

**IN THE HIGH COURT OF KARNATAKA
KALABURAGI BENCH
DATED THIS THE 12TH DAY OF AUGUST, 2022
BEFORE
THE HON'BLE MR. JUSTICE P.N.DESAI
CRIMINAL PETITION NO.200914/2022**

BETWEEN:

SHESHARAO PAWAR S/O SHANKAR RAO PAWAR
AGE: 43 YEARS OCC: PANIPURI VENDOR
R/O: SIDDHARTH NAGAR, BHALKI TQ: BHALKI
DIST: BIDAR-585 328

...PETITIONER

(BY SRI.ANIL KUMAR NAVADAGI, ADVOCATE)

AND:

THE STATE THROUGH
BHALKI TOWN POLICE STATION
TQ: BHALKI DIST: BIDAR
BY THE ADDL. SPP
HIGH COURT OF KARNATAKA,
KALABURAGI BENCH-585 103.

...RESPONDENT

(BY SRI. GURURAJ V. HASILKAR, HCGP)

THIS CRIMINAL PETITION FILED UNDER SECTION 439 OF CR.P.C., PRAYING TO ALLOW THE PETITION AND ENLARGE THE PETITIONER ON BAIL IN CRIME NO.5/2022 OF BHALKI TOWN P.S. OF DIST: BIDAR, WHICH IS NOW PENDING ON THE FILE OF PRL. DIST. AND SESSIONS JUDGE, BIDAR IN S.C.NO.58/2022 REGISTERED FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 506, 302 AND 324 READ WITH SECTION OF IPC AND SECTION 3 OF CHILD LABOUR (PROHIBITION AND REGULATION) AMENDMENT ACT, 2016.

THIS PETITION COMNG ON FOR ORDERS THIS DAY, THE COURT PASSED THE FOLLOWING:.

ORDER

This petition is filed under Section 439 of the Code of Criminal Procedure, 1973 ('Cr.P.C.' for short), seeking to enlarge the petitioner, who is arraigned as accused No.1, on bail in Crime No.5/2022 of Bhalki Town Police Station Dist: Bidar, registered for the offences punishable under Sections 506, 302 and 324 read with Section 34 of Indian Penal Code ('IPC' for short) and Section 3 of the Child Labour (Prohibition and Regulation) Amendment Act, 2016, on the file of Prl. District and Sessions Judge, Bidar in S.C.No.58/2022.

02. It is the case of the prosecution that FIR came to be registered on the basis of complaint lodged by father of the deceased - Rahul stating that he has got four children. When they went for coolie work, they had left their two children Rahul who was aged about 12 years and Ajay who was aged about 10 years, in the house of the petitioner who happened to be the relative of the complainant. It is further alleged that on 15.01.2022, when informant was at Buichnalli, he received a phone call from the petitioner stating that his son - Rahul is not well. Accordingly,

complainant came to Government Hospital, at Bhalki and found that there was a head injury and other injuries on the body of his son - Rahul and he was unconscious. When injured was taken for treatment to Aland, Hospital on the way, the said Rahul succumbed to the injuries. The petitioner ran-away from the spot. Then, the complainant lodged a complaint. It is also informed that this petitioner and his family members assaulted the deceased and his brother and threaten to take away the life of the deceased - Rahul. Thereafter, this petitioner is arrested 17.01.2022. His bail petition was rejected by the Sessions Court. Hence, the petitioner has filed this petition.

03. Heard Sri.Anilkumar Navadagi, learned counsel for the petitioner and Sri.Gururaj V. Hasilkar, the learned High Court Government Pleader for the respondent.

04. Learned counsel for the petitioner argued that already the wife of the petitioner was released on bail. The petitioner is falsely implicated in this case, as the first informant is due a sum of Rs.40,000/-. Just to dupe that amount a false case has been filed. There is no material to

show that the petitioner ill-treated the deceased – Rahul or his brother. The investigation is already completed and the charge sheet is also filed. The petitioner is not required for investigation. The petitioner is having wife and children. He is the only earning member of the family. The petitioner is permanent resident of Bhalki Town and having roots in the society. The petitioner is ready to abide by any conditions that may be imposed by this Court and ready to offer surety. Hence, learned counsel for the petitioner prays to allow the petition.

05. Against this, the learned High Court Government Pleader argued that the postmortem report shows that the cause of death is due to intracranial bleed that is sub arachnoid hemorrhage. The doctor also opined that injuries could be caused by the heinous weapon in the case. The postmortem report reveals that there are as many as 24 injuries on the body of the deceased. There is another eyewitness who is none-other-than the brother of the deceased, who is also minor. He has also sustained injuries. As per the wound certificate, he had suffered as many as 07 injuries. There is also statement of witness that they have

seen this petitioner who has kept these two children in his panipuri shop and ill-treating and assaulting them for not working properly. So, this act of the petitioner is heinous one by assaulting brutally the minor children and it has resulted in unfortunate death of the deceased. Hence, the learned High Court Government Pleader prays to reject the petition.

