

(2018) 02 KAR CK 0113
In the Karnataka High Court
Case No : 509 of 2018

SRI G NARASIMHULU & ANR

APPELLANT

Vs

STATE OF KARNATAKA

RESPONDENT

Date of Decision : 06-02-2018

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](#),
[Section 201](#)

Citation : (2018) 02 KAR CK 0113

Hon'ble Judges : Budihal R.B.

Bench : Single Bench

Advocate : VIJAYKUMAR PRAKASH, K.NAGESHWARAPPA

Judgement

1. This petition is filed by the petitioners/accused Nos.1 and 2 under Section 439 of Cr.P.C. seeking their release on bail of the offences

punishable under Sections 302 and 201 read with 34 of IPC, registered in respondent - police station Crime No.445/2017.

2. Heard the arguments of the learned counsel appearing for the petitioners/accused and also the learned High Court Government Pleader appearing for the respondent-State.

3. Learned counsel for the petitioners during the course of his arguments has submitted that even looking into the case of the prosecution as per the complaint averments, the complainant is none other than the brother of the deceased. The materials show that the deceased was having illicit

connection with petitioner No.2 herein, who is the wife of petitioner No.1. It is also his submission that in order to avoid the said connection,

petitioners have shifted and came to the present village with an intention that if

they shift to the said village, the deceased may discontinue his illicit connection with petitioner No.2. Learned counsel for the petitioners has submitted that even the deceased continued and was coming to the said village, and on 06.09.2017 during midnight between 12.00 to 1.00 the deceased found in the house of the petitioners, therefore, as per the prosecution case itself galata took place between the deceased on the one side and the petitioners i.e., the husband and wife, on the other side. Learned counsel has fairly submitted that so far as the assault made on the deceased is concerned, of course, there is a prima-facie material placed by the prosecution. Looking into the charge sheet material, learned counsel has submitted that when the deceased was having illicit connection with the wife of petitioner No.1, naturally the husband/petitioner No.1 might have picked up quarrel and he might have assaulted the deceased, but petitioner No.1 had not gone to the house of the deceased with a prior intention to commit his murder, it is when the deceased came to his house the incident took place. Therefore, looking into the prosecution material the case comes under exception-1 to Section 300 of IPC, and it is under the grave and sudden provocation, hence, it will not be punishable under Section 302 of IPC. Insofar as petitioner No.2 is concerned, he has submitted that there are no serious allegations except the deceased having illicit connection with her, even so far as the alleged offence under Section 201 of IPC is concerned, it is not against petitioner No.2. Looking into the statement of witnesses, who are the neighbours, it is only accused No.1, who was carrying the bag containing the dead body of the deceased, hence, in view of these materials, learned counsel has submitted to allow the petition and to grant bail to the petitioners.

4. Per contra, learned High Court Government Pleader, during the course of his arguments has submitted that the statement of eye-witnesses, so also, the contents of the complaint, clearly show that the incident took place in the house of the petitioners herein and there is a prima-facie material placed by the prosecution regarding the assault made on the deceased. He has further submitted that after the incident both the accused persons tried to screen the evidence in the case, hence, they are not entitled for grant of bail.

5. I have perused the grounds urged in the bail petition, FIR, complaint and

other materials placed on record.

6. Looking into the prosecution material so far as the place of offence is concerned, there is no dispute even according to the prosecution, it is the house of the petitioners herein.

7. Looking into the version of eye-witnesses, so also, the medical report, the Doctor, who conducted autopsy over the dead body, has noticed

nine external injuries upon the body of the deceased and the injuries are lacerated and incised wounds. The cause of death as per the opinion of the

Doctor is due to injuries sustained to head and all the injuries are ante mortem fracture of bone show blood extravasations of blood.

8. Looking into these materials, it prima-facie show the involvement of petitioners, but so far as petitioner No.2 is concerned, there is no specific

allegation that she has assaulted the deceased with deadly weapon and so far as the offence under Section 201 of IPC for screening the evidence

is concerned, the witnesses have stated in their statements that they have seen petitioner No.1/accused No.1 carrying the bag and he was

proceeding stealthily when they saw him. Though it is contended by the learned counsel for petitioners that the case of petitioner No.1 comes

under exception-1 to Section 300 of IPC, and he canvassed that it may not be weighed in golden scale, but looking into the number of injuries,

they are nine in number, and the subsequent conduct of petitioner No.1 taking the dead body in a gunny bag to screen the evidence, shows his

intention to commit the said offence. Therefore, the materials would not suggest that the case comes under exception to Section 300 of IPC.

Therefore, insofar as petitioner No.1 is concerned, prosecution placed prima-facie material, hence, he is not entitled for grant of bail.

9. Insofar as petitioner No.2 is concerned, as there are no serious allegations against her that she also assaulted with deadly weapons, even there is

no material so far as Section 201 of IPC against her. Petitioner No.2, who is a woman, contended that she is innocent and not committed the

alleged offence, hence, I am of the opinion that petitioner No.2 can be released on bail.

10. Accordingly, petition insofar as petitioner No.1 is rejected and insofar as petitioner No.2 is allowed. Petitioner No.2/accused No.2

(Smt.Kalyani) is ordered to be released on bail for the offence punishable under

Sections 302 and 201 read with 34 of IPC, registered in

respondent - police station Crime No.445/2017, subject to the following conditions:

i. Petitioner No.2 shall execute a personal bond for Rs.1,00,000/- and shall furnish one surety for the likesum to the satisfaction of the concerned

Court.

ii. She shall not tamper with any of the prosecution witnesses, directly or indirectly.

iii. She has to appear before the concerned Court regularly.