

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 20TH DAY OF DECEMBER, 2023

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

CRIMINAL PETITION No.11041 OF 2023

BETWEEN:

ALMAS PASHA

... PETITIONER

(BY SRI LETHIF B., ADVOCATE)

AND:

THE STATE OF KARNATAKA
BY UDAYAGIRI POLICE STATION
REPRESENTED BY SPP
HIGH COURT BUILDING
BENGALURU – 560 001.

... RESPONDENT

(BY SMT.K.P.YASHODHA, HCGP)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 439 OF CR.P.C., PRAYING TO RELEASE HIM ON BAIL IN CR.NO.178/2021 (CRL.MISC.NO.279/2022) OF UDAYAGIRI POLICE STATION, MYSURU DISTRICT, FOR THE OFFENCE P/U/S 143, 144, 147, 148,

341, 342, 323, 324, 364, 506, 307, 302 R/W 149 OF IPC, PENDING ON THE FILE OF PRINCIPAL DISTRICT AND SESSIONS JUDGE, MYSORE.

THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 29.11.2023, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

The petitioner, accused No.2 in S.C. No.288 of 2022, arising out of crime No.178 of 2021 for offences punishable under Sections 143, 144, 148, 341, 342, 323, 324, 364, 307, 302 and 506 r/w Section 149 of the IPC, is before this Court seeking his enlargement on bail, for the second time.

2. Heard Sri B.Lethif, learned counsel appearing for the petitioner and Smt. K.P. Yashodha, learned High Court Government Pleader appearing for the respondent.

3. Facts in brief germane are as follows:

The petitioner, after withdrawal of Criminal Petition No.134 of 2022, preferred Criminal Petition No.5141 of 2022, which comes to

be rejected by an order of this Court on 12-08-2022. The petitioner is again before this Court seeking his enlargement on bail, claiming to be certain changed circumstances and the changed circumstances are that co-accused, accused No.3 and other accused have been enlarged on bail.

4. The learned counsel appearing for the petitioner Sri B. Lethif would submit that the petitioner is entitled to be enlarged on bail on the score of parity. He would seek to place reliance upon the judgment rendered by the co-ordinate Bench of this Court in Criminal Petition No.3920 of 2023 which is disposed on 21-09-2023 granting bail to accused No.3 in the same sessions case. He would further contend that another accused had been denied bail by this Court which the said accused had called in question before the Apex Court. The Apex Court on the ground of parity has granted him bail. He would, therefore, contend that he should be released on bail on sheer parity. The other submission is that the father of the petitioner is ailing and he has to be with his ailing father. Thus, he would seek enlargement of the petitioner on

bail on two grounds – one on parity and the other on medical condition of his father.

5. Per-contra, the learned High Court Government Pleader Smt. K.P. Yashodha would vehemently refute the submissions to contend that the petitioner does not deserve to be enlarged on bail. The offence is one punishable under Section 307 of the IPC. It is the petitioner who has hit the first blow, chopped of the hand of the victim and the offence being so grave, he should not be enlarged on bail. She would submit that the other accused are released on bail on different circumstances. There is no warrant of any health ailment to his father as it is only a ruse to come out of bail. She would oppose the petition.

6. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record.

7. The facts that led to registration of crime are that, the deceased Mohammed Sarhan Sunain and one Rubina, a married

couple were living together in the house of the complainant. Rubina had contacts with her old friends and was always in conversation with them over phone. Therefore, difference arose between Rabina and the brother the complainant. The brother of the complainant at the relevant point in time was working in a private company at Bangalore. On 13-08-2021, the brother of the complainant and his wife, Rabina come back to Mysore and later developed a serious squabble. On 15-08-2021 at 9.00 a.m. the brother of Rabina, Khadir Pasha and her father Almas Pasha and one Ajmal Pasha along with others came in a Maruthi Van and abused the brother of the complainant, abducted him and later assaulted the brother of the complainant with a chopper and chopped off the hands and cut them into pieces. The brother of the complainant succumbed to the injuries sustained in the incident. It is then the four accused are dragged into the array of accused in Crime No.178 of 2021. The Police conduct investigation and file a charge sheet, which is now pending in S.C.No.288 of 2022. The petitioner initially knocked at the doors of this Court in Criminal Petition No.134 of 2022 at the crime stage, withdrew it and filed a Criminal Petition No.5141 of 2022. This Court, in terms of its order

dated 12-08-2022, rejected the petition and declined to enlarge the petitioner on bail on the following reasons:

"....

