

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 3<sup>RD</sup> DAY OF FEBRUARY, 2022

BEFORE

THE HON'BLE MR. JUSTICE H.P. SANDESH

CRIMINAL PETITION NO.7372/2021

BETWEEN:

SHIVANNA @ KAPPE SHIVA  
S/O NANJAPPA  
AGED ABOUT 43 YEARS  
RESIDING AT NO.05, 3<sup>RD</sup> CROSS  
2<sup>ND</sup> MAIN, VIJAY GALAXY APARTMENT  
RUSHBAVATHI NAGAR  
KAMAKSHIPALYA  
BENGALURU-560 079.

... PETITIONER

(BY SRI VEERANNA G. TIGADI, ADVOCATE)

AND:

STATE OF KARNATAKA  
BY KAMAKSHIPALYA POLICE STATION  
BENGALURU-560 079  
REP. BY STATE PUBLIC PROSECUTOR  
HIGH COURT OF KARNATAKA  
BENGALURU-560 001.

... RESPONDENT

(BY SRI KRISHNA KUMAR K.K, HCGP)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 439 OF CR.P.C PRAYING TO ENLARGE THE PETITIONER ON BAIL IN CR.NO.194/2021 OF KAMAKSHIPALYA POLICE STATION, BENGALURU CITY, FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 143, 147, 148, 341, 323, 324, 325, 307 R/W. SECTION 149 OF IPC.

THIS CRIMINAL PETITION COMING ON FOR ORDERS '**THROUGH VIDEO CONFERENCE**' THIS DAY, THE COURT MADE THE FOLLOWING:

**ORDER**

This petition is filed under Section 439 of Cr.P.C., seeking regular bail of the petitioner/accused No.5 in Crime No.194/2021 of Kamakshipalya Police Station, Bengaluru City, for the offences punishable under Sections 143, 147, 148, 341, 323, 324, 307, 302 read with Section 149 of IPC.

2. Heard the learned counsel appearing for the petitioner and the learned High Court Government Pleader appearing for the respondent/ State.

3. The factual matrix of the case of the prosecution is that on 18.07.2021, an incident was taken place in the Wine Shop at 5 p.m. The injured succumbed to the injuries on 05.08.2021 due to COMA as a result of head injury. At the first instance, a case has been registered against the unknown persons. Thereafter, when this petitioner went and surrendered

on 12.08.2021, he has been in custody. The police have investigated the matter and filed the charge-sheet.

4. The learned counsel appearing for the petitioner would submit that this petitioner has been arraigned as accused No.5. At the first instance, a case has been registered against the unknown persons and the alleged incident was taken place on 18.07.2021 and he died on 05.08.2021. There was no any pre-medication. It is the case of the prosecution that it is an incident of sudden provocation and though the prosecution relies upon the eyewitnesses – CWs.11 to 16, an allegation against this petitioner is that he assaulted with his hands.

5. The learned counsel also brought to the notice of this Court the post-mortem report, wherein, the opinion given as "Death is due to COMA as a result of head injury" and mainly there was a head injury. The allegation of the prosecution is that all the 7 accused persons have assaulted and no corresponding injuries except the injuries viz., fracture of mandible and an injury near the left eye. Hence, the Court has to take note of these aspects into consideration. The learned

counsel also would submit that when there is no pre-medication and also there was no any earlier motive, at the most attracts under Section 304 Part II and not 302 of IPC. Hence, this Court has to enlarge the petitioner on bail since the investigation has been completed.

6. Per contra, the learned High Court Government Pleader appearing for the State would submit that there are eyewitnesses to the incident. CWs.11 to 16 have made the statement before the Investigating Officer that they have witnessed the incident since they were having acquaintance with the accused persons and also the victim.

7. The learned High Court Government Pleader also would submit that CW.14 gave the statement before the learned Magistrate under Section 164 of Cr.P.C. Apart from that, CW.1, is the injured eyewitness to the incident and there are direct eyewitnesses and the cause of death is very clear that due to COMA as a result of head injury, he was succumbed to the injuries. Hence, there is a prima facie against the petitioner herein.

8. Having heard the respective counsel and on perusal of the material available on record, it is not in dispute that the direct witnesses – CWs.11 to 16 are the eyewitnesses to the incident. It is also not in dispute that CW.1 also had sustained the injury in the incident and also the prosecution invoked the offence under Section 307 of IPC apart from that Section 302 of IPC.

9. The main contention of the learned counsel for the petitioner is that the Court has to take note of the injuries found in the post-mortem report. Having perused the post-mortem report, wherein, it is mentioned that vertical fracture of mandible present over lower lateral incisor on right side. Apart from that, fractured bone end shows extended extravasations. MRI BRAIN PLAIN – MOIL shown facial injuries. Having taken note of the injuries insofar as the cause of death is concerned, it is clear that the death is due to COMA, as a result of head injury. When the eyewitnesses speak with regard to the very presence of this petitioner and assaulted along with other accused persons and no doubt only an allegation against accused No.1 is that he

inflicted injuries with the Chair on the head. But the Court has to take note of the involvement of this petitioner, who is a part of the unlawful assembly and this Court cannot segregate the evidence available on record.

10. This Court would like to rely upon the judgment of the Apex Court in the case of ***Kumer Singh v. State of Rajasthan and another*** reported in ***2021 CrI.L.J. 4244***, wherein, in paragraph No.14, the Apex Court while setting aside the bail order granted by the High Court categorically held that it is required to be noted that all the accused are charged for the offences punishable under Sections 302 and 307 read with Section 149 of IPC. At this stage, the individual role of the accused is not required to be considered when they are alleged to have been the part of the unlawful assembly.

11. When such being the principles laid down by the Apex Court, wherein, categorically held that more particularly when they are charged for the offences punishable under Sections 302 and 307 read with Section 149 of IPC as well as

Sections 147 and 148 of IPC and not a case for granting bail. The Apex Court even held that, the bail granted by the Trial Court is against the principles settled and not taken note of the nature of allegations and gravity of the offences and the role attributed to the accused. In the case on hand also, though he has not inflicted the injury with any weapon, the specific allegations are made against all the accused persons that all of them have shared the common object and mercilessly assaulted by all. When such being the factual aspects, it is not a fit case to enlarge the petitioner on bail.

12. In view of the discussions made above, I pass the following:

ORDER

The bail petition is rejected.

**Sd/-  
JUDGE**

cp\*