

IN THE HIGH COURT OF KARNATAKA

KALABURAGI BENCH

DATED THIS THE 3RD DAY OF SEPTEMBER, 2020

BEFORE

THE HON'BLE MR. JUSTICE K. NATARAJAN

CRIMINAL PETITION NO.200564 OF 2020

BETWEEN:

1. AMRUTH
S/O. LAXMAN POLICE PATIL,
AGED ABOUT 45 YEARS,
OCC: DRIVER & AGRICULTURIST,
RESIDENT OF KAALNOOR VILLAGE,
KALABURAGI TALUK AND DISTRICT.
2. BASAVARAJ
S/O. REVANSIDDAPPA KADBUR,
AGED ABOUT 25 YEARS,
OCC: COOLIE,
RESIDENT OF KAALNOOR VILLAGE,
KALABURAGI TALUK AND DISTRICT.

... PETITIONERS

(BY SRI AVINASH A. UPLAONKAR, ADV.)

AND:

THE STATE
THROUGH MAHAGOAN POLICE STATION,
KALABURAGI DISTRICT,
NOW REPRESENTED BY
ADDL. S.P.P., HIGH COURT OF KARNATAKA,
KALABURAGI BENCH-585 107.

... RESPONDENT

(BY SRI MALLIKARJUN SAHUKAR, H.C.G.P.)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 439 OF THE CR.P.C. PRAYING TO RELEASE THE PETITIONERS ON BAIL IN CRIME NO.16 OF 2019 (SESSIONS CASE NO.223 OF 2019) OF MAHAGOAN POLICE STATION, KALABURAGI DISTRICT, FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 120(B), 302 AND 201 READ WITH SECTION 34 OF THE IPC, PENDING BEFORE THE III ADDITIONAL DISTRICT AND SESSIONS JUDGE AT KALABURAGI.

THIS CRIMINAL PETITION IS BEING RESERVED FOR ORDERS ON 26-8-2020 AND COMING ON FOR PRONOUNCEMENT THROUGH VIDEO CONFERENCING, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

ORDER

The petitioners-accused Nos.1 and 3 have filed this petition under Section 439 of the Cr.P.C. for granting bail in Crime No.16 of 2019 (Sessions Case No.223 of 2019) registered by Mahagoan Police Station, Kalaburagi District, for the offences punishable under Sections 302 and 201 of the Indian Penal Code (for short, 'the IPC') on the file of the III Additional District and Sessions Judge, Kalaburagi.

2. Heard Sri Avinash A. Uplaonkar, learned counsel appearing for the petitioners and Sri Mallikarjun Sahukar, learned High Court Government Pleader appearing for the respondent-State.

3. The case of the prosecution is that, on 14-3-2019 at about 8:00 a.m., one Tippanna had gone for fishing at Bennetora Dam, he saw a dead body of a man without head floating in the water, he suspected that somebody has committed the murder and thrown the dead body. On the basis of complaint, the respondent-Police registered a case against unknown person for the offences punishable under Sections 302 and 201 of the IPC. During investigation, the respondent-Police arrested accused No.1 and recorded the voluntary statement. It is revealed that these petitioners along with accused No.2 have committed the murder of Sharanabasappa

Doddamani (hereinafter referred to as 'deceased') by severing his head on the background of illicit relationship between the deceased and accused No.2 and thrown the dead body into Bennetora Dam. Petitioners were arrested on 17-3-2019. Since then, they are in judicial custody. Petitioners have moved for bail before the III Additional District and Sessions Judge, Kalaburagi, which came to be rejected. Later, they moved bail petition in Criminal Petition No.200112 of 2020, which was dismissed as withdrawn. Hence, they have filed this successive bail petition.

4. Learned counsel for the petitioners has contended that the case was registered against unknown person and the dead body was subjected to Post-Mortem examination only on the inquest report submitted by the Police. The entire case rests upon circumstantial evidence. There is no eyewitness to the incident. Motive

is relied by the prosecution based upon the confessional statement of accused No.1. Identity of the deceased is yet to be established as the D.N.A. test report is yet to be received. The D.N.A. test report with regard to identification of the deceased is inconclusive. Statements of C.Ws.24 and 25 are pertaining to extra-judicial confession made by petitioner No.1, which has no evidential value and is weak piece of evidence. The same has to be tested only after full fledged trial. At this stage, there is no cogent material to show that these petitioners have committed the murder of the deceased. Investigation has been completed and charge-sheet has been filed. Petitioners are in custody for more than one and half-a-year. Due to COVID-19, the health of the petitioners is likely to be affected. Keeping the petitioners in jail is pre-trial detention. Petitioners are ready to abide

by any condition imposed by this Court. Hence, he prayed for allowing the petition.

