

IN THE HIGH COURT OF KARNATAKA
DHARWAD BENCH

DATED THIS THE 30th DAY OF DECEMBER 2020

BEFORE

THE HON'BLE Dr.JUSTICE H.B.PRABHAKARA SASTRY

CRIMINAL PETITION NO.101626/2020

BETWEEN:

Smt. Alfanso W/o.Sharman Kutino,
Age 36 years, Occ: Household,
R/o. Crosswada, Angadi village,
Taluk: Karwar, D/o Anthony Dias,
R/o. Taribagilu, Molkod village,
Taluk: Honnavar, District: Uttara Kannada.

... Petitioner

(Sri. J.S.Shetty and E.F.Gonsalves, Advocates)

AND:

The State of Karnataka,
By its Chitakula Police Station Authorities
Kumta Circle, Uttara Kannada District,
Represented by Public Prosecutor,
High Court of Karnataka,
Dharwad.

.. Respondent

(Sri. V.S.Kalasurmath, HCGP for respondent-State)

This Criminal Petition is filed under Section 439 of Cr.P.C., praying that the petitioner be released on bail, in Chitakula P.S.Crime No.66/2018, now pending in Session

Case No.29/2020, on the file of Principal District and Session Judge Court, Uttara Kannada, Karwar, for the offences punishable under Section 302 of Indian Penal Code, by allowing this criminal petition.

This criminal petition coming on for *orders* through physical hearing/video conferencing hearing this day, the court made the following:

ORDER

Heard the submission of the learned counsel for the petitioner on office objections.

Perused the office objections. In view of the submission made by the learned counsel for the petitioner, the office objections stand over ruled.

Issue notice to the respondent. Learned High Court Government Pleader takes notice for the respondent and submits his oral objection to the petition.

Perused the petition.

Heard the arguments from both side.

2. The present petitioner who is accused in PS Crime No.29/2020 of the first respondent police station has filed this petition seeking bail in P.S.Crime No.66/2018 of first respondent Police Station for the offence punishable under Section 302 of Indian Penal Code, (hereinafter referred to as the 'IPC') which is now said to be pending before the learned Principal District and Sessions Judge, Uttara Kannada, Karwar.

3. The summary of the case of the prosecution is that, the present petitioner is said to have committed the murder of her 18 months old girl child by throwing her into a well with water and also attempted to commit suicide on the night of 02.10.2018 at 02.00 hours and thus has committed the offence punishable under Section 302 of IPC.

4. Learned counsel for the petitioner submits that, even according to the prosecution the petitioner-accused is suffering from mental illness and mentally not

in a sound position, as such, has been taking treatment at different hospitals and Psychiatrist. It is for the said reason she was left alone. There is nothing on record to show that it was the petitioner herself who has thrown her child in to the well. Merely because the child is found floating dead in a well and that the present petitioner also said to have been found in the same well yelling for her rescue, by that itself it cannot be inferred that it was the petitioner herself who had caused the death of her daughter. Learned counsel also submits that, when admittedly the petitioner is mentally not in a sound position and suffering from serious psychiatric disorder, her continuation in judicial custody would cause immense inconvenience both to the inmates in the jail and as well as to her medical treatment. As such, in view of the fact that the charge-sheet has already been filed, she may be enlarged on bail to ensure the proper medical care to her.

5. Learned High Court Government Pleader though concedes that the petitioner is mentally unsound and has been under constant treatment with different psychiatrist, but contends that the allegation leveled against her are so heinous that the same does not warrant her enlargement on bail.

6. In the instant case, the complainant is a junior father-in-law of the petitioner in whose house the petitioner is said to have been living with her 18 months old daughter. According to the complainant her husband had left her in his house at his native place of the name called Angadi in Honnavar taluka, Uttara Kannada district, alone and he was residing at Mumbai, pursuing his avocation. Even according to the complainant, he was not an eyewitness to the alleged incident. It is based upon the information of one Mr. Winston Waaz (C.W.6), he proceeded towards the well near the house of the

petitioner only to see that the petitioner and her deceased daughter were both found in the waters of the well and at that time the said infant daughter was found dead and the petitioner was found yelling for her rescue. The complainant has also stated in his complaint that the behaviour of the petitioner prior to the incident also, while she was leading her marital life with her husband gives an impression that she was not well in her mental condition and it was for that reason she was left alone at a distant place by her husband in the village in a lonely house. The petitioner has also produced the certified copies of the medical records which show that the petitioner has taken treatment by different psychiatrist including Father Muller Medical College Hospital, Mangaluru.

7. A perusal of the said document go to show that she was diagnosed for Unspecified non organic

psychosis, Delusional disorder, Bipolar affective disorder, etc.,

8. The charge-sheet papers further go to show that, even during the investigation also the investigating agency has noticed that the petitioner-accused was psychologically not well and had been under constant treatment. In such a situation when the petitioner is said to be suffering with serious mental illness and is under constant treatment and also in view of the fact that the charge-sheet has already been filed against the petitioner, I am of the view that the continuation of the petitioner in judicial custody is not warranted, even though the alleged offence is heinous in nature. However, the apprehension of the prosecution that securing the petitioner for trial would be of some difficulty can be checked by imposing condition. At this stage, the learned counsel for the petitioner submits that the mother of the petitioner has volunteered to

undertake the responsibility of keeping the petitioner present before the Court on all the dates of hearing or as and when the Court directs for her presence and to ensure co-operation in speedy trial of the matter in the trial Court. In the light of the above, I proceed to pass the following order:

ORDER

The Criminal Petition is allowed. The petitioner be released on bail in P.S.Crime No.66/2018 of the first respondent police station which is said to be pending in S.C.No.29/2020 in the Court of the learned Principal District and Sessions Judge, Uttara Kannada, Karwar, for the offence punishable under Section 302 of Indian Penal Code, however, subject to the conditions that;

- i) The petitioner shall execute a personal bond for a sum of Rs.1,00,000/- with two sureties for the like sum to the satisfaction of the enlarging Court.

- ii) The petitioner shall appear before the trial Court on all the dates of hearing.
- iii) The accused/petitioner shall not hamper or tamper the prosecution witnesses and materials in any manner.
- iv) The accused/petitioner to give in writing about the charge in address if any, to the trial Court as and when such change occurs and obtain an acknowledgement in that regard and the mother of the petitioner by name Smt. Persi Anthon Dias, also to file affidavit undertaking the responsibility of keeping the petitioner present before the Court on all the dates of hearing.

**Sd/-
JUDGE**

kmv