
(1991) 02 KAR CK 0012

In the Karnataka High Court

Case No : Criminal Petition No's. 1606 of 1990 and 47 of 1991

Venkataramanappa and others

APPELLANT

Vs

The State of Karnataka

RESPONDENT

Date of Decision : 21-02-1991

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161
Penal Code, 1860 (IPC) — Section 143, 147, 148, 149, 302

Citation : (1992) CriLJ 2268 : (1991) 1 KarLJ 490

Hon'ble Judges : M.M. Mirdhe, J

Bench : Single Bench

Advocate : Mr. M.N. Pramila, for the Appellant; Mr. C.H. Jadhav, Govt. Pleader, for the Respondent

Judgement

1. These two petitions are filed by the petitioners, who are accused Nos. 1 to 8 in Crime No. 473/90 of Mulbagal police station, which is registered for offences punishable under Ss. 143, 147, 148, 324, 302 read with 149, I.P.C., Petitioners filed similar petitions before the learned Sessions Judge, Kolar and the learned Sessions Judge, Kolar rejected their petitions for bail. Hence they have filed these petitions. Since these two petitions are filed by the petitioners who are accused in the same crime number, I have heard both the petitions together and I am passing a common order in them. I have heard the learned counsel for the petitioners in Cr.P. No. 47/91 and the learned counsel for the petitioner in Cr.P. No. 1606/90 and also the learned Government Pleader and perused the records of the case.

2. The case of the prosecution is as follows :-

That on 24-10-1990 at 9 a.m. the complainant Aslam Pasha was going along with the deceased Fiyaz at Kurubarapalya, Mulbagal town and at that time communal riots started there and when the complainant and the deceased were at Dobipalya, petitioners and another accused who is still absconding, came in a group holding Machu, clubs, choppers and stones in their hands and attacked

them and the accused Nagesh Babu hit him with a stone on his face and whereas the other accused attacked Fias with Machu and clubs on his head, face and back as a result of which he fell down and on seeing the incident the complainant ran away from that place and he lodged his complaint at 9.45 a.m. in Mulbagal Police Station which came to be registered by the police at Crime No. 473/90. The police investigated into the case and they have filed charge sheet against the petitioners and one more accused which is still absconding and the case is pending in the Court of J.M.F.C., Mulbagal at C.C. No. 587/90.

3. Inquest was conducted on the dead body of the deceased and the dead body was subjected to the post-mortem examination. In the post-mortem report, the Medical Officer has opined that the death of the deceased Fias was due to injury to brain associated with haemorrhage. Therefore this is a case of homicidal death. The learned counsel for the petitioners in Cr.P. No. 47/91 argued that the deceased died due to police firing in Mulbagal town and the police in order to save their own skin have filed this false case against the petitioners. When the Court is dealing with the bail application, the Court is required to find out whether there are any grounds to grant bail to the petitioners on the basis of the material that is collected by the prosecution during investigation. The material that is collected in the form of post-mortem examination shows that the deceased died due to the injuries sustained by him and not by gun shot injuries. The learned counsel contended that the post-mortem is also a concoction. Whether the post-mortem is a concoction or not or whether the police have manoeuvred this case in order to save their own skin is a matter to be decided at the time of trial of the offences. The learned counsel also contended that there were reports in press and T.V. to the effect that two persons died in police firing in Mulbagal town. The Court will not be justified in taking into account of the reports, if any, published in the papers or announced on the T.V. while deciding a bail application. The learned counsel also contended that a statement was made by the responsible persons on the floor of the house in the Assembly in this connection. But the learned Government Pleader submitted that he has ascertained and all the statements they have made is to the effect that justice would be done in the case. Therefore, the contentions of the learned counsel for the petitioner in Cr.P. No. 47/91 are wholly irrelevant for disposal of this petition.