5. Per contra, the learned High Court Government Pleader has objected the bail petition and contended that though there is no eyewitness to the incident, but there are circumstantial evidence, which shows the commission of the murder by the petitioners by severing the head of the deceased on the background of illicit intimacy between the wife of petitioner No.1, i.e. accused No.2 and the deceased. Petitioner Nos.1 and 3 called the deceased through the mobile phone of accused No.2 to the banana plantation. When the deceased came to the banana plantation, petitioner No.1 held the legs of the deceased tightly, accused No.2 caught hold the hands of the deceased, petitioner No.3 sat on the chest of the deceased and cut the neck of the deceased with knife and thereby, they committed the murder of the deceased. After

severing the head, they bundled it and in order to destroy the evidence, they have thrown the dead body into Bennetora Dam. Statements of C.Ws.24 and 25, before whom petitioner No.1 made extra-judicial confession, and on the basis of voluntary statement, the knife and other incriminating material were recovered by the Police with the help of the panchas, which clearly goes to show the involvement of the petitioners in commission of the murder of the deceased. The offences are heinous one. If they are granted bail, there is likelihood of committing similar offence, tampering and threatening the prosecution witnesses. Merely, the petitioners are in custody for one and half-a-year that itself is not a ground to release them on bail. The offences are punishable with death or imprisonment for life. Hence, he prayed for rejecting the petition.

6. Upon hearing the arguments and on perusal of the charge-sheet material, it reveals that the respondent-Police registered a case against unknown person on the basis of complaint of one Tippanna that when he had gone for fishing at Bennetora Dam, he saw a dead body of a man without head floating in the water. Admittedly, the head of the dead body was not traced. Subsequently, the wife and children of the deceased have identified the dead body of the deceased as Sharanabasappa Doddamani. After arrest of petitioner No.1 and based upon his voluntary statement, it is revealed that due to previous enmity between him and the deceased on the background that the deceased had intimacy with accused No.2, who is the wife of petitioner No.1 and on the day prior to incident, the deceased said to have misbehaved with accused No.2. Therefore, petitioner Nos.1 and 3 conspired and took him to the banana plantation and committed murder. They

removed the head and thrown the body to the Bennetora Dam. Thereby, they have caused the disappearance of the evidence. Fortunately, petitioner No.1 is said to have been made extra-judicial confession before C.W.24 and based upon his voluntary statement, weapon used for commission of the murder and other incriminating material have been recovered by the Police, which goes to show that there is *prima-facie* case made out against the petitioners to show their involvement in commission of the murder of the deceased and destroying the evidence by removing the head from the body and still, the head is not traced out by the Police. D.N.A. test for confirmation of identification of the deceased is yet to be received. However, the family members, the wife and relatives have identified the body, which clearly goes to show that the involvement of the petitioners in the crime. No doubt, extra-judicial confession may be weak piece of evidence,

which is required to be proved through full fledged trial. There is no eyewitness to the incident, but that itself cannot be said that there is no evidential value in respect of recovery of weapon and belongings of the deceased at the instance of the accused. The alleged offences are heinous one. They have committed barbaric murder by severing the head from the body and caused disappearance of the evidence to screen the offence. Therefore, merely the petitioners are in custody for more than one and half-a-year and the trial may likely to be delayed due to COVID-19 that itself is not a ground to release the petitioners on bail. The alleged offences are punishable with death or imprisonment for life. If the petitioners are granted bail, there is every possibility of threatening and tampering with the prosecution witnesses. Therefore, considering the facts and circumstances of the case, I do not find any merit in the

arguments addressed by the learned counsel for the petitioners for extending the discretionary relief of bail to the petitioners. Hence, the petition filed by petitioners No.1 and 3 is liable to be dismissed.

Accordingly, the petition is ***dismissed***.

**Sd/-
JUDGE**

kvk