IN THE HIGH COURT OF KARNATAKA

KALABURAGI BENCH

DATED THIS THE 20TH DAY OF NOVEMBER, 2023

BEFORE

THE HON'BLE MR. JUSTICE K NATARAJAN

CRIMINAL PETITION NO. 201226 OF 2023 (439)

BETWEEN:

SMT. MALASHRI @ MALA
W/O MALHARI @ MALLU LOKHANDE,
AGE: 26 YEARS, OCC: H.H.WORK,
R/O SHIRANAL DODDI,
TQ. AND DIST. VIJAYAPURA-586101.

...PETITIONER

(BY SRI. SHIVANAND V. PATTANASHETTI, ADVOCATE)

AND:

1. THE STATE OF KARNATAKA
THROUGH POLICE P.I.
VIJAYAPURA RURAL P.S.,
DIST. VIJAYAPURA-586101
REPRESENTED BY ADDL. SPP
HIGH COURT OF KARNATAKA
KALABURAGI BENCH-585107.

2. JYOTIBA S/O DAVALAPPA LOKHANDE
AGE: 60 YEARS, OCC: AGRICULTURE
R/O SHIRANAL DODDI
TQ. & DIST. VIJAYAPURA-586101.

...RESPONDENTS

(BY SMT.ANITA M. REDDY, HCGP FOR R1;
R2-SERVED)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 439 OF CR.P.C., PRAYING TO GRANT THE REGULAR BAIL TO THE PETITIONER/ACCUSED NO.2 IN VIJAYAPURA RURAL P.S. CRIME

Digitally signed by KHAJAAMEEN L MALAGHAN
Location: High Court Of Karnataka

NO.81/2023 FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 109, 324, 341, 302, 504, 506 R/W 34 OF IPC, PENDING ON THE FILE OF IV-ADDL. CIVIL AND JMFC (JR., DN.,) COURT, VIJAYAPURA.

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

ORDER

This petition is filed by the petitioner-accused No.2 under Section 439 of Cr.P.C. seeking regular bail in Crime No.81/2023 registered by Vijayapura Rural Police Station, Vijayapura District, who is charge sheeted for the offences punishable under Sections 109, 324, 341, 302, 504, 506 r/w Section 34 of IPC.

2. Heard learned counsel for the petitioner and learned High Court Government Pleader for respondent No.1-State.

3. The case of the prosecution is that on the complaint filed by one Jyothiba Davalappa Lokhande, father of the deceased, the police registered FIR on 14.03.2023. It is alleged in the complaint that his son Malhari along with his wife (petitioner) went for grazing sheep. Accused No.1 also along with his wife had gone for

grazing sheep to the land for the purpose of manure. They used to stay in the land for about two-three days. One day prior to the date of incident, the deceased-Malhari had called his father over phone and informed that his wife (petitioner-accused No.2) is having illicit intimacy with accused No.1-Somaninga and inspite of warning, they have continued their affair. In turn, the complainant replied that within two-three days, he will conduct and panchayat and advise them. Subsequently, on 14.03.2023, he came to know from CW.7-Manjunath that in the last night they were sleeping in the land. At about 1.00 a.m., on seeing accused Nos.1 and 2 sleeping together, the deceased objected for the same. At that time, accused No.1 has assaulted the deceased with belt while the petitioner was holding the deceased. On hearing the voice of quarrel, CW.7-Manjunath came and warned. At that time, the deceased told CW.7 about the illegal intimacy between accused Nos.1 and 2 and the deceased has also told that they have assaulted him. Thereafter, CW.7 went back. Again at 5.00 a.m., on hearing the voice

of quarrel, he came to the spot, by that time, accused No.1 had already assaulted the deceased and the deceased-Malhari was lying dead. On seeing CW.7-Manjunath coming to the spot, accused Nos.1 and 2 ran away from the spot. CW.6-wife of accused No.1 was present at the spot. CW.7 came to know from CW.6-wife of accused No.1 that accused No.1 has assaulted the deceased with iron rod and axe and the petitioner (accused No.2) has abetted accused No.1 for committing the murder of the deceased. On registration of FIR, the police have arrested the petitioner on 15.03.2023 and she was remanded to judicial custody. The petitioner approached the Sessions Judge for bail, which came to be rejected. Hence, she is before this Court.

4. Learned counsel for the petitioner submits that the petitioner is innocent of the alleged offences and she has been falsely implicated in this case. The petitioner is in custody from almost eight months. He submits that the

petitioner is ready to abide by any conditions that may be imposed. Accordingly, he prayed for granting of bail.

5. Per contra, learned High Court Government Pleader for respondent No.1-State objected for granting bail to the petitioner.

6. Having heard the learned counsel for the petitioner and the learned High Court Government Pleader, I have perused the records which reveals that the deceased-Malhari himself told CW.7-Manjunath about the illegal intimacy between accused Nos.1 and 2 and the deceased has also told that they have assaulted him. Thereafter, CW.7 went back. At 5.00 a.m., once again he heard the voice of quarrel and came to the spot, by that time, accused No.1 had already assaulted the deceased with iron rod and axe and the deceased-Malhari was lying dead. On seeing CW.7-Manjunath coming to the spot, Accused Nos.1 and 2 ran away from the spot and the wife of accused No.1 was present at the spot. CW.7 came to know from CW.6-wife of accused No.1 that accused No.1

has assaulted the deceased with iron rod and axe while the petitioner (accused No.2) has abetted and instigated accused No.1 for committing the murder of the deceased. Of-course, in the FIR the police have invoked Section 34 of IPC, but in the charge sheet, the police have inserted Section 109 of IPC for abetment of commission of offence since the petitioner has instigated and abetted accused No.1 for commission of offence. Accused No.1 is also arrested and he is in judicial custody. Though there is eyewitness to the incident who has spoken about the petitioner holding the deceased while accused No.1 assaulting the deceased with iron rod and axe, the investigation has been completed long back and the charge sheet has been filed. The petitioner is in custody from almost eight months. Therefore, considering the facts and circumstances of the case, I am of the view that without expressing any opinion on the merits of the case and by imposing certain conditions, if the petitioner is released on bail, no prejudice would be caused to the case of prosecution. Hence, the following:

ORDER

The petition is ***allowed***.

The Trial Court/Committal Court is directed to release the petitioner/accused No.2 on bail in Crime No.81/2023 registered by Vijayapura Rural Police Station, Vijayapura District, for the offences punishable under Sections 109, 324, 341, 302, 504, 506 r/w Section 34 of IPC, subject to the following conditions:-

(i) Petitioner shall execute a personal bond for a sum of Rs.2,00,000/- with two sureties for the likesum to the satisfaction of the Trial Court/Committal Court;

(ii) Petitioner shall not indulge in similar offences strictly;

(iii) Petitioner shall not tamper with the prosecution witnesses directly/indirectly;

(iv) Petitioner shall not leave the jurisdiction without prior permission of the trial Court.

(v) Petitioner shall co-operate for the trial without causing any delay.

If any of the bail conditions is violated, the prosecution is at liberty to file an application for cancellation of bail.

Sd/-
JUDGE

NB
CT:SI
List No.: 1 Sl No.: 9