

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 22ND DAY OF NOVEMBER, 2022

BEFORE

THE HON'BLE MR. JUSTICE RAJENDRA BADAMIKA

CRIMINAL PETITION NO.9099 OF 2022

BETWEEN:

1. SRI SUBRAMANI @
SUBRAMANI RAO
S/O.LATE KRISHNOJI RAO
AGED ABOUT 33 YEARS
2. SRI KRISHNOJI RAO N.
S/O.LATE NARAYANA RAO
AGED ABOUT 48 YEARS

BOTH ARE RESIDING AT
CHARAKAMMATTENAHALLI
THONDEBHAVI HOBLI
GOWRIBIDANURU TALUK
CHIKKABALLAPURA-572 121

...PETITIONERS

(BY SRI SUBHASH CHANDRA BOSE, ADVOCATE)

AND:

STATE OF KARNATAKA
BY SHO OF MANCHENAHALLI
POLICE STATION
REP. BY PUBLIC PROSECUTOR
HIGH COURT COMPLEX
BENGALURU-560 001

...RESPONDENT

(BY SMT. RASHMI JADHAV, HCGP)

THIS CRL.P. IS FILED UNDER SECTION 439 CR.P.C PRAYING TO RELEASE THE PETITIONERS ON BAIL IN CRIME NO.231/2021 OF MANCHENAHALLI POLICE STATION AND IN SC.NO.19/2022 ON THE FILE OF III ADDITIONAL DISTRICT AND SESSIONS JUDGE, CHIKKABALLAPURA FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 427, 302, 143 AND 149 OF IPC.

THIS PETITION, COMING ON FOR ORDERS, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

The petitioners - accused Nos.1 and 4 have filed this petition under Section 439 of Cr.P.C. for enlarging them on bail in Crime No.231/2021 of Manchenalli Police Station, which is culminated in submission of chargesheet in SC.No.19/2022 on the file of III Additional District and Sessions Judge, Chikkaballapura, for the offences punishable under Sections 143, 302, 427 read with Section 149 of IPC.

2. Brief factual matrix leading to the case is as under:

The deceased Ashwath Rao was owning a land bearing Sy.No.3/2 measuring 0-35 guntas, wherein he has grown tomatoes. It is also alleged that in order to protect

tomatoes, he has installed electric fencing around the land. It is alleged that on 24.11.2021, the deceased Vasanth Rao, who is the brother of accused Nos.2 and 3 trespassed into the land of the deceased Ashwath Rao and he was electrocuted, as a result, he died. Then all the accused formed an unlawful assembly and they quarreled with deceased by holding him responsible for death of Vasanth Rao. They were well prepared and assaulted him and thereby caused his death. When the complainant got information about the said incident, she went to the spot and found that her husband was lying in the pool of blood and immediately, he was shifted to the Hospital, wherein he succumbed.

3. In this regard, the complainant after getting relevant information has lodged a complaint. On the basis of the complaint, the Investigating Officer has registered an FIR in Crime No.231/2021 for the offences punishable under Sections 302 and 427 read with Section 34 of IPC. During the course of investigation, the Investigating Officer

arrested the present petitioners and they were remanded to custody. Subsequently, the Investigating Officer has submitted the chargesheet on 22.02.2022 and the present petitioners are arraigned as accused Nos.1 and 4. They moved a regular bail petition before the learned Sessions Judge and the learned Sessions Judge has rejected their bail petition. Hence, the petitioners are before this Court.

4. Heard the learned counsel for the petitioners and learned High Court Government Pleader for the State. Perused the records.

5. Learned counsel for petitioners would contend that there are no eye witnesses and CWs.2 and 3 though claimed to be eye witnesses, their statements do not disclose that they are the eye witnesses. He would further contend that accused Nos.5 to 10 were released on bail by the Coordinate Bench of this Court. He would also contend that since last one year, the petitioners are in custody and their presence is no more required by the Investigating Agency and there is no chance of they tampering

prosecution witnesses. Hence, he would seek for admitting the petitioners on bail.

6. *Per contra*, learned High Court Government Pleader, seriously objects the bail petition, contending that CWs.2 and 3 are the eye witnesses and specific overt-act is alleged against the present petitioners, as they have assaulted by stone on the head and by stick on eye of the deceased and Post Mortem report supports the said allegation. It is contended that there is *prima facie* material to show that there is overt-act as against the present petitioners and in case, they are enlarged on bail, there is every possibility of tampering the prosecution witnesses. Hence, she would seek for rejection of bail petition.

7. Having heard the arguments and perusing the records, there is no serious dispute with regard to the deceased Ashwath Rao died because of the injuries suffered on his head and other parts of the body due to internal bleeding. Admittedly, his death is homicidal and

this is again supported by the Post Mortem report. The allegations made disclose that he was possessing land, wherein he was growing tomatoes and the accused used to damage tomatoes and as such, he installed electric fencing. According to the prosecution, subsequently, the brother of accused Nos.2 and 3 came in contact with the said electric fencing, when he tried to illegally trespass into the said land and succumbed. As a result, the present petitioners and others by nurturing the vengeance against the deceased Ashwath Rao, on 25.11.2021 in the early morning, picked up a quarrel with the deceased and with pre-determination, assaulted him. The statements of the eye witnesses namely, Kishor and Naveen clearly disclose that they are the eye witnesses and since there are number of persons about 10-11, who have assaulted the deceased, they did not venture to intervene so as to resolve the dispute. Their statements further disclose the specific overt-act as alleged against the present petitioners. It is alleged that petitioner No.1 assaulted on the head of the deceased by stone and petitioner No.2

assaulted by club on the eye of the deceased. The said assaults were corresponding to the injuries found on the body of the deceased, which is evident from the Post Mortem report. There is a fracture of skull and the death is as a result of internal bleeding.

8. The aforesaid facts and circumstances of the case clearly establish that there is specific overt-act alleged against the present petitioners. The ground of parity cannot be made applicable to the case in hand considering the specific overt-act alleged by the present petitioners. Learned Sessions Judge has observed all these aspects in detail. When there is a specific overt-act alleged, merely on the ground that the petitioners are in custody for last one year, is not ground for admitting them on bail as they have taken away the life of a human being. The offence is punishable with death or life imprisonment.

Looking to the facts and circumstances of the case, this is not a fit case to exercise discretion of granting bail in favour of the present petitioners. Hence, the petition is

devoid of merits and does not survive for consideration and accordingly, the same stands ***rejected***.

**Sd/-
JUDGE**

LB