NC: 2025:KHC:4440
CRL.P No. 13669 of 2024

IN THE HIGH COURT OF KARNATAKA

AT BENGALURU

DATED THIS THE 31ST DAY OF JANUARY, 2025

BEFORE

THE HON'BLE MR JUSTICE S VISHWAJITH SHETTY

CRIMINAL PETITION NO.13669 OF 2024 (439(Cr.PC) / 483(BNSS))

BETWEEN:

SRI YOGESH ACHARYA
S/O SANKRAYYA ACHARYA
AGED ABOUT 54 YEARS,
R/AT. THODABETTU KATPADI,
UDUPI TALUK AND DISTRICT-574105.

...PETITIONER

(BY SRI JAYANTHA POOJARY, ADVOCATE)

AND:

Digitally signed by SHIVAKUMAR HIREMATH
Location: HIGH COURT OF KARNATAKA

STATE OF KARNATAKA
BY CIRCLE INSPECTOR OF POLICE,
KAPU CIRCLE,
UDUPI DISTRICT-574106,
REPRESENTED BY STATE PUBLIC PROSECUTOR,
HIGH COURT OF KARNATAKA,
BANGALORE-560001.

...RESPONDENT

(BY SRI M.R. PATIL, HCGP)

THIS CRL.P IS FILED U/S.439 (FILED U/S.483 BNSS) CR.P.C PRAYING TO ENLARGE THE PETITIONER (ACCUSED NO.1 IN S.C.NO.33/2023) ON THE REGULAR BAIL IN S.C.NO.33/2023 ARISED OUT OF CRIME NO.16/2023 REGISTERED BY THE RESPONDENT KAPU POLICE STATION PENDING ON THE FILE OF THE II ADDITIONAL DISTRICT AND

SESSIONS JUDGE, UDUPI FOR THE OFFENCE PUNISHABLE UNDER SECTIONS 120-B, 201, 302 AND 34 IPC.

THIS PETITION COMING ON FOR ORDERS, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR JUSTICE S VISHWAJITH SHETTY

ORAL ORDER

Accused No.1 in S.C.No.33/2023, pending before the Court of II Additional District and Sessions Judge, Udupi, arising out of Crime No.16/2023, registered by Kapu Police Station, Udupi, for the offences punishable under Sections 120-B, 201, 302 read with Section 34 of IPC, is before this Court under Section 439 of Cr.P.C. seeking regular bail.

2. Heard learned counsel for the parties.

3. FIR in Crime No.16/2023 was registered by Kapu Police Station, Udupi initially for the offences punishable under Sections 302 read with Section 34 of IPC against unknown persons on the basis of the first information dated 05.02.2023 received from Chandrahas Shetty, who is the brother-in-law of deceased Sharath.

The investigation of the case is completed and charge sheet has been filed against eight accused persons. The petitioner herein was arrayed as accused No.1 in the charge sheet. Since the petitioner was absconding, a split up case was registered against him in C.C.No.3590/2023 and thereafter the case as against other accused persons was committed and numbered as S.C.No.33/2023 on 09.11.2023. In the split up case, the petitioner has surrender before the learned Magistrate on 23.05.2024 and thereafter matter was committed to the Sessions Court in S.C.No.29/2024. Subsequently, S.C.No.29/2024 was merged with original S.C.No.33/2023 and the petitioner is now facing trial before the Trial Court in S.C.No.33/2023. The bail application filed by the petitioner before the Trial Court in S.C.No.33/2023 was rejected on 05.12.2024. Therefore, he is before this Court.

4. Learned counsel for the petitioner submits that the allegations against accused Nos.4 and 5 and the

petitioner herein are identical. Accused Nos.4 and 5 have been granted regular bail by this Court in Criminal Petition No.9939/2024. He submits that the petitioner undertakes to cooperate with the Trial Court for the purpose of trial. Accordingly, he prays to allow the petition.

5. Per contra, learned High Court Government Pleader has opposed the petition. He submits that the petitioner was absconding for a considerable period of time and in the event, he is enlarged on bail, he is likely to flee away from justice. Accordingly, he prays to dismiss the petition.

6. Perusal of the material available on record would go to show that the allegation of assaulting deceased Sharath and committing his murder is as against accused Nos.1 and 3 to 5. Undisputedly, the entire case of the prosecution is based on circumstantial evidence. In the charge sheet, it is alleged that accused No.1, who was the friend of deceased Sharath had subsequently developed ill-will against him and thereafter conspired with

other accused persons to commit his murder. In furtherance of the said conspiracy, on 05.02.2023 at about 16.55 hours, deceased Sharath was standing near a building belonging to Vasudeva Shanbhag in front of the land bearing Survey No.42/20 and speaking to the petitioner herein, accused Nos.3 to 5 came there with deadly weapons and allegedly assaulted Sharath. It is alleged that even the petitioner took out a knife and tried to assault Sharath but Sharath tried to snatch the knife from the hand of the petitioner and said knife fell down and at that time, accused No.1/petitioner allegedly caught hold of Sharath from his back and accused Nos.3 to 5 assaulted Sharath with sickle and committed his murder. Accused Nos.4 and 5 have been granted regular bail by this Court in Criminal Petition No.9939/2024. Having regard to the nature of allegations and the charge sheet material found in the present case, this Court has granted bail to accused Nos.4 and 5. So far as petitioner is concerned, it is brought to the notice of this Court that he is involved in another case, which was registered against

him and deceased. IN the said case, he is said to have been released on bail. The apprehension expressed by the learned High Court Government Pleader can be taken care of by imposing appropriate conditions on the petitioner.

7. Under the circumstances, I am of the opinion that petitioner's prayer for grant of regular bail needs to be answered affirmatively. Accordingly, following order is passed:

ORDER

The petition is allowed.

The petitioner/accused No.1 is directed to be enlarged on bail in Crime No.16/2023 of Kapu Police Station, Udupi, registered for the offences punishable under Sections120-B, 201, 302 read with Section 34 of IPC, pending on the file of learned II Additional District and Sessions Judge, Udupi in S.C.No.33/2023, subject to the following conditions:

a) Petitioner shall execute personal bond for a sum of Rs.1,00,000/- with two sureties for the

likesum, to the satisfaction of the jurisdictional Court;

b) Petitioner shall appear regularly on all the dates of hearing before the Trial Court unless the Trial Court exempts his appearance for valid reasons;

c) Petitioner shall not directly or indirectly threaten or tamper with the prosecution witnesses;

d) Petitioner shall not involve in similar offences in future;

e) Petitioner shall not leave the jurisdiction of the Trial Court without permission of the said Court until the case registered against him is disposed off.

Sd/-
(S VISHWAJITH SHETTY)
JUDGE

SRT
List No.: 19 Sl No.: 6
CT:PK