

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 28th DAY OF FEBRUARY 2013

BEFORE

THE HON'BLE MR.JUSTICE K.N.KESHAVANARAYANA

CRIMINAL PETITION NO.562 OF 2013

BETWEEN:

SHIVAMALLU
S/O LATE RANGASETTY
AGED ABOUT 35 YEARS
RESIDING AT KESTHURU VILLAGE
YALANDUR TALUK – 571 441
CHAMERAJNAGAR DISTRICT – 571 441

... PETITIONER

[BY SRI.L.SRINIVASA BABU, ADV. FOR M/S SRINIVASA BABU
ASSTS. ADVS.,]

AND:

THE STATE OF KARNATAKA
BY ITS YELANDUR POLICE STATION
REP. BY ITS
GOVERNMENT ADVOCATE
HIGH COURT BUILDING – 560 001.

...RESPONDENT

[BY SRI.G.M.SRINIVASA REDDY, HCGP]

THIS CRIMINAL PETITION IS FILED UNDER SECTION 439 OF THE CR.P.C. WITH A PRAYER TO ENLARGE THE PETITIONER ON BAIL IN CR.NO.96/2012 OF YELANDURU P.S., CHAMRAJANAGARA, FOR THE OFFENCE PUNISHABLE UNDER SECTIONS 143, 147, 148, 341, 323, 324, 307 R/W SEC 149 OF IPC.

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

ORDER

Petitioner is arraigned as accused No.1 in Crime No.96/12 of Yelandur Police Station, Chamarajanagar District registered for the offences punishable under Sections 143, 147, 148, 341, 323, 324, 307 r/w Sec 149 of Indian Penal Code. The aforesaid case according to prosecution, came to be registered on the basis of a report lodged by one Siddappaswamy son of Mahadevashetty, resident of Kesthuru Village, Yelandur Taluk at about 9.30 p.m. on 11.12.12. According to the allegations made in the said report, at about 2.45 p.m. on 11.12.12 when the complainant, his brother, his father Mahadevashetty including other family members were sitting in the court yard in front of their house, this petitioner who is the neighbor, in the guise of pelting stones at a dog hit the leg of Marashetty, uncle of the complainant and when all of them questioned this petitioner as to why he has done so, this petitioner along with other accused persons forming

themselves into unlawful assembly armed with weapons like iron rod etc., assaulted Mahadevashetty and others causing them injuries. This petitioner said to have assaulted Mahadevashetty, father of the complainant with an iron rod on the head. Immediately, after the incident, injured was taken to Hospital at Yelandur and from there to District Hospital at Chamarajanagar.

2. During investigation, this petitioner and others were arrested and later subjected to judicial custody. The application filed by the petitioner for grant of bail came to be rejected by the learned Sessions Judge, though accused No.3-Thyagaraj was granted bail by the learned Sessions Judge. Therefore, petitioner is before this Court.

3. The petition is opposed by respondent-State.

4. I have heard both the sides and perused the records made available.

5. Learned counsel for the petitioner contended that petitioner stands on the same footing as that of accused

No.3 and two other accused who have been granted relief of Anticipatory Bail by the learned Sessions Judge. Therefore, on the principles of parity, the petitioner is entitled to be enlarged on bail. He also contended that there was a counter complaint lodged by the nephew of this petitioner against the complainant in this case and others alleging assault by dangerous weapons and based on the said report case in Crime No.98/12 for the offences punishable under Sections 143, 341, 324 r/w Section 149 of Indian Penal Code has been registered and therefore, petitioner is entitled to be enlarged on bail. It is also contended that the injured Mahadevashetty has been discharged from the hospital and the injuries said to have been sustained by him have been described as simple in nature, therefore, the alleged acts of assault on him was not with an intention to commit murder as such there are no reasonable grounds to indicate that the petitioner is guilty of the offences punishable under Section 307 of Indian Penal Code.

6. Perusal of the complaint allegations indicate that the petitioner is the neighbour of the complainant and the injured. The alleged incident of assault is equal to a petty quarrel. Perusal of the copy of FIR in Crime No.98/12 prima facie indicates that a counter complaint has been filed against the complainant herein and others. The medical certificate available on record prima facie indicates that Mahadevashetty, father of the complainant had only sustained simple injury. Even the other persons had also sustained simple injuries on non-vital parts of the body.

7. Having regard to the facts and circumstances of the case, I am of the considered opinion that at this stage there are no reasonable grounds to believe that the alleged acts of assault attributed against this petitioner was with an intention to commit murder attracting the offences punishable under Section 307 of Indian Penal Code. Hence, the petitioner is entitled to be enlarged on bail.

8. Hence, the petition is ***allowed***. Petitioner is ordered to be released on bail in Crime No.96/12 of Yelandur Police Station on his executing a personal bond for Rs.50,000/- (Rupees Fifty Thousand Only) with two sureties for the like sum to the satisfaction of the Jurisdictional Magistrate/Sessions Judge and subject to further conditions that,

- i) He shall not tamper or terrorise with the prosecution witnesses in any manner.
- ii) He shall not indulge in any acts similar to the one alleged in the case.
- iii) He shall appear on all hearing dates before the Court without fail.
- iv) He shall mark his attendance in the respondent – Police Station, on every 10th and 25th of each calendar month till the filing of the Final Report.
- v) He shall not leave the jurisdiction of the Court of Sessions without express permission thereof.

- vi) He shall not visit Kesthuru Village in Yelandur Taluk till filing of the Final Report.

Sd/-
JUDGE

SS*