

Karnataka High Court

Raju S/O Khubu Chavan vs The State Of Karnataka on 11 May, 2023

Bench: Ramachandra D. Huddar

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CRL.P No. 200253 of 2023

IN THE HIGH COURT OF KARNATAKA
KALABURAGI BENCH

DATED THIS THE 11TH DAY OF MAY, 2023

BEFORE

THE HON'BLE MR JUSTICE RAMACHANDRA D. HUDDAR

CRIMINAL PETITION NO 200253/2023

BETWEEN:

RAJU S/O KHUBU CHAVAN
AGE 38 YEARS, OCC DRIVER,
R/O DEVAN TEGNOOR THANDA
TQ SHAHABAD,
DIST KALABURAGI 560037

...PETITIONER

(BY SRI SYED FAYAZUDDIN, ADVOCATE)

Digitally
signed by
SACHIN
Location:
High
Court of
Karnataka

AND:

THE STATE OF KARNATAKA
THROUGH SHAHABAD TOWN POLICE
STATION TQ SHAHABAD,
DISTRICT KALABURAGI

REPRESENTED BY
ADDL SPP HIGH COURT OF KARNATAKA
KALABURAGI BENCH 585103

...RESPONDENT

(BY SRI GURURAJ V. HASILKAR, HCGP)

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THIS CRIMINAL PETITION IS FILED UNDER SECTION 439 OF CR.P.C., PRAYING TO RELEASE THE PETITIONER ON BAIL IN CRIME NO. 02/2023 OF SHAHABAD TOWN POLICE STATION DIST. KALABURAGI, FOR THE OFFENCES PUNISHABLE U/SEC. 143, 147, 148, 323, 324, 326, 354, 307, 504, 506 R/W SEC. 149 OF IPC PENDING BEFORE THE J.M.F.C. COURT AT SHAHABAD.

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

ORDER

The petitioner arrayed as accused No.2 has filed this petition under Section 439 of Cr.P.C., to grant him bail in Crime No.2/2023 registered by the Shahabad Town Police Station for the offences punishable under Sections 143, 147, 148, 323, 324, 326, 307, 504, 506 read with Section 149 of IPC.

2. Brief and relevant facts as set out in the FIR are as under:

A complaint came to be filed by one Sri Manik Naduvinakeri alleging that on 01.01.2023 at about 9:45 p.m., when complainant's son Shreshail went outside the house to bring grocery, at about 10:15 p.m., a relative of CRL.P No. 200253 of 2023 the complainant by name Vijaykumar Doddamani informed the complainant over mobile phone that at about 10:00 p.m., when Shreshail was returning to his house at that point of time near Water Tank all the accused persons stated in the complaint, because of previous animosity, wrongfully restrained Shreshail and picked up quarrel with him. It is alleged that accused No.1 abused Shreshail in filthy language and assaulted him with stick; accused No.2 gave fist-blow on the mouth of Shreshail. On getting such information, complainant and his wife along with their children went to the said spot. Accused No.1 abused them in filthy language. It is alleged that complainant's another son Mallikarjun tried to pacify the quarrel, but accused No.2 assaulted him with the bat on his back and on his left leg causing grievous injuries. When another son of the complainant tried to pacify the quarrel, accused No.3 assaulted him with stick and caused internal injury. Even Basalingamma wife of the complainant tried to pacify the quarrel, but accused No.4, 5 and 6 pulled her hair and assaulted her with hands. On hearing the hue and cry of CRL.P No. 200253 of 2023 the victims, the neighbors gathered there and the accused ran away from the spot by giving life threat. With these allegations a complaint came to be filed and the petitioner was arrested by the responded-police. Since the bail petition of the petitioner was rejected by the Sessions Court, he is before this Court seeking bail on the following grounds:

That he is innocent and not committed any offence and a false case has been registered against him because of animosity against the complainant. The other accused were already granted bail by the Sessions Judge. Victim is already discharged from the hospital. Since from 05.01.2023 petitioner-accused No.2 is in judicial custody. Petitioner is ready to abide by any conditions to be imposed by this Court. He is permanent resident of the address stated in the petition. Amongst other grounds, it is prayed to grant him bail.

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3. Pursuant to the notice issued to the respondent, learned HCGP appeared and resisted the bail petition by filing a detailed objections statement. In the objections statement, the contents of the complaint have been re- iterated. In addition to that, it is specifically contended that this petitioner is involved in all 15 cases and he is a habitual offender. There are overt-acts being complained against the petitioner. There was a life threat to Shreshail and attempted to cause his murder. It is contended by the learned HCGP that since the petitioner is a habitual offender, as a matter of right he is not entitled for bail. He submits that investigation has been completed and charge-sheet has already been filed. If the petitioner is enlarged on bail, he may repeat the similar offences. Hence, he prayed to dismiss the petition.

