

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 29TH DAY OF DECEMBER, 2016

BEFORE:

THE HON'BLE MR.JUSTICE K.SOMASHEKAR

CRIMINAL PETITION No.8796/2016

BETWEEN:

RAJU
S/O LATE SANNAIAH
AGED ABOUT 23 YEARS
OCC: STUDENT
R/AT BELACHANAVADI VILLAGE
GUNDLUPET TALUK
CHAMARAJANAGAR DISTRICT-571 111 ... PETITIONER

(By Sri. CHANDRASHEKARA K. A., ADV.)

AND:

THE STATE OF KARNATAKA
BY POLICE OF BEGUR POLICE STATION
GUNDLUPET TALUK
CHAMARAJANAGAR DISTRICT-571111. ... RESPONDENT

(By Sri. K.NAGESHWARAPPA, HCGP)

THIS CRIMINAL PETITION IS FILED U/S.439 CR.P.C
PRAYING TO ENLARGE THE PETITIONER ON BAIL IN
CR.NO.127/2015 OF BEGUR P.S,. CHAMARAJANAGAR
DISTRICT AND S.C.NO.24/2016 PENDING ON THE FILE OF
PRL. DISTRICT AND SESSIONS JUDGE,

CHAMARAJANAGARA FOR THE OFFENCE P/U/S 143, 147, 341, 323, 302 R/W 149 OF IPC.

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

ORDER

This petition is filed by petitioner-A-3 under Section 439 of Cr.P.C in Crime No.127/2015 of Begur Police Station, Chamarajanagar District for the alleged offences punishable under Sections 143, 147, 341, 323, 504, 302 R/W 149 OF IPC. Subsequently, Investigating officer has filed charge-sheet in CC No.113/2016. Since from the date of arrest he is in judicial custody, therefore counsel has prayed for regular bail among other grounds urged therein.

2. Heard learned counsel for the petitioner as well as the learned HCGP for the respondent.

3. It is the case of the prosecution that as per the case, charge-sheet laid by the Investigating Officer which reveals that husband of the complainant Chandramma and the accused Sannaiah are brothers. The said Sannaiah who

started constructing house abutting to the house of the complainant without leaving setback and encroached the passage situated in between the houses. It is further seen that this was a serious question made by the complainant and family members. In that regard, at about 12 noon accused persons and family members were putting roof tiles to the house and accused Kariyaiah, at that time husband of the complainant, Mahadeva, Ratnamma and Mangalamma assaulted the complainant as a result of which he sustained injuries. In this context, complainant and her husband being deceased had been to the police station, lodged the complaint before Begur Police Station in Cr.No.127/2015. This matter has been revealed in the complaint and registered by the respondent-police. However, counsel for the petitioner, during the course of argument has been contended that there is no direct overt act attributed for the commission of the offence and as alleged in the complaint as well as recording in FIR. The accused is in judicial custody since from the date of arrest. The alleged case has been registered with an

oblique motive. During investigation it does not disclose prima-facie to constitute offence punishable under Sec.302 of IPC, the deceased who has sustained simple injuries which are not grievous in nature. It can be seen in the post mortem report and the doctor who has conducted the post mortem on the dead body. It is further contended that it is pertinent to note that at the time of the alleged offence accused persons assaulted the deceased with their hands and legs as alleged. All the accused persons are not having any deadly weapons at the time of committing the offence and had no intention to do away with the life of the deceased. A1, 2, 4 & 5 against whom similar overt act has been made, it has to be revealed in the complaint as well as in the FIR of the concerned police, but these accused have already been granted bail by this court in CrI.P. No.2953/2016 and CrI.P. No.3699/2016 by imposing certain conditions as specified therein. However, Investigating Officer has laid charge-sheet against the accused in Cr.No.127/2015 related to the case in CC No.113/2016 for the offences punishable under Sec.302

R/w 34 of IPC with other offences. Therefore, learned counsel submitted that the accused is in judicial custody since from the date of arrest. Moreover, there is no direct overt act attributed against this accused and cause for the death of the deceased. Principles of parity be extended to this accused as A-1, 2, 4 & 5 have already been granted bail by imposing certain conditions as stipulated therein. As this accused is ready to abide by the conditions while granting bail to him. Therefore, learned counsel praying for considering the grounds urged in this petition and for grant of bail.

4. Per contra, learned HCGP for the respondent during the course of arguments has been contended that there are prima facie material against the accused and cause for the death of the deceased who fell on the ground thereafter remaining accused who given a fist blow on the person. As the inflicted injuries on the person of the deceased for his death and the PM report given by the doctor who conducted the post mortem on the dead body. However, this accused is

the cause for the death of the deceased who made him to fell on the ground and also fist blow, as well as on his person and other accused. Accused who have been gathered and assaulted with their hands and kicked him with their legs with which deceased being the husband of the complainant has succumbed to the injuries. This incident which was revealed in the complaint and also the charge-sheet, therefore the accused is not deserves bail.

5. Having regard to the submissions of the learned counsel for the petitioners/accused and learned High Court Govt. Pleader for the respondent, it is relevant to state that the complainant by name Chandramma who being the author of the complaint and also wife of the deceased. Complainant's father-in-law by name Chikkamadaiah and Accused Sannaiah are brothers. The said Sannaiah has started construction of a house abutting to the house of the complainant without leaving the set back and also encroached upon the area in between their houses. This was seriously questioned by the complainant and her family

members and the alleged incident took place on 7.11.2015 at about 12 noon. Accused persons and their family members put roof tiles to the house of Accused Sannaiah, at that time complainant who questioned that without leaving the passage and encroached the land, at that time Mangalamma, Rathnamma and Mahadeva and the other accused who are on the spot of crime assaulted the complainant. She sustained injuries. In this context, she and her husband filed the complaint in the police station. The entire statements of witnesses which were to be recorded by the investigating officer during the course of investigation also laid charge-sheet against the accused. It is relevant to state that the doctor who conducted post mortem over the dead body and post mortem report reveals that death was due to shock and hemorrhage as a result of injury to the spleen. It can be seen from the materials which were to be available on record. However the co-accused have already granted bail in CrI.P. No.2953/2016 dated 11.7.2016. Therefore, feels that at this stage it does not require detailed discussion while

considering the bail petition as there are substance in the arguments of the learned counsel appearing for the petitioner/Accused seeking for relief of bail.

6. The learned Govt. Pleader appearing for the respondent submitted that accused are supposed to be released on bail he would come in the way of the prosecution and destroy the evidence. This apprehension of the learned Govt. Pleader could be curtailed by imposing appropriate conditions to safeguard the interest of the prosecution.

6. Therefore, for the aforesaid reasons as well as in the circumstances, I am of the considered opinion that the accused persons deserve bail. Accordingly, I proceed to pass the following:

ORDER

The Petition is hereby allowed subject to following conditions:

- (i) Petitioner-Accused shall execute a personal bond for a sum of ₹1,00,000/- (Rupees One Lakh only) with

one surety for the like sum to the satisfaction of the
Prl. Dist. & Sessions Judge, Chamarajanagar in SC
No.24/2016 relating to Crime No.127/2015 of Begur
P.S.

- (ii) Petitioner-accused shall not tamper or hamper the
case of the prosecution witnesses.
- (iii) Petitioner-accused shall appear before the
jurisdictional court on all the dates of hearing
without fail.
- (iv) Petitioner-accused shall not leave the jurisdiction of
the trial court without prior permission. If the
petitioner-accused shall not follow any conditions,
bail order shall automatically stand ceased.

**Sd/-
JUDGE**

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