

IN THE HIGH COURT OF KARNATAKA  
KALABURAGI BENCH

DATED THIS THE 26<sup>TH</sup> DAY OF AUGUST, 2022

BEFORE

THE HON'BLE MR. JUSTICE P.N.DESAI

CRIMINAL APPEAL No.200131/2022

C/W

CRIMINAL APPEAL NO.200135/2022

CRIMINAL APPEAL NO.200148/2022

**IN CRL.A NO 200131/2022:**

**BETWEEN:**

SUNILDATT S/O MARUTIRAO SARAF  
AGE. 44 YEARS,  
OCCU. EDITOR NEWS PAPER,  
R/O KANAKADAS BADAVANE,  
VIJAYAPURA 586109

**...APPELLANT**

**(BY SRI. R. S. LAGALI, ADVOCATE)**

**AND:**

- 1 . THE STATE OF KARNATAKA  
THROUGH THE SHO,  
VIJAYAPURA RURAL P.S  
REP BY THE ADDL SPP  
HIGH COURT OF KARNATAKA  
KALABURAGI 585102
  
- 2 . SHRIMANT S/O RAMACHANDRA DHARASANG  
AGE. 60 YEARS,  
OCCU. PENSIONER,  
R/O. GYANG BAWADI  
VIJAYAPURA 585102

**...RESPONDENTS**

**(BY SRI.GURURAJ V. HASILKAR, HCGP FOR R1;  
SRI.B.C.JAKA, ADVOCATE FOR R2)**

THIS CRL.A FILED U/SEC. 14-A(2) OF SC/ST (PA) ACT, PRAYING TO ALLOW THE PRESENT APPEAL SEEKING REGULAR BAIL AND SET ASIDE THE ORDER DATED 08.06.2022 PASSED IN CRL.MISC.NO.609/2022 PASSED BY THE II ADDL. SESSIONS COURT, VIJAYAPURA THEREBY ORDER THE RELEASE OF THE APPELLANT ON BAIL IN VIJAYAPURA RURAL P.S. CRIME NO.22/2022 PENDING ON THE FILE OF II ADDL. SESSIONS JUDGE/SPL. JUDGE, VIJAYAPURA FOR THE OFFENCE P/U/SEC.120B, 302,201,109 R/W 34 OF IPC ALONG WITH SEC.3(2) (VA) OF SC/ST (PA) ACT.

**IN CRL.A NO 200135/2022:**

**BETWEEN:**

1. SACHIN S/O SHIVANINGAPPA CHALAWADI, AGE 26 YEARS, OCCU.BUSINESS,
- 2 . PRAVEEN S/O SHANKAR CHALAWADI, AGE 24 YEARS, OCC.STUDENT,  
BOTH THE APPELLANTS ARE  
R/O KAVALAGI VILLAGE,  
TQ AND DIST.VIJAYAPURA-586109.

**...APPELLANTS**

**(BY SRI. R. S. LAGALI, ADVOCATE)**

**AND:**

1. THE STATE OF KARNATAKA  
THROUGH THE SHO.,  
VIJAYAPURA RURAL PS.,  
REP. BY THE ADDL. STATE  
PUBLIC PROSECUTOR,  
HIGH COURT OF KARNATAKA,  
KALABURAGI-585102.

2. SHRIMANT  
 S/O RAMACHANDRA DHARASANG,  
 AGE 60 YEARS, OCCU.PENSIONER,  
 R/O GYANG BAWDI,  
 VIJAYAPURA-586102.

**...RESPONDENTS**

**(BY SRI.GURURAJ V. HASILKAR, HCGP FOR R1;  
 SRI.B.C.JAKA, ADVOCATE FOR R2)**

THIS CRL.A FILED U/SEC. 14-A OF SC/ST (PA) ACT, PRAYING TO, ALLOW THE PRESENT APPEAL SEEKING REGULAR BAIL AND SET ASIDE THE ORDER DATED 29.06.2022 PASSED IN CRL. MISC. NO. 705/2022 PASSED BY THE II ADDL. SESSIONS COURT, VIJAYPAURA, THEREBY ORDER THE RELEASE OF THE APPELLANTS ON BAIL IN VIJAYAPURA RURAL POLICE STATION, CRIME NO. 22/2022 PENDING ON THE FILE OF THE II ADDL. SESSIONS JUDGE / SPECIAL JUDGE, AT VIJAYAPURA FOR THE OFFENCES PUNISHABLE U/SEC. 120(B), 302, 201, 109, R/W SEC. 34 OF IPC, ALONG WITH SEC. 3(2)(VA) OF SC/ ST (PA) ACT, IN THE INTEREST OF JUSTICE AND EQUITY.