8. The petitioner is one of the accused persons, who have indulged in the commission of the offences, which would be punishable under Sections 143, 144, 147, 148, 341, 342, 323, 324, 364, 307, 302, 506 and 149 of the IPC. The petitioner was taken into custody pursuant to the registration of the crime and after being in custody, he seeks enlargement on bail, which is turned down by the learned Sessions Judge by his order dated 11.03.2022, on the ground that the offences alleged against the petitioner is so grave that he would not be entitled to be released on bail. The complaint averments indicate that the petitioner takes a bamboo stick, assaults on the left shoulder, left hand, backside and right shoulder of the brother of the complainant and then took out a chopper and assaulted on the right hand of the deceased on several times and then, accused No.1 takes the same chopper and cuts off one hand and has made brutal attempts to commit murder of the deceased. The deceased later succumbs to the incident at the hospital and the police after investigation have filed the charge sheet. The summary of the charge sheet at Column No.17 insofar as it pertains to role of the petitioner, reads as follows:

"....
 ...ಇವನಿಗೆ ಒಂದು ಗತಿ ಕಾಣಿಸಬೇಕು ಎಂದು ಹೇಳುತ್ತಾ, ಒಂದು ಮಚ್ಚನ್ನು ತೆಗೆದುಕೊಂಡು ಬಂದು "ಇವನ್ನ ಒಂದೇ ಸಾರಿ ಮರ್ಡರ್ ಮಾಡಿದರೆ ಅವನಿಗೆ ಕಷ್ಟ ಗೊತ್ತಾಗುವುದಿಲ್ಲ. ಇವ್ನು ನರಳಿ-ನರಳಿ ಸಾಯ್ಬೇಕು, ಹಂಗೇ ಮರ್ಡರ್ ಮಾಡ್ಬೇಕು" ಎಂದು ಹೇಳಿದಾಗ 5 & 6 ನೇ ಆರೋಪಿಗಳು ಮೃತನ ಬಲಕೈಯನ್ನು ನುಲುಚಿ ಹಿಡಿದುಕೊಂಡರೆ, 3ನೇ ಆರೋಪಿಯು ಮೃತನ ಕಾಲುಗಳನ್ನು ಅಲುಗಾಡದಂತೆ ಹಿಡಿದುಕೊಂಡಾಗ ಮೊದಲಿಗೆ 2ನೇ ಆರೋಪಿಯು ತನ್ನ ಬಲಯಿದ್ಧ ಮಚ್ಚಿನಿಂದ ಮೃತನ ಬಲ ಕೈಗೆ ಹಲವು ಬಾರಿ ಜೋರಾಗಿ ಹೊಡೆದಿದ್ದು, ನಂತರ 1ನೇ ಆರೋಪಿಯು ಅದೇ ಮಚ್ಚಿನಿಂದ ಅರ್ಧ ಏಟಾಗಿದ್ದ ಮೃತನ ಬಲ ಕೈಗೆ ಮತ್ತೆ ಮತ್ತೆ ಹೊಡೆದು, ಮೃತನ ಬಲ ಕೈಯನ್ನು ಕಟ್ ಮಾಡಿದ್ದು, ನಂತರ 3ನೇ ಆರೋಪಿಯು 1ನೇ ಆರೋಪಿಯ ಬಲಯಿದ್ಧ ಮಚ್ಚನ್ನು ಪಡೆದುಕೊಂಡು ಮೃತನ ಬಲ ಮೊಣಕೈ, ಎಡ ಮೊಣಕೈ ಹಾಗೂ ಕೈ & ಕಾಲಿನ ಬಳಿಗೆ ಹೊಡೆದು ಗಾಯವನ್ನುಂಟು ಮಾಡುತ್ತಿರುವಾಗ 5ನೇ ಆರೋಪಿಯು "ಹೀಗೆ ಹೊಡೆದರೆ ಏನ ಆಗಲ್ಲ" ಎಂದು ಹೇಳುತ್ತಾ, 3ನೇ ಆರೋಪಿಯಿಂದ ಮಚ್ಚನ್ನು ಪಡೆದುಕೊಂಡು ಮೃತನ ಬಲಕಾಲಿಗೆ 5-6 ಬಾರಿ ಹೊಡೆದಿದ್ದು, ಆಗ 6ನೇ ಆರೋಪಿಯು 5ನೇ ಆರೋಪಿಯಿಂದ ಅದೇ ಮಚ್ಚನ್ನು ಪಡೆದುಕೊಂಡು 3-4 ಬಾರಿ ಮೃತನ ಬಲಕಾಲಿಗೆ ಹೊಡೆದು ಮೃತನ ಬಲಕಾಲನ್ನು ಭಾಗಶಃ ಕಟ್ ಮಾಡಿದ್ದು, ಈ ಎಲ್ಲಾ ಮಚ್ಚಿನ ಏಟುಗಳಿಂದ ಮೃತನ ಮೈಮೇಲೆ ಆಗಿದ್ದ ಕತ್ತರಿಸಿದ

