

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 20<sup>TH</sup> DAY OF JULY 2011

BEFORE

THE HON'BLE MR.JUSTICE K N KESHAVANARAYANA

CRIMINAL PETITION NO.2689/2011

BETWEEN:

1. Divakara Bhandary  
S/o Late Ishwara Bhandary  
Aged about 38 years  
R/at Sambrama House  
Manjunagar  
Naravi Post and Village  
Belthangady Taluk.

2. Sri Ponkar Poojary  
@ Shivappa Poojary  
Aged about 57 years  
S/o Late Annu Poojary  
R/at Subbarottu House  
Marodi Village  
Belthangady Taluk.

... Petitioners

(By Sri S.Vishwajith Shetty, Adv)

AND:

State of Karnataka  
Represented by State Public Prosecutor  
High Court Buildings  
Bangalore.

... Respondent

(By Sri B.Raja Subramanya Bhat, HCGP)

This CrI.P. is filed U/S.439 Cr.P.C. praying to enlarge  
the petitioners on bail in C.C.No.73/11 (CR.No.92/10 of



Venoor P.S.) on the file of JMFC, Court, Belthangady, which is regd. for the offence P/U/S.302 R/W Sec. 34 of IPC.

This petition coming on for orders this day, the Court made the following:

ORDER

In this petition filed under Section 439 Cr.P.C., the petitioner Nos.1 and 2 who have been arraigned as accused Nos.2 and 6 respectively in C.C.No.73/2011 on the file of the JMFC, Belthangady, registered for the offence punishable under Sections 302 read with Section 34 of IPC, have sought for relief of bail, inter alia on the ground that they are innocent of the offence alleged and that they have not committed any acts as alleged either by the complainant or the witnesses and there are no reasonable grounds to believe that they are guilty of the offence punishable under Section 302 IPC, therefore, they are entitled to be enlarged on bail.

2. Petition is opposed by the respondent-State.

3. I have heard both sides. Perused the records made available.



4. The case of the prosecution in brief is that the deceased P.K.Paradi, r/o Naravi Village, in Belthangady Taluk, who had come to Bangalore on 14.12.2010 to attend a Court case, returned to his Village in the early hours of 16.12.2010. At about 5.45 a.m. on 16.12.2010, he alighted from the bus which had stopped in front of his house. At that time his wife, Nalini on hearing the sound of bus stopping in front of the house, came out of the house to receive her husband. At that time, accused No 1 Vasantha Poojary along with his associates accused Nos.2 to 7 came there in a Cruiser Jeep and dashed against the deceased as a result, he fell down. Thereafter, accused Nos.1 to 7 got down from the vehicle armed with iron rods, assaulted the deceased Paradi on the head with iron rods, stamped him by legs and on seeing the relatives of the deceased coming to the scene of occurrence, they ran away from the place. On seeing the incident Nalini, wife of the deceased came running raising hue and cry and thereafter she shifted her husband to the Government Hospital at Karkala in an Ambulance, where Doctor on



examination declared him dead. Thereafter, the said Nalini lodged a report about the incident with the jurisdictional police at 11.15 a.m. on the same day based on which, the case in Crime No.92/2010 came to be registered for the offence punishable under Section 302 read with Section 34 of IPC and investigation was taken up. During investigation, the Investigation Officer held inquest over the dead body and subjected the dead body to Post Mortem examination. The Doctor who conducted PM examination, noticed as many as seven injuries over the head. He was of the opinion that the death was due to neurogenic shock as a result of head injury. During investigation, the further statement of the complainant and also two more eye witnesses viz., CWs.2 and 3 were recorded, which revealed the complicity of these petitioners in the commission of the offence. Thereafter, the petitioners were apprehended and subjected to judicial custody. As their prayer for bail made before the learned Sessions Judge came to be rejected they are before this Court seeking relief of bail.



5. It is the contention of the learned Counsel for the petitioners that the complicity of these petitioners was not disclosed in the FIR lodged by the wife of the deceased, who was stated to be an eye witness and subsequently, in her further statement, the petitioners have been falsely implicated in the background of pendency of the civil dispute between the deceased and accused No.1 Vasantha Poojary. Therefore, learned Counsel submitted that from the spontaneous statement of the wife of the deceased made at the earliest point of time, it is clear that the petitioners were not responsible for the alleged acts, therefore they are entitled to be enlarged on bail.

6. The perusal of the copy of PM report prima facie indicates that the deceased had sustained as many as seven injuries on the head and he died on account of the head injuries. CW1 Nalini, the wife of the deceased claims to be an eye witness to the incident of murder and assault on her husband just in front of her house soon after he alighted from the bus.



7. The perusal of the FIR lodged by CW1 at the earliest point of time do not indicate the names of these two petitioners as assailants. In the said report, it has been merely stated that accused No.1 Vasantha Poojary assaulted her husband and his associates were trying to lift the vehicle which had been stuck by the roadside. The names of the associates of accused No.1 Vasantha Poojary have not been disclosed in the said report nor it was stated in the said report that any of the associates of accused No.1 had assaulted the deceased. It is only in the further statement said to have been made by CW1 later, the names of these petitioners and others have been disclosed. Perusal of the further statement would indicate that CW1 knew the names and identity of these petitioners.

8. Having regard to the contents of the FIR, at this stage, this Court is of the considered opinion that there are no reasonable grounds to believe the complicity of these petitioners in the homicidal death of the deceased. It is also noticed that this Court in CrI.P.No.1572/2011



has granted bail to accused No.7 Kitta. Therefore, I am of the opinion that the petitioners are entitled to be enlarged on bail.

9. In the result, the petition is allowed. The petitioners are ordered to be enlarged on bail in C.C.No.73/2011 on the file of JMFC, Belthangady, subject to the following conditions:

- (i) The petitioner shall execute a personal bond for a sum of Rs.50,000/- with two sureties for the like sum to the satisfaction of the learned Magistrate;
- (ii) The petitioner shall not intimidate or tamper with the prosecution witnesses in any manner;
- (iii) He shall appear on all hearing dates before, the court without fail;
- (iv) He shall not indulge in any acts similar to the one alleged in the case;
- (v) He shall not leave the jurisdiction of the court of sessions without express permission and



(vi) He shall mark his attendance with the jurisdictional police station on 15<sup>th</sup> of each calendar month between 10.00 a.m. and 5.00 p.m. till disposal of the trial case.

Sd/-  
JUDGE

JT/-