IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 14TH DAY OF SEPTEMBER, 2023

BEFORE

THE HON'BLE MR JUSTICE SHIVASHANKAR AMARANNAVAR

CRIMINAL APPEAL NO. 1408 OF 2023

BETWEEN:

SANTHOSH. R @ JACKIE @ GENARATER,
S/O LATE RAMACHANDRA K,
AGED ABOUT 36 YEARS,
R/AT C/O RAMEGOWDA, NO. 58,
3RD CROSS, 5TH MAIN, RAJIV NAGARA,
PATEGARAPALYA, YESHWANTHPURA-2,
BANGALORE.

...APPELLANT

(BY SRI. CHANDRAPPA K. N, ADVOCATE)

AND:

1. THE STATE OF KARNATAKA,
   MADANAYAKANAHALLI P.S,
   BANGALORE, REPRESENTED BY STATE PUBLIC
   PROSECUTOR, HIGH COURT OF KARNATAKA,
   BANGALORE - 560 001.

2. SRI. MAHADEV M,
   S/O LATE MADAIAH,
   AGED ABOUT 45 YEARS,
   R/AT NO. 26/4, 20TH CROSS
   6TH MAIN ROAD, K. P. AGRAHARA,
   MAGADI ROAD, BANGALORE.

...RESPONDENTS

(BY SRI. M. DIVAKAR MADDUR, HCGP FOR R1;
R2 SERVED AND UNREPRESENTED)

Digitally signed by
LAKSHMINARAYANA
MURTHY RAJASHRI
Location: HIGH
COURT OF
KARNATAKA

THIS CRL.A IS FILED U/S 14(A)(2) OF SC/ST (POA) ACT, 2015 BY THE ADVOCATE FOR THE APPELLANT/S PRAYING THAT THIS HONBLE COURT MAY BE PLEASED TO SET ASIDE THE ORDER DATED 27.07.2023 IN SPL.C.NO.506/2023 PASSED BY THE I ADDITIONAL DISTRICT AND SESSION JUDGE, C/C II ADDL. DISTRICT AND SESSIONS AND JUDGE AT BANGALORE RURAL BANGALORE, AND ENLARGE THE APPELLANT ON BAIL IN (CR.NO.540/2022) IN SPL.C.NO.506/2023 AT MADANAYAKANAHALLI POLICE STATION OFFENCE P/U/S 302 R/W SEC. 34 OF IPC AND OFFENCE U/S 3(2)(V) OF SC/ST ACT, PENDING ON THE FILE OF HONBLE II ADDITIONAL DISTRICT AND SESSIONS JUDGE AT BANGALORE RURAL BANGALORE IN THE ABOVE CASE.

THIS APPEAL, COMING ON FOR ORDERS, THIS DAY, THE COURT DELIVERED THE FOLLOWING:

JUDGMENT

This appeal is filed by accused No.3 praying to set aside the Order dated 27.07.2023 passed in Special case Spl.C.506/2023 and Second Additional District and Sessions Judge, Bengaluru Rural district, Bengaluru. Where under the bail application of the appellant/accused No.3 sought in respect of Crime No.540/2022 of

Madanayakanahally Police Station for the offences under Section 302 read with Section 34 of IPC and under Section 3(2)(v) of SC/ST (POA) Act 1989 came to be rejected.

2. Heard learned counsel for appellant, learned High Court Government Pleader for R1 State. In respect of service of notice, respondent No.2 remained absent and unrepresented.

3. The case of the prosecution is that, on 15.11.2022 at about 07:30 p.m., one Prashanth attempted to murder the accused No.1, in that regard accused No.1 filed complaint and it is registered in Cr.No.131/2019 of Kempapura Police Station. The accused No.1 suspected that, said Prashanth was planning to kill him by joining with Nataraj and therefore, thought of killing the Nataraj. Accused No.1 with help of accused Nos.2 and 3 has procured the deceased on 14.11.2022 at Bangalore Satellite Bus stand and all of them had consumed liquor. They took deceased at the top of the

godown near Huliyuramma temple at Machohalli village and in the night at about 03.45 a.m., accused No.1 assaulted deceased Nataraj with chopper about 10 to 15 times on his head, face, hands and this appellant/accused No.3 kicked the deceased and accused No.1 took machete kept in motor cycle and assaulted the deceased Nataraj on his head and committed his murder. The charge sheet came to be filed against accused Nos. 1 to 3 for offences punishable under Section 302 of IPC and under Section 3(2)(v) of SC/ST (POA) Act 1989. That the appellant/accused No.3 came to be arrested on 25.11.2022 and he is in judicial custody. The appellant/accused No.3 filed bail application in Spl.C.No.506/2023 which came to be rejected by impugned order dated 27.07.2023 and the said order in challenged in this appeal.

4. The learned counsel for the appellant would contend that there is no motive for this appellant/accused No.3 to commit the murder of deceased Nataraj, the

motive alleged is against accused No.1. No serious overtacts are alleged against this appellant/accused No.3. The allegation against this appellant/accused No.3 is that, he kicked the deceased. The serious overtacts are alleged against accused Nos. 1 and 2 who are stated to have assaulted the deceased with machete. The post mortem report reveal that death is due to injury sustained. As the charge sheet is filed, this appellant/accused No.3 is not required for custodial interrogation. With this he prays to allow the appeal and grant bail to the appellant/accused No.3.

5. Per contra, the learned High Court Government Pleader would contend that the offence alleged against this appellant/accused No.3 is heinous offence. The appellant/accused No.3 was present on the spot at the time of incident and that he has kicked the deceased. If the appellant/accused No.3 is granted bail he will threaten the complainant and prosecution witnesses. With these he prays to dismiss the appeal.

6. Having heard the learned counsel for appellant and learned High Court Government Pleader for respondent No.1-State, this court gone through the impugned order and charge sheet**.**

7. The motive alleged is against the accused No.1. The deceased is stated to be a rowdy. The acquisition against this appellant/accused No.3 is that he was present at the spot and kicked the deceased. Serious overtacts are alleged against accused Nos. 1 and 2 who are stated to have assaulted the deceased with machete on his head face and caused his death. The case of the prosecution is based on circumstantial evidence. As the charge sheet filed the appellant/accused No.3 is not required for custodial interrogation. The prosecution has to prove each of circumstances to establish guilt of the accused at trial. Without considering all these aspects the learned Sessions Judge has passed the impugned order which requires interference by this Court. The appellant/accused

has made out grounds for setting aside the impugned order and grant of bail. In the result following:

ORDER

(i) The appeal is ***allowed***.

(ii) The impugned order dated 27.07.2023 passed in Spl.C.506/2023 by Second Additional District and Sessions Judge Bangalore Rural district, Bangalore is set aside.

(iii) The bail application of the appellant/accused No.3 stands allowed.

(iv) Appellant /accused No.3 is ordered to be released on bail in crime No.540/2022 of Madanayakanhalli Police Station subject to the following conditions:

a. The appellant/accused shall execute a personal bond for sum of Rs.2,00,000/-(Rupees Two Lakh only) with one surety for the likesum to the satisfaction of the Trial Court.

b. The appellant/accused shall not tamper with the prosecution.

c. The appellant shall not threatened the prosecution witnesses.

d. The appellant/accused shall attend the jurisdiction Court on all dates of hearing unless exempted and co-operate for a speedy disposal of the case.

e. The appellant/accused shall not involve in commission of any similar offence during the pendency of the case registered against him.

Sd/-
JUDGE

LDC
List No.: 1 Sl No.: 19
CT: BHK