

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 10<sup>TH</sup> DAY OF AUGUST, 2023

BEFORE

THE HON'BLE MR. JUSTICE K.NATARAJAN

CRIMINAL PETITION NO.6243 OF 2023

BETWEEN

ANSU @ ANSAR ALI  
S/O G K ABDUL GAFUR  
AGED 30 YEARS  
R/AT HALLADAKERI  
GUNDLUPET TOWN - 571 111 ... PETITIONER

(BY SRI HASHMATH PASHA, SENIOR ADVOCATE  
FOR SRI KARIAPPA N.A., ADVOCATE)

AND

STATE OF KARNATAKA  
BY GUNDLUPET POLICE STATION  
CHAMARAJ NAGAR DISTRICT - 571 313

(REPRESENTED BY LEARNED  
STATE PUBLIC PROSECUTOR  
HIGH COURT OF KARNATAKA  
BANGALORE - 560 001.)

...RESPONDENT

(BY SRI P. THEJESH, HCGP)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 439 OF THE CODE OF CRIMINAL PROCEDURE, PRAYING TO ENLARGE THE PETITIONER ON BAIL IN CR.NO.198/2020 OF GUNDLUPETE P.S., CHAMARAJANAGAR FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 120(B), 143, 147, 148, 109, 114, 504, 307, 341, 323, 324, 326, 302, 506(B), 212 READ WITH SECTION 149 OF IPC PENDING ON THE FILE OF THE PRINCIPAL DISTRICT AND SESSIONS JUDGE, CHAMARAJANAGARA IN S.C.NO.5018/2020.

THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 07.08.2023, THIS DAY, THE COURT MADE THE FOLLOWING:

**ORDER**

This petition is filed by the petitioner-accused No.1 under Section 439 of Cr.P.C., for granting regular bail in Crime No.198/2020 registered by Gundlupet Police Station, and charge sheeted for the offences punishable under Sections 120B, 143, 147,148, 109, 504, 307, 341, 323, 324, 114, 326, 302, 506B, 212, 307 read with Section 149 of IPC, now pending on the file of Principal District and Sessions Judge, Chamarajnagar.

2. Heard the arguments of learned senior counsel for the petitioner and learned High Court Government Pleader for the respondent-State.

3. The case of the prosecution is that on the complaint of one C.W.1-Muzibul Rehman, whose statement was recorded in the hospital, the case has been registered. It is alleged that accused No.6 said to be doing the business of transporting cows and also said to be

transporting rice to the neighbouring State and the deceased was said to be the obstacle for doing the business by accused No.6, due to which, there was enmity. On that back ground, on the date of incident at about 8.20 p.m., the complainant saw some of the accused persons quarelling in front of one Imran Alias Niyat with C.W.2 - his brother-in-law and his brother Zakauulla (deceased No.1). The accused persons came in a car and bikes with deadly weapons like chopper, long, knife and assaulted one Zakauulla, Kaiser and Idris and all the said three persons were murdered, and the complainant and four other persons were injured. Accordingly, the police arrested the petitioner, investigated the matter and filed charge sheet. The petitioner is in custody from 04.06.2020, for almost more than 3 years. His bail petition came to be dismissed by this Court on 08.03.2021 on merits. Subsequently, the petitioner filed one more bail petition in Criminal Petition No.11823/2022, which came to be dismissed as withdrawn on 22.02.2023. The petitioner is once again before this Court on the additional grounds.

4. Learned Senior Counsel for the petitioner has contended mainly on three grounds, that, the co-accused persons were already granted bail by the Co-ordinate Benches of this Court. Subsequent to rejection of the bail petition, the Co-ordinate Bench granted bail to accused No.2 who is having the similar allegation and the other accused persons also were granted bail by the Co-ordinate Benches. Therefore, this petitioner is also entitled for bail on the ground of parity. The second contention taken by the learned Senior Counsel for the petitioner is that the statement of eye witnesses under Section 164 of Cr.P.C. has not stated the specific overt act against the petitioner and none of them have named this petitioner in the FIR and the statement. Therefore, this petitioner is also entitled for bail on this ground. The third contention of the learned Senior Counsel is that the petitioner is in custody for almost more than 3 years and the trial is not yet begun. The trial Court is simply adjourning the matter and the prosecution has not recorded the evidence of the

witnesses. The speedy trial is guaranteed under the Constitution. Therefore, there is delay in trial and hence, he is entitled for bail. Accordingly, prayed for allowing the petition.