4. Heard the arguments of both the sides and meticulously perused the records.

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5. On perusal of the complaint and other documents produced by the petitioner which do reveal that, there was a assault on the person of a complainant's son Shreshail by fisting him on his mouth. According to the prosecution it is accused No.2 who had assaulted the victim and attempted to cause his murder. It is stated in the petition that the other accused persons have already been granted bail, therefore, on the ground of parity this petitioner is also entitled for bail.

6. During the course of the arguments, learned counsel for the petitioner submits that amongst the other cases registered against the present petitioner, all the cases have been ended in acquittal except three cases, which are pending trial. It is his further submission that the petitioner has not committed any offence and he has been falsely implicated in the case because of animosity. It is further submitted that the petitioner is ready to abide by any conditions to be imposed by this Court.

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7. On perusal of the objections statement, it reveals that they appear to be formal objections taken by the prosecution to every bail petition. With regard to registering several cases against the petitioner, there is no denial of this fact by the petitioner, but it is submitted that all the cases have been ended in acquittal. It means they are not ended in conviction of the petitioner. The law with regard to grant of bail under Section 439 of Cr.P.C., is very much settled. The Hon'ble Apex Court in the case of Dattaram Singh v. State of Uttar Pradesh reported in (2018) 3 SCC 22 wherein it is held that:

"A fundamental postulate of criminal jurisprudence is the presumption of innocence, meaning thereby that a person is believed to be innocent until found guilty. However, there are instances in our criminal law where a reverse onus has been placed on an accused with regard to some specific offences but that is another matter and does not detract from the fundamental postulate in respect of other offences. Yet another important facet of our criminal jurisprudence is that the grant of bail is the general

rule and putting a person in jail or in a prison or in a correction home (whichever expression one may wish to use) is an exception. Unfortunately, some of these basic principles appear to have been lost sight of with the result that more and more persons CRL.P No. 200253 of 2023 are being incarcerated and for longer periods. This does not do any good to our criminal jurisprudence or to our society."

8. Further, in the case of Arnesh Kumar v. State of Bihar reported in (2014) 8 SCC 273, it makes it mandatory that in any case where the offence is punishable with imprisonment for a term which may extend to 7 years, the accused may not be automatically arrested and the Magistrate may not authorize the detention casually and mechanically.

9. Now there is no evidence placed on record by the prosecution that still the victim is under treatment and there is a life threat to the victim. Victim has already been discharged from the hospital and charge-sheet is already filed. Therefore, the presence of the petitioner may not be required in judicial custody for any interrogation. Mere granting of bail does not amount acquittal and rejection does not amount to conviction. More-over the other accused persons have already been CRL.P No. 200253 of 2023 granted bail. The only observation made by the Sessions Court for rejecting the bail application of this petitioner is that there are allegations of overt-acts against the present petitioner and as well as he has involved in several other criminal cases, which is not a ground to accept now at the time of deciding the bail application, as while deciding the bail application we cannot conduct any mini trial. Therefore, in view of the above facts and circumstances of the case and well settled position of law, the petitioner has made out grounds to grant bail, but with certain conditions, which would meet the serious objections raised by the prosecution. Hence, the petitioner is entitled for bail with conditions. Resultantly I pass the following:

ORDER The bail petition filed by the petitioner under Section 439 of Cr.P.C., is allowed.

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CRL.P No. 200253 of 2023 Petitioner is directed to be released on bail in Crime No.2/2023 registered by the respondent Police Station, subject to following conditions:

1. The petitioner shall execute personal bonds for a sum of Rs.1,00,000/- with two sureties for the likesum to the satisfaction of the jurisdictional Court;
2. The petitioner shall not threaten or tamper the prosecution witnesses directly or indirectly;
3. The petitioner shall mark his attendance before the respondent police once in a week preferably on Sunday between 8.00 a.m. and 4.00

p.m., and sign in the Register
maintained by the Station House
Officer to that effect;

4. The petitioner shall not involve in similar offences and shall not leave the jurisdictional Court without prior permission;

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5. The petitioner shall appear before the Investigating Officer as and when called upon for the purpose of further investigation and co-operate for investigation.

Breach of any of these conditions would entail cancellation of bail.

Sd/-

JUDGE SBS