

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 14TH DAY OF AUGUST, 2020

BEFORE

THE HON'BLE MR. JUSTICE H.P. SANDESH

CRIMINAL PETITION No.3195/2020

BETWEEN:

1. CHOWDEGOWDA D.B.,
S/O BHOOMI GOWDA,
AGED ABOUT 40 YEARS.
2. BASAVARAJU D.B.,
S/O BHOOMI GOWDA,
AGED ABOUT 36 YEARS.
3. BHOOMIGOWDA @ BHUMI D.R.,
S/O KALLAIAH @ BASAVIAH,
AGED ABOUT 33 YEARS.

PETITIONERS NO.1 TO 3 ARE
RESIDENTS OF DEVIPURA VILLAGE,
THALAGAVADI POST,
KIRUGAVALU HOBLI,
MALAVALLI TALUK,
MANDYA DISTRICT - 570 401.

... PETITIONERS

(BY SRI A.N. RADHA KRISHNA., ADVOCATE)

AND:

THE STATE OF KARNATAKA,
BY K.M. DODDI POLICE STATION,
REPRESENTED BY THE STATE PUBLIC PROSECUTOR,

HIGH COURT BUILDINGS,
BENGALURU - 560 001.

... RESPONDENT

(BY SRI R.D. RENUKARDHYA, HCGP)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 439 OF CR.P.C. PRAYING TO ENLARGE THE PETITIONERS ON BAIL IN CR.NO.110/2020 OF K.M. DODDI P.S., MANDYA, FOR THE OFFENCE PUNISHABLE UNDER SECTIONS 341, 302, 120-B, 109 R/W SECTION 34 OF IPC.

THIS CRIMINAL PETITION COMING ON FOR ORDERS **THROUGH VIDEO CONFERENCE** THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

This petition is filed under Section 439 of Cr.P.C. seeking regular bail of the petitioners/accused Nos.2 to 4 in Crime No.110/2020 registered by K.M. Doddi Police Station, Mandya, for the offence punishable under Sections 341, 302, 120-B, 109 read with Section 34 of IPC.

2. Heard the learned counsel for the petitioners and the learned High Court Government Pleader appearing for the State.

3. The factual matrix of the case is that the son of the complainant was murdered and at the first instance, a case was registered against unknown persons. Subsequently, four accused persons are arrayed for the offence punishable under Sections

341 and 302 of IPC. The voluntary statement of accused No.1 was recorded and he reveals that the victim was troubling his sister and hence his sister committed suicide. Thereafter, he continued to trouble his another sister and her marriage was solemnized. Even after the marriage also, he was telling accused No.1 that how his another sister will lead marital life and hence he has approached these petitioners, who have been arrayed as accused Nos.2 to 4 and they promised him to help him out. On the date of the incident, he went and made attack on the victim and committed the murder and thereafter sought help of the petitioners. The voluntary statement of other accused persons is also recorded.

4. The learned counsel for the petitioners would submit that the petitioners have not participated in the crime and the prosecution material discloses that after committing the murder, accused No.1 sought help of the petitioners and offences under Section 302 cannot be invoked against the petitioners. At the most, it attracts offence under Section 212 of IPC for harbouring accused No.1 and the same is bailable in nature.

5. The learned counsel in support of his contention relied upon the unreported order of this Court passed in CrI.P.No.2918/2020 dated 13.07.2020 and referring this order, the counsel would submit that the said order is squarely applicable to the case on hand.

6. Per contra, the learned High Court Government Pleader appearing for the State would submit that it is an offence under Section 302 of IPC and the petitioners have helped the main accused and the investigation is not yet completed. The material as to whether the petitioners have participated in the crime or helped in eliminating the victim, has to be collected. Hence, it is not a fit case to exercise the powers under Section 439 of Cr.P.C. at this stage and prayed this Court to dismiss the petition.

7. Having heard the arguments of the learned counsel for the petitioners and the learned High Court Government Pleader appearing for the State and having considered the material available on record, this Court has to examine whether it is a fit case to exercise the powers under Section 439 of Cr.P.C.

8. Having considered the material available on record, it is clear that there are no eye-witnesses to the incident and the case is rest upon the circumstantial evidence and also the voluntary statement of the main accused. The papers which have been produced by the learned High Court Government Pleader discloses that voluntary statement of the petitioners are also recorded. The voluntary statement discloses that only after committing the murder, the main accused contacted them and they assisted to shift accused No.1 to a safer place harbouring him.

9. Having taken note of the material collected by the prosecution and also voluntary statement of the petitioners, it is clear that there is no prima facie material against the petitioners that they have indulged in committing the crime. The only offence is under Section 212 of IPC for harbouring the offender. The petitioners are already in custody and their voluntary statement has been recorded. When such being the facts and circumstances of the case, whether the petitioners have concealed accused No.1 knowing fully well that he is an offender

with an intention of screening him from legal punishment, has to be examined during the course of the trial. Hence, I am of the opinion that it is a fit case to exercise the powers under Section 439 of Cr.P.C to enlarge the petitioners on bail, subject to safeguarding the interest of the prosecution.

10. In view of the discussions made above, I pass the following:

ORDER

The petition is allowed. Consequently, the petitioners shall be released on bail in connection with Crime No.110/2020 registered by K.M. Doddi Police Station, Mandya, for the offence punishable under Sections 341, 302, 120-B, 109 read with Section 34 of IPC, subject to the following conditions:

- (i) The petitioners shall execute their personal bond for a sum of Rs.2,00,000/- (Rupees Two Lakhs only) with two sureties for the like-sum to the satisfaction of the jurisdictional Court.
- (ii) The petitioners shall not indulge in tampering the prosecution witnesses.

- (iii) The petitioners shall appear before the jurisdictional Court on all the future hearing dates, unless exempted by the Court for any genuine cause.
- (iv) The petitioners shall not leave the jurisdiction of the Trial Court without prior permission of the Court till the case registered against them is disposed of.

**Sd/-
JUDGE**

MD