5. *Per contra*, learned High Court Government Pleader has seriously objected the petition and contended that this Court has already rejected the bail petition of the petitioner on merits by considering the ground of parity and the other grounds. Therefore, there is no additional ground made out by the petitioner to grant bail. The learned High Court Government Pleader also contended that there were triple murder committed by the accused persons apart from causing the injuries and attempt to commit murder of the complainant and also 4-5 other injured persons. Therefore, prayed for rejecting the petition.

6. Having heard the arguments of learned counsel for the parties, perused the records. On perusal of the records, it reveals that, on 26.05.2020 when the

complainant was near the house, his brother Zakaula came near the house and they were talking each other. The complainant said to be told his brother not to drink any alcohol, etc. Accused No.6, who came there, quarreled with the deceased. Subsequently, accused No.6 went inside the house and telephoned to some persons. Accordingly, around 18 persons came there in a car as well as on the motor cycles and started assaulting the brother of the complainant i.e. Zakaula and when the complainant went there, they also assaulted him and his brother-in-law. Likewise, the accused persons committed the murder of two other persons namely, Kaisar and Idris, apart from causing injuries to C.Ws.2, 9, 10, 11, 12. All of them were shifted to the hospital. The accused ran away from the spot due to the assault. There were 19 persons involved in the crime. Most of the accused persons were arrested and granted bail by the Co-ordinate Benches of this Court.

7. This Court while considering the bail petition of the petitioner in Criminal Petition No.1029/2021 decided

on 08.03.2021 has considered the entire case on merits, including the parity ground urged by the learned Senior Counsel, as per the findings recorded in paragraphs 8, 9 and 10 of the order passed in the aforesaid criminal petition. Of course, in the statement of some of the witnesses under Section 164 of Cr.P.C., the name of the petitioner has not been mentioned, but they have stated that the person came with accused No.2, stabbed Zakaula on the chest, though the other accused also assaulted Zakaula. On perusal of the post mortem report, there were injuries on the chest of the deceased, i.e. injury Nos.3, 4, 5, 6, 7 and 8, all reveal that this petitioner stabbed on the chest of the deceased Zakaula, 4-5 times, which caused his death. Therefore, the arguments of the learned Senior Counsel that there is no multiple injury on the chest, is not correct and not acceptable. The statement of the witnesses under Section 164 of Cr.P.C. especially C.W.10 has categorically stated the name of the petitioner. The other witnesses have stated that the person came with accused No.2, stabbed on the chest of Zakaula.

The investigation officer has stated that the petitioner is the main cause for committing the death of Zakauilla and assaulting the other persons. Therefore, the Co-ordinate Benches have considered these aspects while granting bail to accused No.2. Therefore, this Court considering the order passed by the Co-ordinate Benches, rejected the bail petition of the petitioner on the earlier occasion. Therefore, the contention of the learned Senior Counsel for the petitioner that the petitioner is entitled for bail on the ground of parity and the witness have not identified the accused, cannot be acceptable. Though the learned Senior Counsel for the petitioner has filed the copy of the remand application of the petitioner and others, but the remand application cannot be looked into at this stage as the police have already investigated the matter and filed charge sheet. This Court rejected the bail petition of the petitioner on an earlier occasion on merits. Such being the case, the remand application cannot be considered at this stage.