**IN CRL.A.NO.200148/2022:**

**BETWEEN:**

GURUSIDDA S/O APPASHY DONI  
 AGED ABOUT 28 YEARS,  
 OCC. COOLIE,  
 R/O HOLISANK,  
 NOW AT SAI HOTEL,  
 MANAGULI ROAD,  
 VIJAYAPUR 586 101

**...APPELLANT**

**(BY SRI. S. S. MAMADAPUR, ADVOCATE)**

**AND:**

1. THE STATE OF KARNATAKA  
THROUGH THE PSI,  
VIJAYAPURA RURAL PS  
REP BY THE ADDL  
STATE PUBLIC PROSECUTOR,  
HIGH COURT OF KARNATAKA  
KALABURAGI 585102
2. SHRIMANT S/O RAMACHANDRA DHARASANG  
AGED ABOUT 60 YEARS,  
OCC.PENSIONER,  
R/O GYANG BAWDI,  
VIJAYAPURA 585102

**...RESPONDENTS**

**(BY SRI.GURURAJ V. HASILKAR, HCGP FOR R1;  
SRI.B.C.JAKA, ADVOCATE FOR R2)**

THIS CRL.A FILED U/SEC. 14-A OF SC/ST (PA) ACT,  
PRAYING TO SET ASIDE THE ORDER DATED 29.06.2022 PASSED  
BY THE HONOURABLE II ADDL. SESSIONS JUDGE, AT VIJAYAPUR,  
IN CRL. MISC. NO. 851/2022 AND CONSEQUENTLY ENLARGE THE  
APPELLANT ON BAIL IN VIJAYAPUR RURAL PS. CRIME NO. 22/2022  
PENDING ON THE FILE OF THE II ADDL. SESSIONS JUDGE /  
SPECIAL JUDGE, AT VIJAYAPUR FOR THE OFFENCES PUNISHABLE  
U/SEC. 120(B), 302, 201, 109, R/W SEC. 34 OF IPC, AND U/SEC.  
3(2)(VA) OF SC/ ST (POA) ACT, IN THE INTEREST OF JUSTICE  
AND EQUITY.

THESE APPEALS COMING ON FOR ADMISSION THIS  
DAY, THE COURT DELIVERED THE FOLLOWING:

JUDGEMENT

Criminal Appeal No.200131/2022 filed by one Sunildatt who is arrayed as accused No.11; Criminal Appeal No.200135/2022 filed by accused No.8-Sachin Chalawadi and accused No.9-Praveen Chalawadi; Criminal Appeal No.200148/2022 filed by one Gurusiddappa Doni under Section 14(A)(2) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as 'SC/ST (POA) Act' for short) in Crime No.22/2022 for the offences punishable under Sections 120B, 302, 201, 109 read with Section 34 of Indian Penal Code along with Section 3(2) (v-a) of SC/ST (POA) Act.

2. The brief case of the prosecution is that one Ramesh Dharasangh was a member of Dalit association. It is alleged that on 01.02.2022 the said deceased-Ramesh in his face book account posted some defamatory words which is insulting to the Dalita leaders, particularly accused No.2 by name Jeetendra Kamble. In this regard, accused