06. I have perused the petition averments, charge sheet, postmortem and doctor opinion which is produced before the Court today. According to the FIR, it shows that the petitioner himself informed about admitting the deceased to the Hospital. He is also stated to be a relative of the first informant. In the FIR, it is stated that these two children were left in the house of the first informant. Subsequently, the police report shows that as the first informant was due a sum of Rs.40,000/-, this petitioner brought his two children. Out of four children and made them to work in his panipuri shop. Their parents are away from the said place. The allegation is that this petitioner and family members used to assault their children for not doing work properly. The postmortem report shows there are as many as 24 injuries on deceased which are as under:-

1. Bone deep laceration present overhead of size 1 x 2 cm. fresh wound,
2. Contusion of size 1 x 3 cm. under right eye,
3. Contusion of size 5 x 1 cm. under left eye,
4. Abrasion of size 0.5 x 1 cm. on root of nose.
5. Abrasion of size 0.5 x 0.5 cm. left ala of nose,
6. contusion of size 0.5 x 1 cm. on anterior chest wall around sternum,
7. Multiple contusions of various sizes around 1 x 2 cm. 12 in number on right Arm around right shoulder,
8. Contusions of various sizes around 1 x 1 cm. on left arm around left shoulder 6 in number,
9. Contusion of size 3 x 6 cm. on right forearm,
10. Contusion of size 2 x 2 cm. on right elbow,
11. Contusion of size 7 x 5 cm. on left elbow, swelling around elbow,
12. Contusion of size 0.5 x 0.5 cm. on left forearm,
13. Abrasion of size 0.1. x 0.1 cm. on left forearm,
14. Contusion of 2 x 3 cm. on left dorsum of hand,
15. Scar mark around and umbilicus,
16. Contusion of size 3 x 2 cm. on right flank,
17. Contusion of 10 x 9 cm. on right thigh,
18. Multiple contusions of various sizes around 1 x 1 cm. on left thigh,
19. Contusion of size 2 x 1 cm. below left knee,
20. Abrasion of size 1 x 0.5 cm. on left knee,
21. Contusion of size 3 x 2 cm. on left leg antously,
22. Multiple sizes around 0.5 x 0.5 cm. on right Shin of tibia and around the shin of tibia,
23. Contusion of size 2 x 2 cm. below right knee and
24. Contusion of size 3 x 2 cm on dorsum of right foot.

07. The brother of deceased by name Ajay who is eyewitness to incident has stated that himself and the deceased – Rahul were assaulted by the petitioner and his family members in the morning on the said day. The said Ajay was also taken to hospital and he has also sustained as many as 07 injuries as under:-

- 1. Left eye blackening under left eye. Age of injury is less than a day,*
- 2. Swelling at right wrist, right elbow and swelling at left elbow and left writ. Age of injury is less than 1 day,*
- 3. Scar marks on right thigh and abdomen. Age of injury more than 01,*
- 4. Contusion on right angle of mouth. Age of injury less than 14 hours,*
- 5. Multiple scar marks on left thigh. Age of Injury more than 01 week,*
- 6. Scar mark on left side of Abdomen. Age of Injury more than 01 week,*
- 7. 07. Abrasion of size 0.1. x 1.00 cm on left side of nale and fresh wound. Age of injury less than 01 days.*

08. The facts and circumstances and materials placed before the Court, at this stage show that these two children were in custody of the petitioner. Whether they are left voluntarily or the petitioner kept them for return of the money from first informant, it is matter of trial. There is also statement of eyewitness to show that this petitioner and family members are used to ill-treat and assault the children for not doing work properly. Therefore, the death of the deceased is due to the injury sustained. Therefore, eyewitness to the incident is the child witness. It is also stated that they are relatives of petitioner. If the petitioner is released on bail, there is definitely possibility that the petitioner bringing pressure or trying to threaten eyewitness to the incident. The apprehension of the prosecution in this regard also cannot be ruled out. On the other hand, simply because the wife of petitioner was released on bail, is not a ground to enlarge this petitioner on bail. Because according to the witnesses statement, the petitioner assaulted the deceased with a club and there are number of injuries totally in 24, which itself shows that very serious and brutal nature of assault and causing injuries all over the body. The

deceased was very small child of 12 years age and it is very unfortunate that the said child met with such a situation and died due to the said injuries. Therefore, at this stage there is prima-facie material to show that the petitioner is involved in the offence as alleged against him.

09. It is settled principle of law that bail is a rule and rejection is an exception. While granting or rejecting the bail application, the Court will have to take into consideration,

- (1) *the nature and seriousness of the offence;*
- (2) *character of the accused;*
- (3) *circumstances which are peculiar to accused;*
- (4) *reasonable probabilities of presence of the accused not being secured at trial;*
- (5) *reasonable apprehension of witnesses being tampered with; and*
- (6) *larger interest of public or the state and similar other considerations, which arise when a Court is asked to admit the accused to bail in a non-bailable offence.*

10. In the light of these principles, the present materials are considered, then it is evident that such a incident shocks the conscience of the society at large and create a fear and panic in the mind of public. It has got large impact on the public. Looking into the age of the victim and nature of injuries and the manner in which the alleged incident took place, the role of this petitioner, considering the statement of other witnesses and the eyewitness, in my considered view, the petition deserves to be dismissed. Accordingly, I pass the following;

ORDER

The criminal petition filed under Section 439 of Cr.P.C. is dismissed.

**Sd/-
JUDGE**

KJJ