8. As regards the third ground urged by the learned Senior Counsel for the petitioner is that the trial Court is not conducting the trial in spite of the accused is in custody and simply adjourning the matter even when the witnesses were present and therefore, there was delay in disposal of the case and hence, the petitioner is entitled for bail. In this regard, the learned Senior Counsel has produced the order sheet of the trial Court. On perusal of the order sheet, the accused persons were produced before the Sessions Judge through Video conferencing on 22.10.2020. Thereafter, the matter went on adjourned (the petitioner's counsel has not produced the entire order sheet, but produced only order sheet from 05.12.2022). On perusal of the order sheet dated 05.12.2022, it shows that the accused persons present and some of the accused persons filed an application under Section 227 of Cr.P.C. and the matter went on adjourned, at the request of learned counsel for the accused. Thereafter, the trial Court passed an order on 19.12.2022 by rejecting the application filed by accused No.5 under Section 227 of

Cr.P.C. Thereafter, accused No.6 filed the similar application for discharge, which came to be dismissed on 03.01.2023. Thereafter, the trial Court framed the charges on the same day. Subsequently, on 31.01.2023, summons was issued to C.W.1 and on 01.03.2023, accused were not produced from the judicial custody, the other accused were remained absent and an exemption application was filed, thereafter, the matter was adjourned.

9. On 27.03.2023, accused Nos.1 and 5 were produced, and accused No.6 was absent. An exemption application was filed and it was allowed and one of the accused, filed bail application. Thereafter, on 12.04.2023, the bail application of accused No.5, came to be rejected and posted the matter on 03.05.2023. Accordingly, on 03.05.2023, accused No.2 was absent, accused Nos.1 and 5 were produced from the judicial custody. C.W.1-the complainant and C.W.2 were also present. The learned counsel for the accused ASSR and DKM requested for an

adjournment. Accordingly, the case was adjourned by the trial Court at the request of the learned counsel for the accused on 03.05.2023. Thereafter, on 19.06.2023, again two of accused persons remained absent and notice was issued to some of the accused persons and C.Ws.1 and 2 were present and they were sent back. Again, the learned advocate for the petitioner requested time for conducting the trial. It is also submitted by the learned counsel that, even on 26.7.2023, the case was adjourned to September 2023. The learned counsel has also produced the case status extract which reveals that the trial Court adjourned the matter from 26.07.2023 to 11.09.2023 by issuing summons to C.W.1.

10. On perusal of the submissions made by the learned counsel that due to delay in conducting the trial, the petitioner is entitled for bail, cannot be acceptable, since the petitioner is involved in serious triple murder case and assaulted five persons in causing the grievous injuries, simple injuries and an attempt to commit murder.

The same cannot be taken lightly and grant bail. That apart, the very learned counsel for the accused appearing in the trial Court requested the trial Court to adjourn the matter when C.Ws.1 and 2 were present before the Court for more than two dates. Such being the case, the learned counsel for the accused cannot blow hot and cold, that on one hand, taking adjournments in the trial Court and on the other hand, seeking bail on the ground of delay in the trial and that, cannot be acceptable.

11. It is observed by this Court from the order sheet of the trial Court, that when C.Ws.1 and 2 were present, the trial Court ought not have adjourned the matter on the request of learned counsel for the accused without assigning any reason, which amounts to violation of the mandate under Section 309 of Cr.P.C. This Court wants to draw the attention and to refer the judgment of the Hon'ble Supreme Court in the case of **STATE OF U.P. Vs. SHAMBUNATH SINGH AND OTHERS** reported in **AIR**

**2001 SC 1403**, wherein the Hon'ble Supreme Court at para 11 and 12, has held as under:

*" 11. The first sub-section mandates on the trial courts that the proceedings shall be held expeditiously but the words "as expeditiously as possible" have provided some play at the joints and it is through such play that delay often creeps in the trials. Even so, the next limb of the sub-section sounded for a more vigorous stance to be adopted by the court at a further advanced stage of the trial. That stage is when examination of the witnesses begins. The legislature which diluted the vigour of the mandate contained in the initial limb of the sub-section by using the words "as expeditiously as possible" has chosen to make the requirement for the next stage (when examination of the witnesses has started) to be quite stern. Once the case reaches that stage the statutory command is that such examination "shall be continued from day to day until all the witnesses in attendance have been examined". The solitary exception to the said stringent rule is, if the court finds that adjournment "beyond the following day to be necessary" the same can be granted for which a condition is imposed on the court that reasons for the same should be recorded. Even this dilution has been taken away when witnesses are in attendance before the court. In such situation the court is not given any power to adjourn the case except in the extreme contingency for which the*