No.2 called the deceased over phone and stated that he will teach him lesson. Accused No.2 also informed his friends accused Nos.3 and 4 about posting some defamatory words and sentences in the face book and informed accused Nos.3 and 4 to call the deceased to Hitnalli road at Vijayapura. Accordingly, accused Nos.3 and 4 called accused No.1 near Sindagi bypass road. It is further alleged that when accused No.1 was proceeding on a scooty, he met accused No.11. The said accused No.11 told that deceased is posting defamatory words against Jeetendra Kamble. Therefore, they have to teach him a lesson and instigated them. Accordingly, accused Nos.1, 3 and 4 conspired to take away the life of the deceased and called the deceased to Sindagi bypass road. Accordingly, deceased-Ramesh came on his motorcycle. Then accused Nos.1, 3 and 4 took him to housing board situated in Hitnalli road and at that time, they assaulted him with plastic pipe. Then they called accused No.2 there. Accused No.2 also abused Ramesh for posting defamatory

sentences against him and he also assaulted him with plastic pipe. He went along with accused No.1. Accused Nos.3 and 4 kept Ramesh with them in a house. They stayed night there. They found Ramesh is dead. On 02.02.2022 they called accused No.1. Then, accused No.1 came in a car of one Santosh. The said car driver refused to take the dead body. Then accused No.1 called accused Nos.5 and 6 and requested them to take the dead body of deceased and they went to Kavalagi village. There accused called accused Nos.7 to 10 and asked accused Nos.8 and 9 to show the house of deceased where the deceased was staying. Then accused Nos.1 and 5 to 10 throw the dead body in front of his house and ran away. On the basis of the same, complaint lodged by father of the deceased, an FIR came to be registered.

3. Thereafter the police investigated the case and arrested eleven accused. After completing the investigation, the Investigating Officer has filed the Charge Sheet against the accused Nos.1, 3 and 4 for

the offences punishable under Sections 120B, 302, 201 read with Section 34 of Indian Penal Code and Sections 3(2)(va) of SC/ST (POA) Act; against accused No.2 for the offences punishable under Sections 302, 201 of IPC; and against accused Nos.5 to 10 for the offences punishable under Sections 201 of IPC; and against accused No.11 for the offences punishable under Sections 109 of IPC and 3(2)(va) of SC/ST (POA) Act.

4. Accused No.5 is arrested on 16.02.2022; accused Nos.8 and 9 are arrested on 29.04.2022; accused No.11 is arrested on 27.04.2022; their bail petitions came to be rejected by the learned Sessions Judge. Hence, all the four accused who are accused Nos.5, 8, 9 and 11 as referred above have preferred these three appeals seeking to enlarge them on bail for the aforesaid offences.

5. Heard Sri.R.S.Lagali, learned counsel for the appellants in Cril. Appeal No.200131/2022, Cril. Appeal No.200135/2022 and Sri.S.S.Mamadapur, learned counsel for appellant in Cril.Appeal

No.200148/2022 and Sri.Gururaj V. Hasilkar, learned High Court Government Pleader for the respondent-State in all the three appeals and Sri.B.C.Jaka, learned counsel appearing to assist learned High Court Government Pleader on behalf of complainant who is father of deceased.

6. Learned counsel for the appellants argued that the entire allegations of assault and overt acts alleged are against only accused Nos.1 to 4. The Charge Sheet against accused Nos.1, 3 and 4 for the offences punishable under Sections 120B, 302, 201 read with Section 34 of Indian Penal Code and Sections 3(2)(va) of SC/ST (POA) Act; against accused No.2 for the offences punishable under Sections 302, 201 of IPC; and against accused Nos.5 to 10 for the offences punishable under Sections 201 of IPC; and against accused No.11 for the offences punishable under Sections 109 of IPC and 3(2)(va) of SC/ST (POA) Act is made out.

7. The alleged allegations against accused Nos.5 to 10 is only under Section 201 of IPC and the

allegations against accused No.11 is under Section 109 of IPC. Learned counsel argued that there are no eyewitnesses to show the role of these appellants in this case. There is no material against these appellants to show that they have committed offences which is punishable with death or imprisonment for life. Even the further statements of complainant which are recorded twice shows that these appellants were subsequently implicated. Except the alleged voluntary statements of these accused and other accused, there is no material against these appellants. There is no recovery from these appellants. The appellants were not at all present at the spot when the alleged assault and incident took place. The appellants in Cri.Appeal No.200131/2022 is an Editor of local newspaper, who was very much present in the village. Though the police alleged that his name was mentioned on the basis of voluntary statement of accused No.11, that itself shows that the said statement was created and this accused No.11 was arrested on 27.04.2022.

