

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 11TH DAY OF FEBRUARY 2013

BEFORE

THE HON'BLE MR.JUSTICE K.N.KESHAVANARAYANA

CRIMINAL PETITION NO.153 OF 2013

c/w

CRIMINAL PETITION NO.399 OF 2013

CRL.P.NO.153/13

BETWEEN:

1. J.R.PRASANNA
D/O D.T.RAJU
AGED ABOUT 35 YEARS
OCC: AGRICULTURIST
R/AT CHEBIKODI VILLAGE
SHANIVARSANTHE HOBLI
SOMWARPET TALUK
KODAGU DISTRICT – 571 236.
2. H.T.NAVEEN
S/O LATE THIMMAIAH
AGED ABOUT 27 YEARS
OCC: AGRICULTURIST
R/AT APASEHATTALLI VILLAGE
SHANIVARASANTHE HOBLI
SOMWARPET TALUK
KODAGU DISTRICT – 571 236.

... PETITIONERS

(BOTH ARE NOW IN JUDICIAL CUSTODY)

[BY SRI.H.S.CHANDRAMOULI FOR SRI.NAGESHA K.A.,
ADVS.,]

AND:

THE STATE OF KARNATAKA
 BY THE POLICE OF
 SOMAWARPET POLICE STATION
 KODAGU DISTRICT – 571 236.

...RESPONDENT

[BY SRI.G.M.SRINIVASA REDDY, HCGP]

THIS CRIMINAL PETITION IS FILED UNDER SECTION
 439 OF THE CR.P.C. WITH A PRAYER TO ENLARGE THE
 PETITIONERS ON BAIL IN CR.NO.151/2012 OF SOMWARPET
 P.S., KODAGU FOR THE OFFENCE PUNISHABLE UNDER
 SECTIONS 302 R/W 34 OF IPC.

CRL.P.NO.399/13**BETWEEN:**

N.GANESH
 S/O NARASIMHAIAH
 AGED ABOUT 31 YEARS
 OCC: AGRICULTURIST
 R/AT GUNDOORAO EXTENSION
 SHANIVARASANTHE
 SOMWARPET TALUK
 KODAGU DISTRICT – 571 236
 (NOW IN JUDICIAL CUSTODY)

... PETITIONER

[BY SRI.H.S.CHANDRAMOULI FOR SRI.CHANDRASHEKARA,
 ADVS.,]

AND:

THE STATE OF KARNATAKA
 BY THE POLICE OF
 SOMAWARPET POLICE STATION
 KODAGU DISTRICT – 571 236.

...RESPONDENT

[BY SRI.G.M.SRINIVASA REDDY, HCGP]

THIS CRIMINAL PETITION IS FILED UNDER SECTION 439 OF THE CR.P.C. WITH A PRAYER TO ENLARGE THE PETITIONER ON BAIL IN CR.NO.151/2012 OF SOMWARPET P.S., KODAGU, WHICH IS REGISTERED FOR THE OFFENCE PUNISHABLE UNDER SECTIONS 302 R/W 34 OF IPC.

THESE CRIMINAL PETITIONS COMING FOR ORDERS ON THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

Petitioners 1 and 2 in Crl.P.No.153/13 have been arraigned as accused Nos.3 and 4 while petitioner in Crl.P.No.399/13 has been arraigned as accused No.2 in C.C.No.151/12 on the file of Civil Judge (Jr. Dn.), JMFC, Somwarpet registered for the offences punishable under Sections 302 r/w 34 of Indian Penal Code. The petitioners in these two petitions filed under Section 439 of Code of Criminal Procedure have sought for an order to enlarge them on bail in connection with the aforesaid case.