*second proviso to sub-section (2) has imposed another condition,*

*"provided further that when witnesses are in attendance, no adjournment or postponement shall be granted, without examining them, except for special reasons to be recorded in writing".*

*(emphasis supplied)*

**12.** *Thus, the legal position is that once examination of witnesses started, the court has to continue the trial from day to day until all witnesses in attendance have been examined (except those whom the party has given up). The court has to record reasons for deviating from the said course. Even that is forbidden when witnesses are present in court, as the requirement then is that the court has to examine them. Only if there are "special reasons", which reasons should find a place in the order for adjournment, that alone can confer jurisdiction on the court to adjourn the case without examination of witnesses who are present in court."*

12. The Hon'ble Supreme Court in the similar situation in the case of **RAJDEV SHARMA (II) Vs. STATE OF BIHAR** reported in **1999(7) SCC 504**, at paragraphs 16, 17, 18 and 19, has held as under:

**"16.** *In Raj Deo Sharma (II) v. State of Bihar this Court pointed out that the trial court cannot be permitted to flout the mandate of Parliament unless the court has very cogent and strong reasons and no court has permission to adjourn examination of witnesses who are in attendance beyond the next working day. A request has been made by this Court to all the High Courts to remind all the trial Judges of the need to comply with Section 309 of the Code. The request is in the following terms: (SCC p. 614, para 14)*

*"14. We request every High Court to remind the trial Judges through a circular of the need to comply with Section 309 of the Code in letter and spirit. We also request the High Court concerned to take note of the conduct of any particular trial Judge who violates the above legislative mandate and to adopt such administrative action against the delinquent judicial officer as the law permits."*

**17.** *We believe, hopefully, that the High Courts would have issued the circular desired by the Apex Court as per the said judgment. If the insistence made by Parliament through Section 309 of the Code can be adhered to by the trial courts there is every chance of the parties cooperating with the courts for achieving the desired objects and it would relieve the agony which witnesses summoned are now suffering on account of their non-examination for days."*

13. The case status produced by the learned Senior Counsel reveals that though C.Ws.1 and 2 were sent back by the trial Court without examining them, but once again, the summons was issued only to C.W.1, which reveals that the trial Court being a Sessions Judge has not fixed the trial as per Chapter XVIII of Cr.P.C. and issued summons to C.W.1 like a warrant trial before the Magistrate. In view of the judgments of the Hon'ble Supreme Court cited supra, it is necessary for this Court to issue a direction to the trial Court to dispose of the case by fixing the trial on day-today basis, without sending back the witnesses. In view of the above observations, the petitioner has not made out a fresh ground for granting bail.

Accordingly, the petition filed by the petitioner-accused No.1 is hereby dismissed.

It is observed by this Court in various cases that learned counsels for the accused are approaching this Court for the grant of bail on the ground that there is delay in conducting the trial by the Sessions Court. And it was



observed by this Court that most of the sessions judges are not conducting the trial with letter and spirit by following the mandate of the Hon'ble Supreme Court and as per Chapter XVIII of Cr.P.C. by conducting the trial on day-today basis by following Section 309 of Cr.P.C.

Therefore, the Registrar Judicial is directed to circulate the copy of this order to all the trial Courts with a direction to conduct the sessions trials on day-today basis by following the procedure prescribed in Chapter XVIII of Cr.P.C.

The Registry shall comply the order and report to this Court.

**Sd/-  
JUDGE**