8. It is also argued that the appellants in Cri.AppealNo.200135/2022 were arrested on 29.04.2022 on the basis of their alleged voluntary statements and the name of these appellants are not mentioned by the complainant. Accused Nos.8 and 9 also belong to SC community, therefore, Atrocities Act not attracted against them. The only allegation against these appellants that they shown the house of CW.21/Laxman Harijan who is father in law of the deceased-Ramesh. There is neither any role of these accused in conspiracy nor in the incident of murder. They were not present at the time of incident of assault.

9. It is argued that the allegations against accused No.5 does not show that he was present at the time of incident or he did any act. Neither he committed the murder of deceased nor there is any allegations against him. This appellant-accused No.5 is implicated on the basis of his voluntary statement. It is alleged that these accused Nos.5 to 10 went to Kavalagi and thrown the dead body of Ramesh at

10:30 p.m. near the house of CW.21. There is no statement to show that who has seen these appellants throwing the dead body. He is also falsely implicated for the offence punishable under Section 201 of Indian Penal Code, which is also not made out.

10. Learned counsel for the appellants in all the appeals argued that the accused No.5 is in custody from 16.02.2022 and accused Nos.8 and 9 from 29.04.2022 and accused No.11 from 27.04.2022. The investigation is already completed and Charge Sheet is already filed. They are having family members and they have movable and immovable properties. In view of the material placed before the Court learned counsel argued that as there is no material evidence to show that they have committed offence punishable with death or imprisonment for life, pre-trial detention shall not be encouraged and they shall be released on bail. It is further argued that appellants are ready and willing to abide by any conditions that may be imposed by

this Court. With these arguments, learned counsel for the appellants prayed to enlarge the appellants on bail.

11. Against this, the learned High Court Government Pleader orally objected and argued that the alleged offences are heinous in nature. The Investigating Officer has collected materials against these appellants. The murder of a young boy was committed for posting some material in the face-book. One of the accused i.e., accused No.2 is a rowdy sheeter and having number of cases against him. The role of these appellants shows that they have assisted the main accused to cause disappearance of the dead body and instigated the other accused to take away the life. Therefore, looking into their role and their background, if these appellants are released on bail, there is likelihood that they threatening the prosecution witnesses or they flea away from jurisdiction of the Court or they may tamper the prosecution evidence. Therefore, the learned Sessions Judge, after considering all the

materials, has rightly rejected their bail petitions. Hence, the learned High Court Government Pleader prays to dismiss the appeals.

12. The learned counsel for the respondent No.2 also argued that all the accused persons have conspired and committed the murder of respondent No.2's son. If they are released on bail, there is likelihood of threatening respondent No.2 and other witnesses and they may also abscond. Hence, the learned counsel for the respondent No.2 prays to dismiss the appeals.

13. I have perused the entire charge sheet, complaint, face-book comment, voluntary statements and other materials. The postmortem report of the deceased shows that there was patterned abrasion horizontally, laceration over posterior aspect of right elbow, contused abrasion over left dorsum aspect palm and etc., The death was due to shock as a result of injuries sustained over the head and body. It is also evident that the dead body was lying in front of house of father-in-law of the deceased and

it is stated that in between 06.00 a.m. to 10.30 a.m. on 02.02.2022 somebody has thrown the dead body by murdering and assaulting deceased. The FIR was lodged against the accused No.1 and 2. Subsequently, the other accused were arrested and their voluntary statements were recorded and motorcycles and other vehicles are recovered. The main allegation of assault appearing at this stage is against accused Nos.1 to 4. The said face-book comment was made against accused No.2. It is alleged that the motive for murder is for the said comment put by the deceased in his face-book and because of that accused No.1 to 4 conspired together, assaulted the deceased, took his body to housing board and next day morning in between 06.00 a.m. to 10.00 a.m., with the help accused No.5 to 10 they have thrown the dead body in front of a house of father-in-law of deceased.