ಗಾಯಗಳಿಂದ ಹಾಗೂ ತೀವ್ರ ರಕ್ತಸ್ರಾವದಿಂದ ಮಹಮದ್ ಸರ್ಹಾನ್ ಸುನೈನ್ ಎಂಬಾತನು ಮೃತಪಟ್ಟಿರುವುದು ತನಿಖೆಯಿಂದ ಧೃಢಪಟ್ಟಿರುವುದರಿಂದ ಆರೋಪಿಗಳ ವಿರುದ್ಧ ಮೇಲ್ಕಂಡ ಕಲಂಗಳ ಅಡಿಯಲ್ಲಿ ದೋಷಾರೋಪಣೆ ಮಾಡಲಾಗಿದೆ.”

The findings in the charge sheet is that, the petitioner was the first person to take the chopper and cut the hands and later hit the deceased along with the stick, which results in chopping of the entire hand of the brother of the complainant. When these being the allegations, which are grave enough to anticipate danger if the petitioner would get enlarged on bail notwithstanding the fact that the charge sheet is filed and he is not required for further interrogation. The enlargement of the petition cannot be based only on mere filing of the charge sheet but the facts and circumstances of the case, the gravity of the offences and the anticipation of threat by the petitioner are also to be looked into.

9. In the light of the charge sheet so filed and the allegations being so grave against the petitioner, I do not find any merit to enlarge the petitioner on bail.

10. The learned senior counsel for the petitioner has also prayed that in the event, the petitioner would not be entitled to be released on bail, the trial be concluded as expeditiously as possible as the petitioner is 60 years old and suffering from ailments. If that be so, this Court cannot be set the clock for the learned Sessions Judge to dispose of cases, in which the charge sheets are filed in the year 2021.

11. Petitioner is at liberty to seek his enlargement on any other changed circumstance in future before the appropriate Court, in accordance with law. "

The petitioner, in exercise of liberty granted by this Court to re-agitate the issue on any changed circumstances, has again preferred the subject criminal petition seeking his enlargement on bail. The reason projected is twofold, the first being on the ground

of parity. The parity is on account of co-ordinate Bench enlarging accused No.3, son of the present petitioner in terms of its order dated 21-09-2023 in Criminal Petition No.3920 of 2023. Why he was released on bail is found in the order itself. The order reads as follows:

"....

4. *Learned counsel for the petitioner submits that petitioner has prayed to enlarge him on bail on medical grounds. He submits that having regard to the medical condition of the petitioner, immediate surgery of his left knee and also spine is required. He further submits that petitioner's mother is a cancer patient and even her condition is very serious. Accordingly, he prays to allow the petition.*

