

IN THE HIGH COURT OF KARNATAKA
DHARWAD BENCH

DATED THIS THE 30TH DAY OF JUNE 2022

BEFORE

THE HON'BLE MR.JUSTICE K. NATARAJAN

CRIMINAL PETITION NO.101712/2022

BETWEEN

1. BASAVARAJ S/O BALAPPA MAMMATGERI,
AGE.19 YEARS, OCC.GOUNDI,
R/O.NARAGUND, SIDDANABHAVI ONI,
NARAGUND, DIST-GADAG-581117
2. SAKRAPPA S/O HANUMANTAPPA KAKANOORM
AGE.19 YEARS, OCC.COOLI,
R/O.NARAGUND, SIDDANABHAVI ONI,
NARAGUND, DIST-GADAG-581117
3. BASAVARAJ S/O SHRISHAIL GADEKAR,
AGE.29 YEARS, OCC.AGRICULTURE,
R/O.NARAGUND, SIDDANABHAVI ONI,
NARAGUND, DIST-GADAG-581117
4. SANJU @ SANJEEV S/O MARUTI NALAVADI,
AGE.29 YEARS, OCC.CONTRACTOR,
R/O.NARAGUND, SIDDANABHAVI ONI,
NARAGUND, DIST-GADAG-581117

.....PETITIONERS

(BY SRI V M SHEELVANT, ADV.)

AND

THE STATE OF KARNATAKA
PSI, NARGUND POLICE STATION,
NARGUND, REP BY STATE PUBLIC PROSECUTOR,
HIGH COURT OF KARNATAKA, DHARWAD BENCH,
DHARWAD-580001

.....RESPONDENT

(BY SMT. GIRIJA S. HIREMATH, HCGP)

THIS CRIMINAL PETITION IS FILED U/SEC. 439 OF CR.P.C. SEEKING TO ALLOW THE PETITION AND ENLARGE THE PETITIONERS/ACCUSED NO. 5 TO 8 ON BAIL IN C.C. NO. 197/2022 (NARGUND P.S. CRIME NO. 13/2022) PENDING ON THE FILE OF THE CIVIL JUDGE AND J.M.F.C. COURT, NARGUND REGISTERED FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 143, 147, 148, 341, 323, 326, 504, 307, 302, 109, 114, 102(B) R/W 149 OF IPC.

THIS PETITION COMING ON FOR ORDERS THROUGH PHYSICAL HEARING/VIDEO CONFERENCING HEARING THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

This criminal petition is filed by the accused Nos.5 to 8 under Section 439 of Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C.', for short) for granting bail in C.C.No.197/2022 pending on the file of the Civil Judge and J.M.F.C., Naragund in respect of Crime No.13/2022 registered by Naragund Police for the offence punishable under Sections 143, 147, 148, 341, 323, 326, 504, 307, 302, 109, 114, 102(B) read with Section

149 of the Indian Penal Code, 1860 (hereinafter referred to as the 'IPC', for short).

2. Heard the arguments of the learned counsel for petitioners and learned High Court Government Pleader for respondent.

3. The case of the prosecution is that on the first information given by one Sameer Shahapur to the police while taking treatment in the hospital on 17.01.2022 alleging that on 17.01.2022 himself and his friend CW-19 were proceeding on a motorcycle near Panchayat. At that time, the juvenile offenders accused Nos.1 to 3 along with other accused persons came with deadly weapons like knife, obstructed the complainant and CW-19 and attacked them. The accused persons assaulted the complainant on his chest and also on the thumb of left hand and then CW-19 called his other friends and they shifted the complainant and CW-19 to the hospital. Therefore, the complaint came to be registered against the petitioners and other accused. After registering the case for the offence punishable under Section 307 of IPC, on the next day i.e., on 18.01.2022, the

injured/complainant died. Therefore, Section 302 of IPC was invoked by the police. After registering the case, the police arrested the petitioners/accused and remanded to judicial custody. The bail petition filed by the petitioners came to be rejected by the Sessions Court. Therefore, they are before this Court.

4. Learned counsel for petitioners contended that as per the charge sheet, the entire allegations made against the juvenile offenders who are arraigned as accused Nos.1 to 3. Absolutely there is no specific overt acts alleged against these petitioners in the complaint. The allegation against these petitioners is that they have assaulted with hands and instigated the juvenile offenders. However, the juvenile offenders have already granted bail by the Juvenile Justice Board. Therefore, the learned counsel prayed for grant of bail.

5. *Per contra*, learned High Court Government Pleader seriously objected the bail petition and contended that the petitioners were accompanied with the other accused for committing murder of the deceased Sameer. There are other cases are pending in Crime Nos.156/2021, 159/2021 and 160/2021

against each other. There was communal clash between two communities. Such being the case, the possibility of again committing similar offence by the petitioners is not ruled out. Hence, she prayed for rejection of bail.

6. Having heard the arguments of the learned counsel for petitioners and learned High Court Government Pleader for respondent, perused the records.

7. Admittedly, the name of accused Nos.1 and 2 is arrayed in the FIR. However, the names of these petitioners are not shown in the FIR. The complainant who is deceased has himself stated that there were 7-8 persons along with accused Nos.1 and 2. The overt act alleged against accused Nos.1 and 2 is that they have assaulted the complainant with knife and caused death of the complainant. The postmortem report reveals that it is a homicidal death due to stab injuries. The accused Nos.1 and 2 said to be released on bail. After investigation, the police have filed charge sheet. It is specifically state that the accused No.5 assaulted with hands and accused Nos.7 and 8 were instigating the juvenile offenders not to leave and finish them. Of course, the accused

Nos.5 and 6 have not used any weapons but accused Nos.7 and 8 were instigating the other accused to commit murder. It is pertinent to note that the complainant has specifically alleged in the complaint that CW-19 informed his other friends, they came and shifted them to hospital otherwise, complainant and CW-19 would have been murdered by the accused persons on the spot. It is also seen from the records that there was previous enmity between two groups belonging to two different communities. As submitted by the learned H.C.G.P. that there are two cases pending in Crime Nos.156/2021, 159/2021 and 160/2021 for communal clashes. Of course, injured witness has given further statement that he has stated the names of these petitioners and in second further statement, he has named accused Nos.2 and 4. Merely the names of these petitioners not mentioned in the FIR or in complaint is not a ground for granting bail. The complaint or FIR is not an encyclopedia to contain the entire details of the accused persons. But the police after investigation, filed charge sheet. Looking to the facts and circumstances of the case, communal clashes between the two communities, if the petitioners are enlarged on bail, there is every possibility of the petitioners committing similar offence and

riots taking place is not ruled out. Therefore, I am of the view that the petitioners are not entitled for bail.

8. Accordingly, the petition is dismissed.

**Sd/-
JUDGE**

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