
Ashwath T. J & Others Vs State Of Karnataka

Criminal Petition No. 3595 Of 2023

Court: Karnataka High Court At Bengaluru

Date of Decision: May 9, 2023

Acts Referred:

Code Of Criminal Procedure, 1973 " Section 439#Indian Penal Code, 1860 " Section 34, 302, 307, 323, 324, 504, 506

Citation: (2023) 05 KAR CK 0017

Hon'ble Judges: T G Shivashankare Gowda, J

Bench: Single Bench

Advocate: Suyog Herele E, Vinayaka V.S

Final Decision: Allowed

Judgement

T G Shivashankare Gowda, J

1. The petitioners who are accused Nos.2 and 4 in Crime No.235/2022 of Halebeedu Police Station are seeking bail under Section 439 of Cr.P.C. for

the offences punishable under Sections 504, 506, 323, 324, 307, 302 read with Section 34 of IPC.

2. Heard the arguments of Sri. Suyog Herele.E, learned counsel for petitioners and learned HCGP for respondent/State.

3. It is the contention of the learned counsel for the petitioners that the alleged incident took place at the instance of the deceased Yashwantha, CW.1

- Shobharani, CW.2-Yatisha and CW.3-Gundamma. After the measurement by Gram Panchayat officers, the encroachment of road by Cw.1 to Cw.3

has been pointed out, they were asked to remove the vegetables grown on the road for which they have refused and made attempt to assault against

the accused persons.

4. Accused No.3 is the father of petitioner No.1. The deceased Yashwantha made attempt to assault against accused No.3 which forced the

petitioners to interfere to rescue him. There was no intention on the part of petitioners to commit the murder of deceased Yashwantha. The injuries

suffered by the deceased Yashwantha was not on the vital parts but it was due to bleeding on the cut injury on his left arm. The petitioners are in

judicial custody, they have already assisted for investigation, charge sheet has already been filed, they are no more required for investigation, they are

ready to face the trial and by imposing any conditions, they may be granted bail.

5. Learned HCGP vehemently opposed the bail application on the ground that on 19.11.2022 at 1.00 p.m., Adagur Panchayath Secretary, Panchyath

Development Officer (PDO) and others have inspected the house of deceased Yashwantha on the complaint filed by the accused persons that they

have grown vegetables by encroaching the road causing obstacle to the way to reach their house. During the inspection, survey was conducted and it

is confirmed that there is encroachment of the road for growing vegetables. Without intimating the deceased Yashwantha and his family members, the

Panchayath Officers have attempted to measure the property of the deceased Yashwantha which prompted the quarrel. Accused Nos.1 and 2 are the

sons of accused No.3. There is specific overt act against the accused persons narrated in the charge sheet. Accused No.1 inflicted injury on CW.2-

Yathisha by means of a sickle. When the deceased Yashwantha came to pacify, accused No.1 snatched the sickle from the hands of CW.3 -

Gundamma and inflicted injury on the hands of the deceased Yashwantha. The petitioners were also inflicted injuries to CW.1-Shobarani and CW.3-

Gundamma by means of their hands. The petitioner No.4 by standing on the chest of the deceased Yashwantha stamped him to floor. There is a

specific overt act pointed out the motive of the petitioners to commit the murder of the deceased Yashwantha and they shall not be granted bail.

6. I gave my anxious consideration to the materials placed before the Court and perused the records. Learned HCGP has made available the full set

of charge sheet filed and now registered in C.C.No.141/2023.

7. On careful perusal of the allegation made in the charge sheet, the specific overt act made against the accused No.1 is that by using sickle as

weapon of offence inflicted injury on the hands of the deceased Yashwantha. The allegation of petitioner No.2 stamping on the chest of the deceased

Yashwantha prima facie has not been supported by the post mortem report. There are no injuries noticed either on the chest or back part of the

deceased Yashwantha to say that he has been stamped on the floor.

8. The specific allegation against these petitioners is that they held the hands of CW.3-Gundamma and abused her. Accused No.3 came to pacify the

quarrel, but the deceased Yashwantha tried to attack him. At that time accused No.1 by means of sickle inflicted injury on hand. Accused Nos. 2 and

4 assaulted by means of their hands to CW.2-Yathisha. From this, it is clear that the cause of death of the deceased Yashwantha is attributed against

accused No.1. The entire charge sheet material did not point out or connect the petitioners to their direct role in causing death of deceased

Yashwantha.

9. As perused from records, the petitioners were present when survey took place on 19.11.2022 at 1.00 p.m. After the panchayath officers informed

the deceased Yashwantha and his family members to remove the vegetable grown particularly chokos, they refused to remove it resulting in quarrel.

The allegation is that the panchayath officers without notice tried to measure the property, which has been objected. The cause of death as mentioned

in post mortem report is ""Hemorrhagic shock as a result of cut injury"" and this cut injury is on the left arm of the deceased Yashwantha. The incident

was at 1.00 p.m. and the death occurred at 4.00 p.m. at hospital. The petitioners have already been arrested, assisted for the investigation and they

are no more required for investigation as the charge sheet has already been filed. The petitioners now have to face the trial. But the learned Sessions

Judge in CrI.Misc.No.286/2023 refused to exercise discretion on the ground that the petitioners may hamper with the prosecution witnesses and may

not co-operate for the trial. The petitioners have undertaken to obey any conditions that may be imposed on them by this Court. Since the presence of

the petitioners is not required for investigation, having regard to the specific overt act alleged against them, I do not find any reason to refuse exercise

of discretion in favour of these petitioners. Hence, the apprehension of the prosecution could be suitably met out by imposing proper conditions.

Hence, the petition deserved to be allowed. In the result, the following;

ORDER

(i) Petition is allowed.

(ii) The petitioners are ordered to be released on bail in crime No.235/2022 of Halebeedu Police Station, now in C.C.No.141/2023 on the file of the

Principal Civil Judge & J.M.F.C., Belur, for the offences punishable under Sections 504, 506, 323, 324, 307, 302 read with Section 34 of IPC, on their

execution of personal bond in a sum of Rs.1,00,000/- (Rupees One lakh) each with one like bond to the satisfaction of the concerned Court;

(iii) The petitioners shall not hold threats to the prosecution witnesses either directly or indirectly;

(iv) The petitioners shall not involve in any similar activities; and

(v) The petitioners shall attend the Court regularly and assist for the trial unless they were exempted by the Trial Court.