

IN THE HIGH COURT OF KARNATAKA  
KALABURAGI BENCH  
DATED THIS THE 13<sup>th</sup> DAY OF JANUARY 2015  
BEFORE  
THE HON'BLE MR. JUSTICE K.N.PHANEENDRA  
**CRIMINAL PETITION No. 200923/2014**

**Between:**

Basawaraja Gowda  
S/o Revansiddappa Gowda Police Patil  
Aged about 54 years,  
Occ: Agriculturist , Kukanore village,  
Jewargi Taluka, Gulbarga District.

**... Petitioner**

**(By Sri. G.G.Chagashetti Advocate)**

**And:**

State of Karnataka  
By the Police of  
Yedrami Police Station,  
Gulbarga District 585 325.

**... Respondent**

**(By Sri. S.S.Aspalli H.C.GP.)**

This Criminal Petition is filed under Section 439 of Cr.P.C. by the Advocate for the petitioner praying that this Hon'ble Court may be pleased to pass an order, enlarging the petitioner on bail who has been arrayed as accused No.1 and arrested in Crime No.170/2013 of Yedrami police station and charge sheeted, which is registered for the offences punishable U/Sec. 341, 302 R/w Sec.34 of Indian Penal Code and 25 & 27 of Arms Act 1959.

This petition coming on for Orders this day, the Court made the following:

**ORDER**

Yedrami police have investigated the crime against the petitioner and others and laid charge sheet for the offences punishable U/Sec.341, 302 R/w Sec.34 of Indian Penal Code and also U/Sec.25, 27 of Indian Arms Act, 1959.

2. The brief factual matrix emanate from the charge sheet papers are that, accused No.1 (petitioner herein) was running a Fair Price Depot and in fact the deceased Ninganna has lodged a complaint against the petitioner alleging that he is not properly distributing the ration from his Fair Price Depot. The said complaint was lodged before Lokayukta and in this back-ground it is alleged that the accused/petitioner and Ninganna were not in good terms and the petitioner has been nurturing ill-will against the deceased.

3. In this back-ground it is alleged that on 04-11-2013 in the morning at 6.30 a.m., when deceased Ninganna had been to attend the nature call and while coming back, the

petitioner intercepted his way and started abusing him in filthy language and also threatened him that he would not leave him on that particular day and showed the Revolver. After seeing the Revolver, the deceased started running and the petitioner in fact chased by firing towards him and at that time, accused Nos.2 and 3 also came there, facilitated accused No.1 to assault the deceased. In this context it is alleged that the petitioner has fired towards the chest and also on back of the deceased and caused severe injuries and later the deceased succumbed to the injuries.

4. The police after due investigation submitted the charge sheet and it is an undisputed fact that the petitioner was arrested and he has been in judicial custody since one year two months and accused Nos.2 & 3 were already enlarged on bail by this Court in Criminal Petition No.2663/2014.

5. Learned counsel Sri.Chandramouli has vividly taken me to the materials on record and submitted that in the first information report the complainant has stated that accused No.1 has fired from front side one Gun-shot and

also from back side, he fired several shots. He also contended that there are four eyewitnesses to the incident including C.W.1 He further contended that, stage by stage the prosecution has improved its case depending upon the nature of the materials collected by the police. Though police have visited the scene of offence at 8.30 p.m., itself but nothing has been seized from the spot. Learned counsel for the petitioner also contended that quite contrary to the statements made by the witnesses if the post-mortem report is seen only one Gun-shot injury is found on dead body of the deceased. Though the witnesses have stated that five gun shot wounds were caused by the accused/petitioner, there is some discrepancy regarding the weapon used as to whether it is Pistol or Revolver and further added to that if the F.S.L. report is perused, it is also not in their favour, because it is not conclusive as to at what time and on what date firing was made by that pistol. He contended that there are so many contradictions and omissions in the statements of the witnesses, particularly the statement of C.W.10 and the other witnesses. Taking me through the above said

circumstance, he contended that there are no previous bad antecedents so far as petitioner is concerned and he is in judicial custody since more than one year. Further, he contended that the prosecution has to prove its case beyond reasonable doubt, therefore, at this stage, considering the above circumstances, the petitioner is entitled for bail. In this regard, he has also cited decision reported in (2004) 9 Supreme Court Cases page No.310.

6. Per contra, learned High Court Government Pleader contended that the statements of the witnesses, particularly the statement of C.W.1 clearly discloses that there is a motive for doing away with the life of the deceased. When the eyewitnesses' versions are there, this is not a stage where the Court can meticulously consider the omissions and contradictions of the statement of the witnesses. It is true that there are some contradictions and omissions in the statement of the witnesses but the statement of the witnesses show that one Gun Shot injury was fired from the front side and there are some injuries i.e. entry wound and exit wound and while deceased trying to run away, the

other Gun Shots were fired by the petitioner. Therefore, there may be chances of not sustaining many injuries due to the circumstances that the deceased was running away from the spot. Revolver has been recovered at the instance of the accused. Therefore, looking to the circumstances, when particularly the case of the prosecution made to show that there is a prima-facie material to connect the accused to the crime, at this stage the petitioner is not entitled to be enlarged on bail.

