

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28TH DAY OF MAY 2015

BEFORE

THE HON'BLE MR.JUSTICE P.S.DINESH KUMAR

CRIMINAL PETITION No.2741/2015

BETWEEN:

SRI. DILIP,
AGED ABOUT 31 YEARS,
S/O SHIVARAJA KODGE,
R/AT SHIVA NAGARA,
BIDAR.

...PETITIONER

(BY SRI.B.V.PINTO, ADVOCATE)

AND:

STATE OF KARNATAKA,
BY NEW TOWN P.S, BIDAR
BY STATE PUBLIC PROSECUTOR,
HIGH COURT,
BANGALORE-560 001.

... RESPONDENT

(BY SRI. K.NAGESWARAPPA, HCGP)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 439 OF CR.P.C. PRAYING TO ENLARGE THE PETITIONER ON BAIL IN CR.NO.282/2008 OF NUTHAN NAGARA P.S. BIDAR DISTRICT FOR THE OFFENCES PUNISHABLE UNDER SECTION 302 R/W 34 OF IPC AND ETC.,

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

ORDER

Petitioner was an accused of offence punishable under Section 302 of IPC in Crime No.282/2008 registered in New Town Police Station, Bidar District. Vide order dated 06/04/2009 in CrI.Misc.No.120/2009 on the file of the learned Principal Session Judge, Bidar, the petitioner was granted bail. After the trial, he was convicted for the offence punishable under Section 302 read with Section 34 IPC in SC No.149/2009 vide judgment and sentence dated 16/04/2015. Upon being challenged in Criminal Appeal No.3682/2012, Kalburgi Bench of this Court, vide order dated 28/01/2015 set aside the order of conviction and remitted the matter back to the trial with a direction to record statement of the petitioner-accused No.1 under Section 313 of Cr.P.C., to grant an opportunity to the petitioner to adduce evidence and thereafter to dispose of the matter in accordance with law. By the same order the petitioner was given liberty to have recourse to the bail provision.

Subsequently a petition filed for grant of bail before the learned Principal District and Sessions Judge, Bidar has been rejected vide order dated 16/04/2015. Hence this petition.

2. Heard Sri. B.V. Pinto, learned counsel appearing for the petitioner and Sri. K.Nageswarappa, learned HCGP for respondent- State and perused the records.

3. Learned counsel for the petitioner submits that the petitioner was granted bail on 06/04/2009. He was taken into custody pursuant to the order of conviction and sentence passed by the Trial Court. While setting aside the order of conviction, this Court has reserved liberty to the accused to have recourse to the bail provision. It is further submitted that there has been delay in recording statement under Section 313 of Cr.P.C. because the appeals filed by other accused are pending consideration before the Kalburgi Bench of this

Court. Assailing the order dated 16/04/2015 passed by the learned Principal District and Sessions Judge, Bidar rejecting the bail, the learned counsel for the petitioner submits that the petitioner was through out on bail and the order of conviction having been set aside, the petitioner is entitled for bail. He submits that the cause for delay in recording the statement under Section 313 of Cr.P.C is due to the fact that two appeals filed by the accused are pending consideration before the Kalburgi Bench and prays for allowing this petition.

4. Per contra, learned HCGP opposes the petition and submits that, once the petitioner has been convicted and sentenced by the trial Court, petitioner is not entitled for any bail as the petitioner may abscond having suffered a judgment of conviction.

5. On perusal of the order of the learned Sessions Judge, Bidar, it is noticed that the pendency of the appeals filed by co-accused has been referred to

their in. Further the learned Sessions Judge has also pointed out that the petitioner-accused can not be examined under Section 313 of Cr.P.C. independently. Petitioner was granted bail during the trial and the judgment and sentence have been set aside by Kalburgi Bench of this Court. In these circumstances, this petition merits consideration and petitioner deserves to be enlarged on bail. Hence, I proceed to pass the following:

ORDER

- (i) Petitioner shall be released on bail upon his executing a personal bond for a sum of Rs.1,00,000/- (Rupees One Lakh only) with two sureties for like sum to the satisfaction of the trial Court.
- (ii) He shall not leave jurisdiction of the Sessions Court, Bidar without prior permission of the Court.

- (iii) He shall not directly or indirectly make any inducement, threat or promise to prosecution witness or any person acquainted with the facts of the case, so as to dissuade him from disclosing such facts to the Court.
- (iv) He shall not manipulate or hold out threats to the prosecution witnesses in any manner.
- (v) He shall not involve himself in any criminal activities.
- (vi) He shall attend the trial Court regularly on all the dates of hearing.

**Sd/-
JUDGE**

MS*