

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 29TH DAY OF OCTOBER 2020

BEFORE

THE HON'BLE MRS. JUSTICE K.S.MUDAGAL

CRIMINAL PETITION No.2861/2020

BETWEEN:

NIRANJAN H K
S/O KRISHNAPPA
AGED ABOUT 37 YEARS
R/AT NO.502, HESARAGHATTA
BENGALURU NORTH
BENGALURU – 560 088 ... PETITIONER

(BY SRI. P.PRASANNA KUMAR, ADVOCATE)

AND:

1. STATE OF KARNATAKA BY
BANASHANKARI POLICE STATION
BENGALURU
REPRESENTED BY STATE
PUBLIC PROSECUTOR
HIGH COURT OF KARNATAKA BUILDING
AMBEDKAR VEEDHI
BENGALURU – 560 001
2. SMT.KAMALA SATHYA
W/O LATE DR.H.C.SATHYA
AGED 72 YEARS
R/AT 419, 9TH MAIN, 24TH CROSS,
BANASHANKARI 2ND STAGE
BENGALURU – 560 070
(AMENDED VIDE ORDER
DATED:25.09.2020)
... RESPONDENTS

(BY SRI. H.R.SHOWRI, HCGP FOR R1;
SMT.JAYNA KOTHARI, SENIOR COUNSEL FOR
SRI.ROHAN KOTHARI, ADVOCATE FOR R2)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 439 OF CR.P.C. PRAYING TO ENLARGE THE PETITIONER ON BAIL IN CRIME NO.49/2017 REGISTERED BY BANASHANKARI POLICE STATION, BENGALURU FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 397, 396 AND 302 OF IPC.

THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 22ND OCTOBER 2020, COMING ON FOR PRONOUNCEMENT OF ORDER THIS DAY, THE COURT THROUGH PHYSICAL HEARING MADE THE FOLLOWING:

ORDER

This is the third successive petition of the petitioner before this Court seeking bail in Crime No.49/2017 of Banashankari police station which is now pending in S.C.No.1068/2018 on the file of the LXVIII Additional City Civil and Sessions Judge (CCH-69), Bengaluru City.

2. The case of the prosecution in brief is as follows:

That petitioner was running a photo studio in a room owned by Dr.H.C.Sathya situated at Hesaraghatta, Bengaluru North Taluk on rental basis. Due to the dispute regarding the payment of rent, on 09.02.2017 at 2:30 p.m., the petitioner assaulted Dr.H.C.Sathya

with an intention to commit his murder and caused him grievous injuries. After the assault, the petitioner threatening PW.4 the wife of Dr.H.C.Sathya to the point of knife, robbed cash of Rs.25,000/- and wrist watch of Sathya and fled away. Dr.H.C.Sathya succumbed to the injuries on 03.06.2017 in the hospital. Thereby the petitioner has committed the offences punishable under Sections 396, 397 and 302 of IPC.

3. Initially on 22.03.2017 the Sessions Court had granted bail to the petitioner. On 19.05.2017, the State filed application for cancellation of bail on the ground that the petitioner is intimidating the witnesses and hampering the investigation. On hearing both sides, the learned Sessions Judge vide order dated 28.06.2017 cancelled the bail. Petitioner challenged that order before this Court in Crl.R.P.No.724/2017, wherein an interim order was granted directing the State not to precipitate the matter in arresting the petitioner. Therefore, he was not arrested though bail was cancelled.

4. Suppressing the fact of cancellation of the bail and pendency of Crl.R.P.No.724/2017, he sought bail before the Sessions Court which was granted on 06.07.2018. On 19.07.2018, this Court dismissed Crl.R.P.No.724/2017 and confirmed the order of cancellation of bail. By that time, the petitioner was at large by virtue of the subsequent bail order of the Sessions Court which was obtained by suppressing the material facts.

5. Again the prosecution and the complainant moved the Sessions Court for cancellation of bail, which was allowed on 29.08.2018. For the second time, the Sessions Court cancelled the bail granted to the petitioner and he was arrested. This Court considering the merits of the case, rejected the petitioner's earlier petitions in Crl.P.No.7011/2018 on 04.01.2019 and Crl.P.No.2705/2019 on 15.07.2019.

6. Against the order in Crl.P.No.2705/2019, the petitioner preferred Special Leave Petition (Criminal)

Diary No.(s) 39976/2019 before the Hon'ble Supreme Court. The Hon'ble Supreme Court vide order dated 09.01.2020 rejected the said petition observing that it was not inclined to interfere with the impugned order. On 13.05.2020 i.e. within five months from the order of the Hon'ble Supreme Court, the petitioner again has filed this petition for grant of bail.

