

IN THE HIGH COURT OF KARNATAKA

CIRCUIT BENCH AT GULBARGA

DATED THIS THE 22ND DAY OF JANUARY 2009

BEFORE

THE HON'BLE MR.JUSTICE ASHOK B. HINCHIGERI

CRIMINAL PETITION No.8833 of 2008

BETWEEN:

1. Syed Yousuf
S/o Syed Molnuddin
Aged about 23 years
Occ:
R/o Beerli (B)
Rajiv Gandhinagar, Borabanda
Hyderabad
2. Syed Chotu Miyan
S/o Syed Molnuddin
Aged about 22 years
Occ:
R/o Beerli (B)
Rajiv Gandhinagar, Borabanda
Hyderabad

...PETITIONERS

(By Smt. Manjula N. Tejaswi, Advocate)

AND:

The State of Karnataka
Represented by Bagdal Police Station
Bidar

...RESPONDENT

(By Sri Sharanabassappa K Babshetty, HCGP)

This Criminal Petition is filed under Section 438 of the Code of Criminal Procedure by the advocate for the petitioners praying to release them on bail in the event of their arrest in Cr. No.47 of 2005 of Bagdal Police Station, District: Bidar which is registered for the offences punishable under Section 323, 302, 504 read with Section 34 of the IPC.

This Criminal Petition coming on for orders this day, court made the following:

ORDER

The respondent registered Crime No.47 of 2005 for the offences punishable under Sections 323, 302, 504 read with Section 34 of the Indian Penal Code.

2. It is the case of the prosecution that four accused persons committed the murder of one Syed Moinuddin. The accused No.1 and 2 were taken into judicial custody. Accused No.3 and 4 (petitioners herein) could not be arrested. Therefore, the split up charge sheet came to be filed. On trial, accused No.1 and 2 came to be acquitted. Now, when the petitioners are about to be arrested, they have sought the relief of anticipatory bail.

3. Smt. Manjula N. Tejaswi, the learned counsel appearing for the petitioners submits that as the accused No.1 and 2 are already acquitted on merits, there is not even a remote possibility of securing the conviction of the petitioners, because the allegations are the same

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against all the four accused and the witnesses are also the same. She further submits that absolutely no overt acts are attributed to the petitioners. She submits that for the reasons best known to themselves, the police have not arrested the petitioners, although they have been residing in Hyderabad, where they have their firm roots.

4. Sri Sharanabassappa K. Babshetty, the learned Government Pleader appearing for the respondent submits that the petitioners have been absconding from 2005. He further submits that the investigation is complete and the charge sheet is filed. He brings to my notice that Anilikumar (CW.6) and Sunil (CW.7), the eyewitnesses have stated that the petitioners have given the blow with their fist on the stomach of the deceased.

5. The power under Section 438 of the Code of Criminal Procedure is exercisable only in the rarest of the rare cases, where a person is being falsely implicated and where he is not likely to misuse his liberty.

6. I do not see any extraordinary circumstances for the grant of anticipatory bail. Just because the accused No.1 and 2 are acquitted, it does not mean that the accused No.3 and 4 (petitioners herein) are

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to be given the relief of anticipatory bail. Going by the investigation report and the eyewitness account, I have no hesitation in dismissing this petition for anticipatory bail.

7. However, I expressly reserve the liberty to the petitioners to move the jurisdictional Court for the grant of regular bail on surrendering themselves. The jurisdictional Court shall take into account the acquittal of the accused No.1 and 2 while considering the petitioners' anticipated application for the grant of bail. Further the jurisdictional Court is also directed to dispose of the petitioners' application for the grant of regular bail as expeditiously as possible and preferably on the same day, subject to the Prosecutor filing the objections.

**Sd/-
JUDGE**

Inn