

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 30TH DAY OF AUGUST 2019

BEFORE

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

CRIMINAL PETITION No.5417/2019

BETWEEN

MR. MOHAMMED ISMAIL
AGED ABOUT 33 YEARS,
S/O. F. CHEYYABBA,
R/AT @5-178, PUNCHAMA HOUSE,
PUDU VILLAGE, FARANGIPET,
D.K. -574 143.

... PETITIONER

(BY SRI M.T.NANAIAH, SENIOR COUNSEL
FOR SRI M R C MANOHAR, ADVOCATE)

AND

THE STATE OF KARNATAKA
BY MALPE POLICE STATION,
UDUPI DISTRICT,
REP. BY STATE PUBLIC PROSECUTOR,
HIGH COURT COMPLEX,
BENGALURU-560 001.

... RESPONDENT

(BY SRI HONNAPPA, HCGP)

THIS CRL.P. IS FILED UNDER SECTION 439 OF CR.P.C
PRAYING TO ENLARGE THE PETITIONER ON BAIL IN
CR.NO.49/2019 OF MALPE P.S., UDUPI DISTRICT FOR THE
OFFENCE P/U/S 307 R/W 34 OF IPC.

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

ORDER

Heard the learned counsel for the petitioner.
Perused the records.

2. Brief factual matrix of the case that emanates from the FIR is that, on 7.6.2019 when the injured-Riyaz was with one Mr.Nijar, near Farangipet at about 4.30 a.m., they parked their vehicle near Marina Ice plant and the said Nijar was consuming tea and at that time, the injured was taking rest in the car itself. After some time, complainant heard the screaming voice of the injured. Immediately he went near the car and observed four persons indiscriminately assaulting the injured with talwars on various parts of his body. Immediately the injured was admitted to the hospital.

3. The other accused persons appears to have been arrested and this petitioner was also arrested. During the course of investigation, as could be seen from the case dairy produced by the learned HCGP, the statement of the injured was also recorded. On perusal of the statement of

the injured it appears that this petitioner was not present at the time of incident. It appears that there was some previous ill-will and dispute between the parties and police have called the injured as well as the petitioner to the police station and warned them and in this context, the complainant suspects that the petitioner might have sent the said assailants to do away with the life of the complainant.

4. From the above said facts it is clear that it is only on the basis of suspicion and it appears on the basis of the voluntary statement of the other accused persons, the petitioner is also made as accused in this case. Conspiracy or connection with the other accused persons by the petitioner has to be established during the course of full fledged trial. As the participation itself is not stated on the date of incident, in my opinion, the petitioner is entitled to be enlarged on bail particularly under Section 439 of Cr.P.C. with certain conditions. Hence, the following order :

ORDER

Accordingly, the petition is **allowed**. Petitioner is enlarged on bail in connection with Crime No.49/2019 registered by Malpe Police, Udupi district for the offence punishable under Sections 307 read with Section 34 of IPC subject to the following conditions:

- (i) The petitioner shall execute a personal bond for a sum of Rs.1,00,000/-(One Lakh only) with two sureties for the like-sum to the satisfaction of the jurisdictional court.
- (ii) The petitioner shall not indulge in tampering the prosecution witnesses.
- (iii) The petitioner shall appear before the jurisdictional court on all the future hearing dates unless exempted by the court for any genuine cause.
- (iv) The petitioner shall not leave the jurisdiction of the trial Court without prior permission of the court till the case registered against him is disposed of.
- (v) The petitioner shall mark his attendance once in 15 days between 10.00 a.m. and 5.00

p.m. before the Investigating Officer till the completion of final report.

**Sd/-
JUDGE**

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