

(2024) 02 KAR CK 0022

Karnataka High Court At Bengaluru

Case No: Criminal Petition No. 221 Of 2024 (439)

Nabiulla @ Nabi Pasha S/O. Late

Anwar Pasha

APPELLANT

vs

State Of Karnataka R/By Kolar

Town Police Station, Kolar-563101

RESPONDENT

Date of Decision: Feb. 8, 2024

Acts Referred:

- Indian Penal Code, 1860 - Section 34, 114, 302
- Code Of Criminal Procedure, 1973 - Section 439

Hon'ble Judges: S Vishwajith Shetty, J

Bench: Single Bench

Advocate: Vinod Kumar M, Nageshwarappa

Final Decision: Allowed

Judgement

S Vishwajith Shetty, J

1. Accused No.2 in Crime No.176/2023 registered by Kolar Town police station, Kolar district for the offences punishable under Sections 302, 114 read with Section 34 of IPC is before this Court under Section 439 of Cr.P.C.
2. Heard the learned counsel for the parties.
3. FIR in Crime No.176/2023 was registered by Kolar Town police station against Roshan Zameer and 2 others for the aforesaid offences on the basis of complaint dated 18.09.2023 lodged by S.R.Yarab Pasha S/o Raheem Sab, who is the father of deceased Mujamil Pasha. In the complaint, it is averred that the complainant is owning ancestral property at Idrisha Mohalla and he is constructing a house in the said property. There

is a dispute between the family members with regard to said construction and members of family had fought against each other earlier and cases were registered against each other.

4. On 18.09.2023, when the complainant's son Mujamil Pasha along with his friend had gone to Idgha for visiting tomb of his grandfather, accused Nos.1 and 2 had allegedly assaulted him with a knife. The injured Mujamil Pasha was immediately shifted to hospital, this was informed to the complainant and he also rushed to the hospital and saw his son who was grievously injured but was not in a position to talk. Subsequently, the complainant shifted his son to R L Jalappa hospital for better treatment. But he had succumbed to the injuries. On enquiry, the complainant was informed by Saddam Hussain that accused Nos.1 and 2 had assaulted his son and the petitioner had instigated accused Nos.1 and 2 to commit the murder of Mujamil Pasha. It is in this background, the complainant had approached the police and lodged a complaint on 18.09.2023 which had resulted in registering FIR in Crime No.176/2023 and in the said FIR, the petitioner was arrayed as accused No.2. During the course of investigation, petitioner was arrested on 21.09.2023. Bail application filed before the Court of the Principal District and Sessions Judge, Kolar in Crl.Misc.No.959/2023 was rejected on 01.12.2023.

Therefore the petitioner is before this Court.

5. Learned counsel for the petitioner having reiterated the grounds urged in the petition submits that the entire allegation of assault on deceased Mujamil Pasha is only against accused No.1. Petitioner has been falsely implicated in the case since he is the younger brother of accused No.1. He is in custody since 21.09.2023. Accordingly, he prays to allow the petition.

6. Per contra, learned High Court Government Pleader has opposed the bail application. He submits that the petitioner had handed over the knife to accused No.1 and therefore he had a common intention with accused No.1 to commit the murder. Accordingly prays to dismiss the petition.

7. The material on record would go to show that there was ill-will between the accused and the deceased Mujamil Pasha having regard to the dispute between the parties in respect of certain ancestral property. On 18.09.2023 accused No.1 after seeing Mujamil Pasha walking on the street had informed his brother accused No.2 to bring the knife which he had kept in his motorbike. The petitioner accordingly had taken the knife from the vehicle of accused No.1 and handed over the same to him. Thereafter, accused No.1 allegedly followed Mujamil Pasha and stabbed him with the said knife. The petitioner allegedly was following accused No.1. Except the same there is no other allegation of overt act against the petitioner. The entire allegation of assault on the deceased Mujamil Pasha with the knife is only as against accused No.1. Petitioner is in

custody from 21.09.2023. Investigation in the case is completed and charge sheet has been filed. Under the circumstances, the prayer made for grant of regular bail is required to be answered in the affirmative. Accordingly, the following:

ORDER

Petition is allowed. The petitioner/accused No.2 is directed to be enlarged on bail in Crime No.176/2023 registered by Kolar Town police station, Kolar district for the offences punishable under Sections 302, 114 read with Section 34 of IPC, subject to the following conditions:

- i. The petitioner shall execute personal bond for a sum of Rs.1,00,000/- with 2 sureties for the likesum to the satisfaction of the jurisdictional Court;
- ii. The petitioner shall appear regularly on all the dates of hearing before the Trial Court unless the Trial Court exempts his appearance for valid reasons;
- iii. The petitioner shall not directly or indirectly threaten or tamper with the prosecution witnesses;
- iv. The petitioner shall not leave the jurisdiction of the Trial Court without permission of the said Court until the case registered against him is disposed off.