4. This is a case of homicidal death and the police have completed the investigation and according to the police there are eye witnesses namely, Kupuswamachari, Ramachandrappa, Nagaraj, Ziaulla Khan, Md. Nazeer Ahamed, Ameer Khan, Md. Hussain and Hayaz Ahamed to connect these petitioners with the offences alleged against them. It is not disputed in this case that the names of the accused are mentioned in the complaint that is given by Aslam Pasha. The learned counsel for the petitioners in Cr.P. No. 1606/90 contended that complaint does not disclose all the overt act on the part of each of the petitioner. Complaint is not an encyclopaedia of the case of the prosecution and when the Court is dealing with the bail application, the Court is not expected to go into the detailed examination of the evidence and elaborate documentation of the merits of the

case. The Supreme Court in *Niranjan Singh and Another Vs. Prabhakar Rajaram Kharote and Others*, has held as follows (at page 427 of Cri LJ) :-

"Detailed examination of the evidence and elaborate documentation of the merits of the case should be avoided while passing orders on bail applications. No party should have the impression that his case has been prejudiced. To be satisfied about a prima facie case is needed, but it is not the same as exhaustive exploration of the merits in the order itself".

However in the statement of the witnesses, the names of all these petitioners and their overt acts are described. The learned Sessions Judge while discussing with the material to be found in which statements of the eye-witnesses has discussed them in detail in para 18 of his order. In view of the statements of the witnesses recorded under S. 161, Cr.P.C., it is difficult to hold at this stage that there is no prima facie case against the petitioners for offences punishable under S. 302. I.P.C., which is punishable with death or imprisonment for life.

5. I am aware of the position that merely because the offence alleged against the petitioners is punishable with death or imprisonment for life or that there is a prima facie case it will not be sufficient grounds to deny the bail to the petitioners. The Court will have to see whether there is any possibility to tampering with the prosecution witnesses and also possibility of their absconding from law. The Supreme Court in *State Vs. Jaspal Singh Gill*, has held that the Court can also refuse bail to an accused in the larger interest of the State.

6. It has to be noted that this is a case of communal riots in Mulbagal town. Whether the prosecution will be able to prove the guilt of the petitioners beyond reasonable doubt or not as required by law is a matter to be considered and decided at the time of the trial. But there is a strong prima facie case against the petitioners for an offence punishable with death or imprisonment for life and the offence is said to have been taken at the time of communal riots. That is also one of the important considerations to be weighed while deciding whether the petitioners should be granted bail in this case or not.

7. Learned counsel for the petitioner in Cr.P. No. 47/91 contended before me that the eye-witnesses cited by the prosecution have given their sworn statements to the effect that they have not witnessed any such incident and that there was a police firing. They have produced the affidavits of Ramachandra, Nagaraja son of Shivaramaiah, Gopalappa son of Krishnappa, Kuppaswamy Achari son of M. Rangachari and Ramachandra son of Sri Venkatappa. I have perused the affidavits of these witnesses, but according to the case of the prosecution, there are still some more eye-witnesses to connect the petitioners with the offences. Therefore, merely because some of the witnesses have filed affidavits disowning their previous statements, it will not be a justifiable ground for this Court to release the petitioners on bail. The prosecution apprehends in this case that if the petitioners are released on the bail, they are likely to tamper with the prosecution witnesses. Some of the eye-witnesses have already come up with

affidavits diswearing their previous statements. In this background, I think there is much force in the contention of the learned Government Pleader that if these petitioners are released on bail, there is likelihood of their tampering with the prosecution witnesses.

8. The learned counsel for the petitioner in Cr.P. 1606/90 urged two special grounds to release the petitioners in that petition on bail. He contended that petitioner No. 1 is suffering from a heart disease and petitioner No. 2 is the only earning member of his family. The offence alleged against the petitioner is very grievous and there is no material produced by the petitioner No. 1 to show that he is suffering any such heart disease and that it is of such a nature that it cannot be treated by his remaining in custody. Supreme Court in State Vs. Jaspal Singh Gill, refused bail to a person who was suffering from cardiac disease in that case. That ruling lays down that if there are circumstances justifying denial of bail to the petitioner, it cannot be said that cardiac disease is a ground to grant bail. Therefore, petitioner No. 1 is not entitled for bail on that count.

9. The ground urged in favour of petitioner No. 2 that he is the only earning member of the family will also not come to his aid in this case as the offence alleged is one punishable with death or imprisonment for life. Therefore, viewing the matter from all angle considering the various contentions of both the sides, I am of the considered opinion that it will not be in the interest of justice to grant bail to these petitioners. Hence I make the following :-

ORDER

Both the petitions are dismissed.

10. Petitions dismissed.