iii. The petitioner shall not tamper with the prosecution witnesses either directly or indirectly.
- iv. The petitioner shall be regular in attending the trial proceedings, unless he is exempted by the court specifically.

v. The petitioner shall furnish proof of his correct address and shall intimate the Trial Court regarding change in address, if any.

Violation of the above conditions would result in cancellation of the bail automatically.