

**IN THE HIGH COURT OF KARNATAKA, GULBARGA
BENCH**

Dated this the 28th day of February, 2014

BEFORE

THE HON'BLE MR. JUSTICE B.V. PINTO

Criminal Petition No.200141/2014

BETWEEN

SRISHAIL
S/O SHIVALINGAPPA BANGARGI
AGE: 42 YEARS
OCC: AGRICULTURE
R/O KHAJURI, TQ: ALAND
DIST: GULBARGA ... PETITIONER

(BY SRI BABURAO MANGANE, ADV.,)

AND

THE STATE THROUGH ALAND P.S.
DIST: GULBARGA ... RESPONDENT

(BY SRI S.S.ASPALLI, HCGP)

THIS CRL.P FILED U/S.439 OF CR.P.C BY THE ADVOCATE FOR THE PETITIONER PRAYING TO ENLARGE THE ACCUSED/PETITIONER ON BAIL IN CRIME NO:100/2013 OF ALAND P.S., WHICH IS REGISTERED FOR THE OFFENCES P/U/Ss.143, 147, 148, 364, 353, 307, 302 R/W 149 OF IPC. THE III ADDL. SESSIONS JUDGE AT GULBARGA HAS REJECTED THE BAIL APPLICATION IN CRL.MISC.NO:949/2013 ON 16.09.2013.

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

ORDER

This petition is filed seeking bail in Crime No.100/2013 of Aland Police Station registered on 13.04.2013 for the offences punishable under Sections 143, 147, 148, 149, 302 and 307 of IPC.

2. The incident is alleged to have happened on 03.04.2013 at 10:00 p.m. FIR is registered on 13.04.2013 since the injured complainant by name Ganesh ran away from the scene of occurrence to Omerga and lodged complaint in the Omerga police station on 04.04.2013 at about 2:25 p.m. The said FIR was later on transferred to Aland police station through Superintendent of Police, Gulbarga and the same was registered on 13.04.2013. According to the complainant-Sri Ganesh, the deceased Shrishail and his friend Ambaraya were in jail in connection with theft case and that they had been released on bail and have come out during the relevant period. There was enmity between the complainant and accused in connection with the earlier murder cases, in which the rival parties were in

custody for the said offences. On 03.04.2013 the complainant had gone to Bangarga village and at that time they had gone for a Dhabha in Khajuri village. The accused persons are said to have come near the said Dhabha, which is the scene of occurrence, between 9:00 p.m. and 10:00 p.m. The complainant went inside the Dhabha, whereas the deceased Shrishail and another person were waiting outside the Dhabha along with their motorcycle. Both deceased Shrishail and Ambaraya were sitting on the motorcycle in front of the Dhabha. At that time about eleven persons came in two jeeps and one of them was a Bolero Mahindra jeep. It is alleged in the complaint that accused caught hold of both Shrishail and Ambaraya and assaulted them with hands and legs and tried to put them inside the jeep. The complainant came out of Dhabha and tried to object the act of the accused. At that time, one Sainath is alleged to have assaulted the complainant with a small knife on the right side of his neck and caused injuries on him. The complainant thereafter escaped from the scene of occurrence due to fear of the accused and slept in the field during the

entire night. It is stated by the complainant that the accused persons have taken away both Shrishail and Ambaraya in the Bolero jeep. In the next morning the complainant went to Omerga in one truck and went to the Government hospital. There he found that some of his villagers had come to the hospital and dead bodies of Shrishail and Ambaraya were brought by those persons. There were injuries on the neck of the deceased. Thereafter he approached the Omerga police station and lodged the complaint.

3. During investigation, when one Gafoor Patel-CW.18 was interrogated on 19.5.2013 he has disclosed that the petitioner was also present at the time of lifting the deceased Shrishail and Ambaraya. There are no overt acts alleged against the petitioner.

4. Sri Babaurao Mangane, learned counsel for the petitioner submits that except the statement of Gafoor Patel, there are no other allegations against this petitioner and the accused who are similarly placed have been already enlarged

on bail. Hence, he submits that the petitioner may be enlarged on bail on the ground of parity.

5. Sri S.S.Aspalli, learned HCGP on the other hand submits that the deceased were found dead after they were lifted and put in the Bolero jeep and therefore there is a prima-facie case against the petitioner for having committed the offence of murder with the aid of Section 149 of IPC. Hence, he submits that the application for bail may be rejected. It is also submitted by him that the earlier bail application filed by the petitioner has been rejected by this Court.

6. It is seen that while considering the bail application of some of the accused including that of one Sainath, this Court has observed that since there are no specific overt acts against the said petitioner for having committed the offence of murder, this Court has granted bail to him. The case of this petitioner is better than that of Sainath. It is the allegation that the petitioner has lifted the deceased while they were forcibly pushed inside the Bolero jeep. No other

material is available on the record to hold that the petitioner has committed any act leading to the murder of the deceased.

7. In that view of the matter, I am of the opinion that the petitioner is entitled for bail. Hence, the following:-

ORDER

- (i) The petition is *allowed*;
- (ii) Petitioner is directed to be released on bail on his executing bond in a sum of ₹25,000/- with one surety for the like sum to the satisfaction of the learned Sessions Judge;
- (iii) Petitioner shall not threaten the witnesses nor dissuade them from deposing against him; and
- (iv) Petitioner shall not involve himself in any other criminal cases during the pendency of this case.

Sd/-
JUDGE

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