

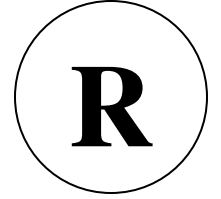
IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 29TH DAY OF JANUARY, 2021

BEFORE

THE HON'BLE MR. JUSTICE H.P. SANDESH

CRIMINAL PETITION No.6696/2020



BETWEEN:

SMT. SWAPNA
W/O LATE RAVI KUMAR
AGED ABOUT 35 YEARS
R/O KOTARI HOUSE
KODIMBALA VILLAGE
KADABA TALUK
D.K. - 574 201.

... PETITIONER

(BY SRI. AJAY PRABHU M., ADVOCATE
FOR SRI. SACHIN B.S., ADVOCATE)

AND:

1. THE STATE OF KARNATAKA
KADABA POLICE, PUTTUR
D.K.DISTRICT
REPRESENTED BY STATE PUBLIC PROSECUTOR
HIGH COURT BUILDINGS
BENGLAURU-560 001.

2. JAYANANDA K
S/O SHEENA NAIK
AGED ABOUT 56 YEARS
R/AT KOTARI HOUSE, KODIMBALA VILLAGE
PUTTUR TALUK, D.K.-574 201. ... RESPONDENTS

(BY SMT. NAMITHA MAHESH B.G., HCGP FOR R1
SRI. K.A. KARUMBIAH, ADVOCATE FOR R2)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C. PRAYING TO QUASH THE IMPUGNED ORDER DATED 08.10.2020 IN CRL.MISC.NO.5172/2020 ON THE FILE OF THE V ADDITIONAL DISTRICT AND SESSIONS JUDGE, D.K., MANGALURU SITTING AT PUTTUR D.K. AND DIRECT RESPONDENT No.1-POLICE TO ARREST THE RESPONDENT No.2 AND COMMIT HIM TO THE CUSTODY.

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

ORDER

This petition is filed under Section 482 of Cr.P.C, praying this Court to set aside the order dated 08.10.2020 in Crl.Misc.No.5172/2020 on the file of V Additional District and Sessions Judge, D.K., Mangaluru, sitting at Puttur, D.K., and direct respondent No.1-Police to arrest respondent No.2 and commit him to the custody.

2. The factual matrix of the case is that the complainant, who is the sister-in-law of the accused had given the statement in the hospital that, when the complainant and her daughter are in the house, this petitioner came in connection

with repayment of loan borrowed by her deceased husband from PCARD Bank, Kadaba. In this regard, he used to come to the house of the complainant and disturb her and her daughter and he used to knock the door of the house. This petitioner trespassed into the house of the complainant; by removing his knicker, he misbehaved and sexually harassed her in the grudge of non-payment of the loan installment and in connection with the cutting of sprinkler pipe of the garden of the accused. On 23.01.2020 at about 4:00 p.m, when the complainant was in her house with her two years old daughter-Sameeksha, abused the complainant in a filthy language and asked her to sell her children and follow him and while complainant was recording the video, he threw the golden touch formic acid through the window to the face and chest of complainant. As a result, the complainant and her daughter suffered burn injuries. Based on this complaint, a case has been registered in Crime No.6/2020 for the offences punishable under Sections 354A, 509, 504, 506, 448, 307 & 326A of IPC. Respondent No.2 has filed the bail petition under Section 439 of Cr.P.C, and the learned District Judge granted bail in favour of respondent No.2 vide order

8.10.2020. Hence, the present petition is filed for cancellation of bail.

3. The main contention of the learned counsel appearing for the petitioner-complainant is that the learned District Judge while exercising the powers under Section 439 of Cr.P.C, failed to take note of the gravity of the offences and also it is a case of throwing the acid and as a result the complainant sustained the burn injuries and the daughter also sustained the injuries. The District Judge while exercising the discretion also not assigned the reason only stating that he is the resident of Kodimbala and there is no chances of fleeing away from justice and fleeing away from justice is also very less. It is also observed in the order that prior to the institution of the present case, the relationship was strained between the parties. The very reasoning given by the Court is erroneous.

4. The learned counsel in support of his arguments, he relied upon the Judgment of the Apex Court in the case of **MAHIPAL v. RAJESH KUMAR @ POLIA AND ANOTHER (Criminal Appeal No.1843/2019)**, in this judgment, the Apex

Court in paragraph No.12 held that, the severity of the punishment and a prima facie view of the involvement of the accused are important. No straight jacket formula exists for courts to assess an application for the grant or rejection of bail. At the stage of assessing whether a case is fit for the grant of bail, the court is not required to enter into a detailed analysis of the evidence on record to establish beyond reasonable doubt the commission of the crime by the accused. However, the Court is required to examine whether there is a prima facie or reasonable ground to believe that the accused had committed the offence and on a balance of the considerations involved, the continued custody of the accused sub-serves the purpose of the criminal justice system.

