CRL.P No. 1058 of 2023

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 5TH DAY OF APRIL, 2023

BEFORE

THE HON'BLE MR JUSTICE V SRISHANANDA

CRIMINAL PETITION NO. 1058 OF 2023

BETWEEN:

SRI. R. VENKATESHACHARI,
S/O LATE RAGHUNATHACHARI,
AGED ABOUT 36 YEARS,
R/AT: HUVADIGARA BEEDHI,
WARD NO.13, ANEKAL TOWN,
BENGALURU DISTRICT,
ANEKAL TALUK,
BANGALORE - 562 106.

...PETITIONER

(BY SRI. LEELADHAR H P., ADVOCATE)

AND:

Digitally signed by R MANJUNATHA
Location: HIGH COURT OF KARNATAKA

STATE OF KARNATAKA,
BY ANEKAL POLICE STATION,
ANEKAL, ANEKAL TALUK,
BENGALURU RURAL DISTRICT,
REPRESENTED BY SPP, HIGH COURT BUILDINGS,
BENGALURU - 560 001.

...RESPONDENT

(BY SRI. VINAYAKA V S., HCGP)

THIS CRL.P IS FILED U/S.439 OF CR.P.C PRAYING TO ENLARGE THE PETITIONER ON BAIL IN CR.NO.186/2022 REGISTERED BY ANEKAL POLICE STATION, BENGALURU

DISTRICT FOR THE OFFENCE P/U/S 302 AND 506 OF IPC, NOW PENDING ON THE FILE OF PRINCIPAL CIVIL JUDGE AND J.M.F.C., ANEKAL IN C.C.NO.13656/2022.

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

ORDER

Heard Sri. Leeladhar H.P learned counsel for the petitioner and learned High Court Government Pleader appearing for the respondent-State:

2. Petition is filed under Section 439 of Cr.P.C with the following prayer:

> *"Wherefore, the petitioner above named humbly prays that this Hon'ble Court be pleased to release the petitioner on bail in Crime No.186/2022 registered by Anekal Police Station, Anekal Taluk, Bengaluru Rural District, for the offences punishable under Sections 302 of IPC now charge sheet has been filed in C.C.No.13656/2022 for the offences punishable under Sections 302 & 506 of IPC, now pending on the file of the Principal Civil Judge & JMFC, Anekal imposing any condition/conditions imposed by this Hon'ble Court in the ends of justice."*

3. Brief facts of the case are as under:

Smt. Bhagya W/o Mahesh lodged a complaint with Anekal Police on 16.07.2022 which was registered in Crime No.186/2022 under Section 302 of IPC.

4. The Gist of the complaint averments revealed that Smt. Bhagya being the younger sister of the deceased Prema got a information over her mobile telephone by an unknown person stating that immediately she has to visit the house of Prema. Accordingly, she rushed to the house of Prema on 16.07.2022 at about 07.45 p.m. She noticed police and other persons gathered in the place. On enquiry, and on going the inside the house, she saw dead body of Prema in the pool of blood near the bathroom. On enquiry with the daughter, she came to know that her husband Venkateshachari (petitioner) assaulted on her head with machete and killed her. Based on the complaint, police registered the case and investigated the matter and filed charge sheet against the petitioner for the aforesaid offences.

5. During the course of investigation, the statement of the child witness, who is the daughter of the deceased and the

petitioner was recorded by the police so also her statement was recorded before the jurisdictional Magistrate under Section 164 of Cr.P.C.

6. The statement made by the child witness who is also an eye witness, would prima facie reveal that it is the petitioner who assaulted the deceased with machete on her head on fateful day resulting in the severe blood injury and death of the deceased. Post mortem report also reveals that the death of Prema is on account of traumatic shock with on account of multiple chop wounds on the head and neck.

7. The attempt made by the petitioner to obtain an order of grant of bail is turned down by the learned District Judge in Crl.Misc. No.5419/2022 by order dated 22.11.2022. Thereafter, the petitioner is before this Court.

8. Sri. Leeladhar H.P learned counsel for the petitioner reiterating the grounds urged in the petition contended that the statement of alleged eye witness is a tutored statement and if the same is eschewed, the entire case of the prosecution would rest on circumstances are as under.

9. Petitioner being the innocent, is entitled for grant of bail. More so, charge sheet having been filed by the investigation agency and continuation of the petitioner in judicial custody is no longer warranted.

10. Per contra, learned HCGP opposes the bail grounds by contending that, it is the daughter who is the eye witness to the incident who revealed about the ghostly incident to the complainant as well as the police and therefore, the material on record would definitely disentitled the petitioner from getting an order of grant of bail by resorting to the special powers vested in this Court under Section 439 of Cr.P.C atleast for the time being and sought for rejection of the bail petition.

11. Perused the materials on record meticulously in view of the rival contention of the parties.

12. On such perusal of the material on record, it is seen that the complainant who is the younger sister of the deceased came to know about the incident by an unknown telephone call to her mobile telephone. On enquiry, it is revealed that he is a police personal who informed her about the incident. Immediately, she rushed to the place of incident around

7.45 p.m on 16.07.2022. On visiting the house, she saw the dead body of her elder sister Prema near the bathroom in a pool of blood. She noticed severe injuries on the neck and head.

13. On enquiry with the daughter of the deceased, she revealed that it is the petitioner who assaulted the Prema with machete on her head and neck resulting in severe blood injury.

14. Thereafter, complainant lodged a written complaint with police and the case came to be registered and thorough investigation has been made by the investigation agency and charge sheet came to be filed against the petitioner under Section 302 of IPC.

15. During the course of investigation, statement of the child witness is also recorded by the police as well as the Jurisdictional Magistrate under Section 164 of Cr.P.C.

16. Prima facie the contents of such statement would relieve that it is the petitioner who is responsible for the homicidal death of the Prema.

17. Whether at all the petitioner is liable for the offence under Section 302 of IPC or not cannot be decided by this Court and at this stage holding the mini trial. So also the veracity of the statement of the child witness cannot be appreciated by this Court at this stage as it is tutored statement are not cannot be decided by this Court.

18. Suffice to say that the case of the prosecution being dependent on the statement of the eyewitness who is none other than the minor child of the deceased and the petitioner, this Court is of the considered opinion that at least at this stage, the petitioner has not made out any grounds whatsoever much less good grounds to accept his request for grant of bail by resorting to the special powers vested in this Court under Section 439 of Cr.P.C.

19. It is always open for the petitioner to approach the Court for grant of bail with a successive bail request, if there is a positive changed circumstances insofar as the petitioner is concerned.

20. Reserving such liberty for the petitioner. Accordingly, the following:

ORDER

Petition is dismissed.

Sd/-
JUDGE

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List No.: 1 Sl No.: 92
CT:STK