14. Admittedly, these appellants were not present, when the said alleged assault took place. Even there is no allegation that they have taken the

injured person to housing board and kept there. The only allegation is that on the next day accused Nos.5 to 10 were called. It is alleged that motorcycle of the accused No.5 was used for transporting the body. The allegation against the accused No.1 is that he instigated the accused No.2. Therefore, looking into the materials collected against these appellants and the nature of allegations against them and statements of the witnesses and other materials, the charge sheet itself discloses that what are the offences they have committed as stated above.

15. It is settled principle of law that bail is a rule and rejection is an exception. While granting or rejecting the bail application, the Court will have to take into consideration,

- (1) the nature and seriousness of the offence;
- (2) character of the accused;
- (3) circumstances which are peculiar to accused;
- (4) reasonable probabilities of presence of the accused not being secured at trial;
- (5) reasonable apprehension of witnesses being tampered with; and
- (6) larger interest of public or the state and similar other considerations, which arise when a court is asked to admit the accused to bail in a non-bailable offence.

16. So, in the light of these principles, if the present appeals, the order passed by the Sessions Judge, entire charge sheet materials, reports and documents are considered, in my considered view these appellants have made out grounds to grant bail. Accused No.8 and 9 also belongs to schedule caste. Only accused No.5 and 11 belongs to different casts as per the charge sheet. The main allegations are against accused No.1 to 4. The only allegation against accused No.11 is for the offence punishable under Section 109 of IPC. The allegation against accused Nos.8 and 9 for the offence punishable under Section 201 of IPC. That are based on their confession statement.

17. The investigation is already completed and charge sheet is also filed. The appellants are not required for further investigation or interrogation. On the other hand, they have contended that they are ready to abide by any conditions and appear before the Court or Investigating Officer. Therefore,

looking into the nature of allegations and the role played by these appellants and in view of the materials placed before the Court, in my considered view the learned Sessions Judge has not justified in rejecting the bail petitions, simply because the offence is punishable under Section 302 of IPC is included in the charge sheet.

18. The apprehension of the prosecution can be meted out by imposing reasonable conditions on the appellants. Accordingly, I proceed to pass the following:

**ORDER**

The Criminal Appeals No.200131/2022, 200135/2022 and 200148/2022 filed under Section 14(A) (2) of the SC/ST (Prevention of Atrocities) Act are hereby allowed.

The order passed by the II Additional Sessions Court, Vijayapura in Crl.Misc.No.609/2022 dated 08.06.2022, in Crl.Misc.705/2022 dated 29.06.2022 and in Crl.Misc.No.851/2022 dated 29.06.2022, respectively are hereby set-aside.

The appellant - accused No.11 – Sunildatt s/o Marutirao Saraf, the appellants – accused No.8 and 9 – Sachin s/o Shivaningappa Chalawadi and Praveen s/o Shankar Chalawadi and the appellant – accused No.5 Gurusidda s/o Appashy Doni, in Crime No.22/2022 of Vijayapur Rural Police Station, on the file of the II Additional Sessions Judge/Special Judge, Vijayapura, registered for the offences punishable under Sections 120B, 302, 201 and 109 read with Section 34 of IPC along with Section 3 (2) (va) of SC/ST (Prevention of Atrocities) Act, shall be released on bail, subject to the following conditions.

- i) The appellants shall execute a self-bond for Rs.2,00,000/- each with two solvent sureties, for the like sum to the satisfaction of the Trial Court or Committal Court where the case is now pending.
- ii) The appellants shall not try to tamper the prosecution witnesses directly or indirectly.
- iii) The appellants shall not threaten the respondent No.2 or any other witnesses in any manner.

- iv) The appellants shall mark their attendance before the jurisdictional Police/SHO once in 15 days, i.e., on alternative Sunday between 10.00 a.m. to 4.00 p.m. till completion of the trial.
- v) The appellants shall not involve in any criminal activities;
- vi) The appellants shall furnish proof of their residential correct address to the investigating officer/Court and shall inform the Court/Investigating Officer if there is any change in the address.
- vii) The appellants shall not leave the jurisdiction of the Trial Court without prior permission of Trial Court.
- viii) The appellants shall appear before the Court on all dates of hearing without fail as and when directed, unless their presence is exempted.

In case if any of the condition is violated, the prosecution is at liberty to move application for cancellation of bail.

**Sd/-  
JUDGE**

sdu/KJJ