5. The learned counsel also relied upon the Judgment of the Apex Court in the case of **NEERU YADAV v. STATE OF UTTAR PRADESH AND ANOTHER** reported in **2015 (15) SCC 422**, and brought to the notice of paragraph No.5 of the Judgment, wherein, the Apex Court held that, it actually calls in question the legal pregnability of the order passed by the High

Court. The prayer for cancellation of bail is not sought on the foundation of any kind of supervening circumstances or breach of any condition imposed by the High Court. The basic assail is to the manner in which the High Court has exercised its jurisdiction under Section 439 of Cr.P.C, while admitting the accused to bail. To clarify, if it has failed to take into consideration the relevant material factors, it would make the order absolutely perverse and totally indefensible. That is why there is a difference between cancellation of an order of bail and legal sustainability of an order granting bail.

6. Per contra, learned High Court Government Pleader appearing for respondent No.1/State would submit that the burn injuries on account of throwing the acid on the complainant is to the extent to 20 to 25% and burns are discoloration on the face, chest and anterior part of the chest and breast area. Further, learned High Court Government Pleader submits that the child also sustained the injury to the face and lower limb. The learned High Court Government Pleader also submits that the accused also sustained the injuries as per the Wound Certificate, which

clearly shows that this accused was very much present at the time of the incident, which *prima facie* discloses an incident.

7. Learned counsel for respondent No.2 would submit that the Police have investigated the matter and filed the charge sheet and the matter is now under trial. The learned Magistrate while exercising the discretion taken note of the earlier differences between the complainant and the accused and assigned the reasons and hence, it does not require any interference by this Court.

8. Having heard the arguments of the respective counsel, this Court has to consider the materials on record whether the learned District Judge while passing the order exercised his discretion and legal sustainability of the order. The fact that the complainant and her child were subjected to acid attack has been investigated and filed the charge sheet. The medical certificates, which are wound certificates, show the very nature of injury sustained by the complainant. The photographs, which have been produced before the Court also shows the gravity of the offence and the acid was thrown on the face of the

complainant and spilled over the body of the complaint and also on her child. It is also important to note that the complaint averment discloses that an attempt was made to outrage the modesty of the complainant, who is none other than the sister-in-law. The fact that the accused is also the brother-in-law of the complainant. It is also not in dispute that the brother of the accused was also passed away and the victim-complainant is the sister-in-law, who is living along with her children after the death of her husband.

9. Having considered the material aspects particularly the Wound Certificate when the complainant had suffered 20 to 25% of burn injuries on account of acid attack and also the child of the complainant, the learned District Judge ought to have taken note of the gravity of the offences and also the nature of the act committed by the accused. The learned Sessions judge failed to take note of the said fact into consideration and while exercising the discretion also, it is mentioned that there was strained relationship between the complainant and family members of the petitioner and much prior to the institution of

the present case. The very complaint itself discloses that the accused was targeting the complainant in not making the loan repayment which has been availed from PCARD Bank. There is no such any other dispute between the family except with regard to repayment of loan i.e., to the bank and not availed the loan from the accused. The complaint clearly discloses with regard to the utterances made by the accused and also making an attempt to sexually harass the complainant and it appears when the complainant did not budge to the desire of the accused, he threw the same on the face and all over the body of the complainant and in that indulging act, the child is also suffered the burn injuries on account of throwing of acid. The accused went with the acid. These aspects have not been considered by the learned Sessions Judge while appreciating the case on hand and while passing the order, an observation is made that the possibilities of the accused i.e., fleeing from justice is very less. This is the reason given while exercising discretion by the learned Sessions Judge. Hence, the learned Sessions Judge failed to appreciate the facts of the case and also the gravity of the offences and committed an error in taking note of the seriousness of the charges levelled

against the accused and it is the case of acid attack on his own sister-in-law that too, who lost her husband and the husband is also none other than the brother of the accused. The accused not only threw the acid on the complainant and as a result of the same the daughter along with the complainant also suffered the burn injuries. Having considered the materials on record, the discretion exercised by the trial Judge is erroneous and legally not sustainable. The trial Judge lost sight of the gravity of the offence. It would make the order absolutely perverse and totally indefensible as held by the Apex Court in **NEERU YADAV's** case (supra). On perusal of the entire material particularly, wound certificates of the complainant, her daughter and also the accused, there is a *prima facie* and reasonable ground that the accused had committed the offence as a balance of the consideration involved, the continued custody of the accused subserves the purpose of the criminal justice system as observed by the Apex Court in **MAHIPAL's** case (supra).

10. Having considered the materials on record and also the discussion made above, I am of the opinion that it is a fit

case to cancel the bail granted by the learned Sessions Judge invoking under Section 482 of Cr.P.C.

11. In view of the discussions made above, I pass the following:

ORDER

- (i) The petition is allowed.
- (ii) The order dated 08.10.2020 in CrI.Misc.No.5172/2020 on the file of V Additional District and Sessions Judge, D.K., Mangaluru, sitting at Puttur, D.K., is hereby set aside.
- (iii) The accused has to be taken to the custody, forthwith.
- (iv) The learned counsel for respondent No.2/accused submits that the trial has already been commenced and hence, the trial judge is directed to conduct the trial as expeditiously as possible.

In view of allowing the main petition, I.A.No.1/2020 for stay does not survive for consideration and the same stands disposed of.

**Sd/-
JUDGE**

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