7. Sri.Prasanna Kumar, learned counsel for the petitioner submits that the following are the changed circumstances:

i) The Hon'ble Supreme Court in Special Leave Petition (Criminal) Diary No.(s) 39976/2019 has observed that a convict can file innumerable number of bail applications. Thereby the petitioner is given the liberty to file this petition;

ii) The earlier bail petitions were rejected on the ground that PW.4 is the eyewitness and her statement is incriminating. Her evidence before the Court is already recorded and that consists of material contradictions and lacks credibility;

- iii) The alleged eyewitnesses PWs.1 and 2 have turned hostile in the trial;
- iv) Identification of the accused by PW.4 is highly doubtful; and
- v) The earlier bail petition was rejected on the sole ground of the conduct of the petitioner. If there is no material to proceed against the petitioner, petitioner cannot be detained only on the ground of his conduct.

8. Sri.H.R.Showri, learned HCGP for the State and Smt.Jayna Kothari, learned Senior Counsel appearing for Sri Rohan Kothari, the advocate on record for respondent No.2 oppose the bail petition on the following grounds:

- i) Since the Hon'ble Supreme Court in Special Leave Petition (Criminal) Diary No.(s) 39976/2019 declined to grant bail to the petitioner, the present petition is vexatious and lacks any merit;
- ii) The alleged changed circumstances are only imaginary;

iii) The bail granted to the petitioner was cancelled on the ground that he tried to tamper the witnesses and that order was confirmed by this Court. The said order has attained finality. When the trial is still going on, the petitioner is not entitled to seek bail;

iv) PW.4 had seen the accused for a considerable length of time when the crime was committed. In the light of that, the procedural irregularity committed, if any, by the Investigating Officer in getting the accused identified cannot be blown out of proportion at this stage; and

v) Within a period of five months, there are no grounds to take a different view.

9. In support of her contention, Smt.Jayna Kothari, learned Senior Counsel relies on the following judgments:

i) *Kalyan Chandra Sarkar vs Rajesh Ranjan Alias Pappu Yadav and another*¹

¹ (2004)7 SCC 528

ii) *Anil Kumar Yadav vs. State (NCT of Delhi) and another*²

iii) *State of MP vs Kajad*³

10. Since the earlier bail petitions were rejected on merits and such rejection was confirmed by the Hon'ble Supreme Court, the present petition can be entertained only if there are any changed circumstances.

11. The earlier bail petitions of the petitioner in Crl.P.Nos.7011/2018 and 2705/2019 were rejected not only considering the conduct of the petitioner, but also considering the material on record. The second bail rejection order of this Court was confirmed by the Hon'ble Supreme Court on 09.01.2020. Within five months thereafter the present petition is filed.

12. When there is successive bail petition, what should be the approach of the Court was considered by the Hon'ble Supreme Court in the judgments relied upon by Smt.Jayna Kothari, learned Senior Counsel. In

² (2018)12 SCC 129

³ (2001)7 SCC 673

para 12 of the judgment in **Kalyan Chandra Sarkar's** case, it was held as follows:

"12. In regard to cases where earlier bail **applications have been rejected there is a further onus on the court to consider the subsequent application** for grant of bail by noticing the grounds on which earlier bail applications have been rejected and after such consideration if the court is of the opinion that bail has to be granted then the said **court will have to give specific reasons why in spite of such earlier rejection the subsequent application for bail should be granted.**"

(Emphasis supplied)

13. Further, in para 20 of the said judgment, it was held that though the accused has a right to make successive applications for grant of bail, the **Court entertaining such subsequent bail applications has a duty to consider the reasons and grounds on which the earlier bail applications were rejected.** It was further held that in such cases, the Court also has a duty to record what are the fresh grounds which persuade it to take a view different from the one taken in the earlier applications.

14. In **Anil Kumar Yadav's** case, the Hon'ble Supreme Court referring to its earlier judgment in **Puran vs Rambilas [(2001)6 SCC 338]** held that in considering the question of grant of bail, the Court should avoid consideration of details of the evidence as that is not a relevant consideration. It was further held that though it is necessary to consider the prima facie case, an exhaustive exploration of the merits of the case should be avoided. Referring to its earlier judgments, the Hon'ble Supreme Court further held that in crimes like murder the period of incarceration by itself would not entitle the accused to be enlarged on bail.

