NC: 2023:KHC:31415
CRL.P No. 7306 of 2023

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 31ST DAY OF AUGUST, 2023

BEFORE

THE HON'BLE MR JUSTICE S VISHWAJITH SHETTY

CRIMINAL PETITION NO. 7306 OF 2023

BETWEEN:

SRI DEVARAJA D
S/O DANAPPA,
AGED ABOUT 33 YEARS
OCC. CIVIL POLICE CONSTABLE
GANDHINAGAR PS, DAVANAGERE
R/AT NO 25/1, SHIVAKKAR DAMANAPPA
AMATEKOPPA VILLAGE, SHIKARIPURA
TALUK, SHIVMOGGA
DISTRICT - 577 201.

...PETITIONER

(BY SRI DINESHKUMAR RAO K, ADV.)

AND:

Digitally signed by NANDINI MS
Location: High Court of Karnataka

THE STATE OF KARNATAKA
BY DAVANAGERE RURAL
POLICE STATION
DAVANAGERE - 577 201.

(REP. BY STATE PUBLIC PROSECUTOR
HIGH COURT BUILDING
BENGALURU - 560 001)

...RESPONDENT

(BY SMT. N. ANITHA GIRISH, HCGP)

THIS CRL.P FILED U/S.438 CR.P.C PRAYING TO ENLARGE THE PETITIONER ON BAIL IN THE EVENT OF HIS ARREST IN CR.NO.164/2023 OF DAVANAGERE RURAL POLICE STATION, DAVANAGERE REGISTERED FOR THE OFFENCE P/U/S.109 AND 302 R/W SEC.34 OF IPC ON THE FILE OF PRINCIPAL CIVIL JUDGE (SR.DN.) AND C.J.M. AT DAVANAGERE. THE I ADDITIONAL DISTRICT AND SESSIONS JUDGE, DAVANAGERE HAS REJECTED THE BAIL PETITION ON 23.06.2023 IN CRL.MISC.NO.622/2023.

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

ORDER

Accused No.2 in Crime No.164/2023 registered by Davanagere Rural Police Station, for offence punishable under Sections 109 and 302 R/w 34 of IPC, is before this Court under Section 438 of Cr.P.C., seeking anticipatory bail.

2. Heard the learned counsel for the parties.

3. On the basis of the complaint lodged by Smt.K.R. Latha W/o Harish Halli, dated 28.05.2023, Davanagere Rural Police had registered F.I.R., in Crime No.164/2023 for the aforesaid offence against petitioner and four others. It is alleged in the complaint that at about 1.00 am on 28.05.2023 the accused persons who are Police Officers had taken the husband of the complainant from his house and murdered him. Complainant has stated that she had received a phone call at about 4.30 am stating that her husband was admitted in the hospital and his condition was serious. She suspected hand of the accused persons in the death of her husband, accordingly, has lodged a complaint, which had resulted in registering F.I.R. in Crime No.164/2023 against the accused persons, who are the Sub Inspector of Police and Constables working in Gandhinagar Police Station, Davanagere. Apprehending arrest

in the said case, petitioner has filed application under Section 438 of Cr.P.C., before the Court of I Additional District and Sessions Judge at Davanagere, Davanagere in Crl.Misc.No.622/2023 and same was dismissed on 23.06.2023. It is under these circumstances, petitioner is before this Court.

4. Learned counsel for the petitioner submits that accused persons are Police officers and on the date of incident they had arrested the complainant's husband who is a habitual offender and on their way back to the Police Station, deceased tried to escape and he jumped from the car which was moving on fly over, and as a result, he suffered grievous injuries. Immediately thereafter, accused persons have shifted him to the hospital where deceased breathed his last. He submits that deceased was in his private car along with accused Nos.2 and 3 who were traveling in the said car, whereas accused no.1 was traveling in his official vehicle. He submits that accused no.1 has been granted anticipatory bail by this Court in Crl.P.No.5928/2023.

5. *Per contra,* the learned HCGP has opposed the bail application and contends that investigation is under progress

and custodial interrogation of the accused persons are required and seeks to dismiss the petition.

6. In the complaint lodged by the wife of the deceased, it is stated that the accused persons have taken her husband from the house and thereafter she had received a phone call stating that her husband was admitted to hospital and his condition was serious. Deceased was accused in Crime No.53/2023 registered by the Gandhi Nagar Police, Davanagere on the complaint of Smt. Jayashri for offence punishable under Sections 506, 149, 419, 420, 465, 468 and 471 of IPC. The said F.I.R. was registered on 23.05.2023. The accused no.1 who was working as Sub Inspector of Police in Gandhinagar Police Station had gone along with accused nos.2 & 3 to arrest the deceased on 28.05.2023. It is the case of the petitioner that, at the request of the deceased he was permitted to travel to the Police Station in his private car and along with him accused Nos.2 and 3 were also asked to travel. On the way to the Police Station, deceased allegedly jumped from the car, when the car was moving on the flyover and as a result, he fell down from height and suffered grievous injuries. Immediately

thereafter, Harish Halli was shifted to hospital but he succumbed to the injury.

7. The material on record would go to show that after the complaint was lodged by Smt. Jayashri, the petitioner along with accused No.1 and other accused had gone to the house of Harish Halli to arrest him. Harish Halli was involved in as many as 8 criminal cases and he was a habitual offender. When Harish Halli was being brought to the Police Station after he was arrested on the basis of complaint lodged by Smt. Jayashri on 23.05.2023, on the way he attempted to escape and as a result he fell down from the flyover and had sustained grievous injuries. Even if the prosecution case is presumed to be true, a serious doubt arises whether the petitioner can be held guilty for the offence punishable under Section 302 of IPC. The petitioner is a police constable. Therefore, chance of he fleeing from justice is very remote. Under these circumstances, I am of the view that, petitioner has made out a *prima facie* case for grant of anticipatory bail. Accordingly, the following:

ORDER

The petition is ***allowed***.

The respondent - Police or any other police in the State of Karnataka are directed to release the petitioner in the event of his arrest in Crime No.164/2023 registered by Davanagere Rural Police Station, for offence punishable under Sections 109, 302 R/w 34 of IPC, subject to the following conditions:

1. The petitioner shall execute a personal bond for a sum of Rs.1,00,000/- (Rupees One Lakh only) with two sureties for the likesum to the satisfaction of the investigating officer.

2. The petitioner shall regularly appear before the Trial Court without fail unless exempted by the Trial Court for valid reasons.

3. The petitioner shall not tamper with the prosecution witness and he shall co-operate with the police for investigation and appear before them whenever called upon.

SD/-
JUDGE

NMS