7. On perusal of the statements of the witnesses, it shows that several omissions are there in the statements of C.W.1, C.W.7 to C.W.10 with regard to the Gun shot injuries. Learned counsel seriously contended that there must be more than one Gun shot injury. As per the statement of the witnesses, some of the witnesses have stated that four Gun shots were fired by the accused and some of the witnesses have stated that five Gun shots were fired and the complainant has stated that two Gun shot injuries were caused, but only one Gun shot injury is there on the deceased. However, there is a inconsistency in the

statement of the witnesses, which show that there was one Gun shot injury on the deceased. P.M. report discloses that there was one entry wound and exit wound. Further added to that post mortem report clarifies that the death was due to cardio respiratory arrest due to firearm injury suffered by the deceased and due to other severe injuries.

8. Ultimately, the Court on the material evidence available on record has to come to the conclusion, whether discrepancies or contradictions in the statements of the witnesses creates a serious doubt in the case of the prosecution which can go to the root of the case, that cannot be considered after recording the evidence of the prosecution case. There are certain contradictions elicited in the statements of the witnesses and there is some improvement in the statement of C.W.10. In my opinion this is not the stage, where the Court can meticulously consider the statements of the witnesses. Prima facie, there are sufficient materials to show that the accused has committed the offences alleged. This Court at this stage, cannot go into the merits of the case and, that exercise should not be done at

the time of considering bail petition, and that can only be done by the Trial Court after appreciating the materials available on record.

9. Learned counsel in fact cited a decision of the Hon'ble Apex Court reported in (2004) 9 Supreme Curt Cases 310 (State of U.P. V/s Ram Bahadur Singh and others) the at para No.4 held that:

“ According to the prosecution case there are two gun shot injuries at the instance of Bhanu Pratap Singh and both of them hit the deceased whereas the injuries on the body of the deceased could only show that Omkar Nath Singh received only one gunshot. All these are not satisfactorily explained by the prosecution. It naturally creates suspicion and under these circumstances we feel that the High Court has taken a plausible view. This is not a fit case where this Court in exercise of its jurisdiction under Article 136 can interfere which such findings. These two appeals fail and are dismissed”.

In the decision referred to above, two Courts have appreciated the evidence on record and ultimately came to the conclusion that the contradictions and omissions elicited during the course of evidence of the witnesses cannot go to



the root of the prosecution and prosecution has failed to explain satisfactorily the contradictions and omissions during the course of trial. The contradictions and omissions are proved by the accused. Considering such evidence, the Hon'ble Apex Court has passed the said decision. But this is not the stage where the Court should appreciate the charge sheet and definitely decide that the prosecution has sufficiently explained those contradictions and omissions or not. When the eye witnesses' versions are available and though there are some contradictions and omissions and some of the witnesses have put horse behind the cart, even under such circumstances the Court should not normally interfere and appreciate such materials at this stage.

10. It is worth to note here, the decision reported in 1983 CrL.L.J Page No.753 ( Bharwada Bhoginbhai Hirjibhai V/s State of Gujarat) where the Hon'ble Apex Court has observed that much importance should not be attached to omissions and contradictions, amounting to discrepancies which do not go into the root of the matter and shake the basic version of the prosecution and observed though a

witness is wholly truthful, is liable to be overawed by the Court's atmosphere and the piercing cross examination made by the counsel and out of nervousness mix up the facts get confused regarding sequence of events, or fill up details from imagination on the spur of the moment. Further added to that if five persons witness one incident there should be five different type versions are available, it cannot be at this stage said that, which is the truth. When the eyewitnesses make different versions, it is difficult to suggest that eyewitnesses have given false statements on seeing the incident, whether they are stating truth or whether they are created witnesses has to be appreciated by the Trial Court during the course of full fledged trial.

11. Under the above circumstances merely because other two accused persons have been enlarged on bail, but the petitioner against whom the entire case has been pitted cannot be said that he stands on the same footing as that of other two persons. I have carefully perused the order passed by this Court in Criminal Petition No.2663/2014 wherein

this Court has observed that other two accused persons are not mainly responsible for the death of the deceased. Their overtacts cannot be equated with the overtact of the petitioner herein. Looking from the above said circumstances, I am of the opinion that the petitioner has not made out a ground for grant of bail, though he is in judicial custody since more than one year two months. However, accused is in judicial custody since one year, it is just and necessary to direct the trial Court to dispose of the matter as expeditiously as possible.

With the above observations the petition stands dismissed.

The trial Court, for any reasons, should not be persuaded by any of the observations made above. The observations are restricted to this petition only.

**Sd/-  
JUDGE**

MWS