15. In para 8 of the judgment in **Kajad's** case, the Hon'ble Supreme Court held that though the successive bail applications are permissible under the changed circumstances, **without the change in the circumstances, the second application would be deemed to be seeking review of the earlier judgment which is not permissible under the criminal law.** In

holding so, the Hon'ble Supreme Court relied upon its earlier judgment in ***Hari Singh Mann v. Harbhajan Singh Bajwa [(2001) 1 SCC 169]***.

16. Therefore, it is clear that if this Court has to grant bail to the petitioner in this petition, it has to give specific reasons as to why it is deviating from its earlier orders, otherwise it amounts not only reviewing the earlier orders of this Court, but also amounts to reviewing the orders of the Hon'ble Supreme Court in Special leave petition (Criminal) Diary No.(s) 39976/2019 which is impermissible under law.

17. It is settled Principle of law that in considering the bail application, the Court has to examine the following factors:

- i) Whether there are reasonable grounds to believe that the petitioner has committed an offence which is exclusively punishable with death or imprisonment for life;
- ii) If bail is granted, whether there is possibility of the accused tampering the witnesses; and

iii) If bail is granted, whether it is possible to secure the accused for the trial.

18. Charge sheet records show that death of Dr.Sathya was homicidal. Sri.Prasanna Kumar, learned counsel submits that though PW.4 states that accused was tenant of her husband, herself and her husband did not know him and the tenor of the complaint shows that both of them were not knowing him. All these contentions were urged in the earlier bail petitions and they were not accepted.

19. So far as the alleged contradictions in the evidence of PW.4, her evidence was recorded on 04.12.2019, 26.12.2019, 14.01.2020, 18.02.2020 and 10.03.2020. Therefore, when the Hon'ble Supreme Court disposed of the Special Leave Petition (Criminal) Diary No.(s) 39976/2019 on 09.01.2020 at least the alleged contradictions regarding the identity of the petitioner in the depositions dated 04.12.2019 and 26.12.2019 were within the knowledge of the petitioner.

It cannot be presumed that they were not urged before the Hon'ble Supreme Court.

20. So far as the evidence of PWs.1 and 2, they were not cited as eye witnesses, but they were cited *res-gestae* witnesses. According to the prosecution, after committing the offence when the accused was fleeing away from the scene of offence, on listening the alarm of PW.4, PWs.1 and 2 the domestic helps rushed to the spot and sighted the accused. It is true that in their depositions, they have not supported the prosecution version regarding identifying the petitioner. But the evidence of PWs.1 and 2 was recorded on 18.11.2019 i.e., before the rejection of the Special Leave petition of the petitioner by the Hon'ble Supreme Court. Therefore, any contradiction, commission or omission in their evidence cannot be treated as changed circumstance.

21. So far as PW.4 identifying the accused first in the police station at the instance of the police and Investigating Officer conducting the Test Identification

Parade subsequent to that, the evidence of PW.4 and the charge sheet records show that the crime went on for a considerable length of time. PW.4 claims to have seen petitioner all along during the said period.

22. Under the aforesaid circumstances, whether the evidence of PW.4 shall be rejected only on the ground of Investigating Officer's lapses in getting the accused identified is a question to be examined at the completion of the trial. The Court also has to examine whether the evidence of PW.4 stands corroborated by the other evidence on record.

23. As per the charge sheet records, there were CCTV footages, showing the image of the petitioner when he was fleeing away from the scene of offence and there was recovery of the robbed money. Therefore, to jump to the conclusion that the prosecution case is bound to fail only on the basis of the procedural lapses if any on the part of investigating officer in getting the accused identified by PW.4 is premature.

24. The earlier bail petitions were rejected considering the merits of the case as well as the conduct of the petitioner. Therefore, there is no merit in the contention that the earlier bail petition was rejected only on the conduct of the petitioner.

25. The second aspect in considering the bail application is whether there is chance of the petitioner tampering the witnesses if bail is granted. In the charge sheet 23 persons are cited as witnesses. Out of them, it is submitted that only four witnesses are examined. The other substantial witnesses are yet to be examined.

26. Admittedly, the bail granted to the petitioner was cancelled on the ground that, abusing the bail granted to him he attempted to tamper the witnesses. That order was confirmed by this Court in Crl.R.P.No.724/2017 which has attained finality. Despite that for the reasons best known to PWs.1 and 2 they have turned hostile. The said circumstance further substantiates the apprehension of the respondents that

if bail is granted the petitioner is likely to tamper the witnesses. On that ground also, the present bail petition is liable to be rejected.

27. No special reasons or grounds are made out to reconsider the matter and grant bail to the petitioner. Therefore, the petition is dismissed.

**Sd/-
JUDGE**

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