2. According to the case of the prosecution CW10-Girish H.K., resident of Honavali village, Somwarpet Taluk lodged a report at about 7.30 p.m. on 8.9.2012 based on which case came to be registered in crime No.151/12

against unknown persons and investigation was taken up. In the said report it was inter alia alleged that at 6.50 p.m. on 8.9.12 when the complainant was in his house he heard a banging sound on the road in front of his house and immediately when he came out of his house he saw four persons after alighting from Maruthi Van assaulting another on the road and on seeing this when he went close to the place of incident, the four assailants boarded a silver colour Maruthi Omni Van and started to proceed. At that time he also saw a person lying in pool of blood and the Motor Cycle bearing registration No.KA09 N 5344 was also found lying. The person lying with injury was found dead. At that juncture CW11-Sudeep and CW12-Girish who were near a shop close by, on hearing the scream of CW1 came there and they noticed the registration No. of the Motor Vehicle, in which the assailants were proceeding. The Motor Vehicle was bearing registration No.KA 12 P 1527. Immediately CW1 telephoned the police about the incident and thereafter the dead body was shifted to the hospital and subjected to

post mortem examination. The Doctor who conducted post mortem examination opined that the death was due to hemorrhagic shock / cardio pulmonary arrest as a result of extradural hemorrhage i.e., head injury.

3. During investigation, on suspicion these petitioners along with accused No.1-Jayappa were apprehended on 10.09.12. During interrogation, the accused persons said to have confessed to the crime. Thereafter, petitioners were subjected to judicial custody. On completion of investigation, charge sheet came to be filed. The application filed by the petitioners for grant of bail before the learned Sessions Judge came to be rejected. Therefore, they are before this Court. It is now reported that the matter has already been committed to the Court of Sessions.

4. The petition is opposed by respondent-State.

5. I have heard both the sides and perused the records made available.

6. According to the allegations made in the charge sheet there was a ill will between the deceased Manjunath and accused No.1-Jayappa on the ground that the deceased even after having married the first sister of accused No.1, he brought the second sister-Hemavathi from her matrimonial home and made her to stay with him. In that background, accused No.1 wanted to eliminate the deceased. Further for that purpose he took services of accused Nos.2 to 4 and on the fateful day all the four persons said to have followed the deceased in the car while he was proceeding on a motor cycle and at the place of the incident all the accused got down from the Van, accused Nos.2 to 4 held the deceased and accused No.1 assaulted with the wooden reaper on the head and thereby killed him. Thus, according to the case of the prosecution the motive and ill will attributed was against accused No.1. Even according to the complaint allegations the assailants who had committed the act of murder were not known to CW1. Though CW11 and CW12 in their statement during investigation have stated

that when they saw the assailants going in the car they were found to be persons having acquaintance. However, the names of the assailants were not disclosed by them to CW1, though the registration number of the Van was disclosed. The alleged identification of these petitioners as assailants was stated to be in the police station. No test identification as required by law has been conducted. Even according to the overt acts attributed against these petitioners in the charge sheet, these petitioners said to have held the deceased while accused No.1 said to have inflicted the fatal blow.

7. Having regard to the facts and circumstances of the case at this stage, I am of the considered opinion that there are no reasonable grounds to indicate that the petitioners are responsible for the homicidal death of the deceased. The petitioners have been in judicial custody since 11.9.12. They are stated to be the permanent residents of Somwarpet Taluk. Therefore, there is no likelihood of petitioners fleeing away from justice. The

investigation is already over and charge sheet has been filed. Therefore, there is no likelihood of the petitioners tampering the prosecution evidences. Therefore, the petitioners are entitled to be enlarged on bail.

8. Hence, the petitions are **allowed**. Petitioners are ordered to be released on bail in connection with case in Crime No.151/2012 of Somwarpet police on each of them executing personal bonds for Rs.1,00,000/- (Rupees One Lakh Only) with two sureties for the like sum to the satisfaction of the learned Sessions Judge and subject to further conditions that,

- i) They shall not tamper or terrorise with the prosecution witnesses in any manner.
- ii) They shall not indulge in any acts similar to the one alleged in the case.
- iii) They shall appear on all hearing dates before the trial Court without fail.

- iv) They shall not leave the jurisdiction of the Court of Sessions without express permission thereof.
- v) They shall mark his attendance in the respondent – Police Station, on every 20th of each calendar month till the disposal of the case

SD/-
JUDGE

SS*