5. *The learned HCGP who was directed to secure reports of the medical condition of the petitioner has produced medical reports of the petitioner along with connected medical documents. The medical report dated 13.09.2023 issued by the Chief Medical Officer, Central Prison, Mysuru, reveals that petitioner was evaluated in K.R.Hospital, Mysuru and M.R.I. was done and he was also referred to Bengaluru as per specialist advise. His evaluation was done in K.R.Hospital on 10.09.2023, 11.09.2023 and 12.09.2023 and Orthopaedician of the Hospital has opined that petitioner needs surgery for the tear of anterior cruciate ligament and the meniscal tear with arthroscopic meniscial repair/excision and reconstruction of the anterior cruciate ligament of Left Knee. He is also having multiple spinal disc changes in spine MRI. Further Neuro Surgeon has opined that patients back pain is due to multilevel degenerative discharges of lumbar spine significant at L3-4 and L4-5 level causing spinal canal stenosis and neuroforaminal narrowing opinion and should take medication. The documents made available to this Court would go to show that petitioner's mother is also suffering from cancer and she has been under treatment for her illness from the year 2016 onwards. Under these*

circumstances, I am of the view that, lenient view is required to be taken as against the petitioner, though he is involved in a heinous crime of committing murder. The petitioner has undertaken to abide by the conditions that may be imposed while enlarging him on bail."

Accused No.3 who is enlarged on bail is enlarged on the ground that he required immediate surgery to the left knee and spine. The Court had directed the State to secure the report of the medical condition of the said accused and the medical condition clearly indicated two factors – one that he had to undergo immediate surgery and the other, the mother of the petitioner therein was suffering from cancer. The other accused who is enlarged on bail was in Criminal Petition No.612 of 2022 in terms of the order dated 08-02-2022, long before rejection of bail of the present petitioner by this Court. Therefore, that would not become a changed circumstance. Accused No.5 who is released on bail by the Apex Court is on 17-10-2023. Therefore, enlargement of accused Nos.3 and 4 by the co-ordinate Bench of this Court and accused No.5 by the Apex Court are factors which would not form semblance of changed circumstances for entertainment of the present petition.

8. The allegation against the petitioner is as quoted supra. The findings in the charge sheet are that the petitioner was the first person to take out the chopper, cut the hands of the deceased, hit the deceased along with a stick and later cut the hands into pieces. Though the petitioner was not required for custodial interrogation, the findings are grave enough to anticipate any danger. The plea of parity that is projected is not binding, as individual offences and individual overt acts are to be assessed and not to simply follow orders of other accused who are enlarged on bail and on parity grant the same. The parity at best is persuasive. The Apex Court in the case of **NEERU YADAV v. STATE OF UTTAR PRADESH**¹ has elucidated the doctrine of parity while enlarging the accused on bail on the said ground. The Apex Court in the said case holds as follows:

"8. It is interesting to note that the learned counsel for the appellant and the learned counsel for the State submitted that Respondent 2 is still in jail despite the order of bail as he is involved in so many cases. We will take up the said issue at a later stage. It is submitted by Mr Yadav, learned counsel for the appellant that despite the factum of criminal history pointed out before the High Court, it has given it a glorious ignore which the law does not countenance. The solitary and the singular

¹ (2016) 15 SCC 422

grievance which is propounded with solidity that the High Court should have dwelt upon the same and thereafter decided the matter. Mr Dash, learned Senior Counsel (though the State has not moved any application for setting aside the order of bail granted by the High Court for the reasons which are unfathomable) unhesitatingly accepted the said submission. In the additional affidavit, an independent chart has been filed by the State and we find that apart from the present case, there are seven cases pending against Respondent 2. The chart of the said cases is reproduced below:

"1. FIR No. 664 of 2002 under Section 302 IPC, Police Station Kavi Nagar, Ghaziabad.

2. FIR No. 558 of 2004 under Sections 392, 411 IPC, Police Station Kotwali, District Bulandshahar.

3. FIR No. 14 of 2005 under Sections 398, 401, 307 IPC Police Station Noida, Gautam Budh Nagar.

4. FIR No. 15 of 2005 under Sections 25, 27, Arms Act, Police Station Sector 49, Noida, Gautam Budh Nagar.

5. FIR No. 1614 of 2008 under Sections 364, 302, 201 IPC, Police Station Sihani Gate, Ghaziabad.

6. FIR No. 98 of 2005 under Section 2/3 Gangster Act, Police Station Sector 49, Noida, Gautam Budh Nagar.

7. FIR No. 451 of 2012 under Section 60 Police Station Sector 49 Noida, Gautam Budh Nagar."

9. *On a perusal of the aforesaid list, it is quite vivid that Respondent 2 is a history-sheeter and is involved in heinous offences. Having stated the facts and noting the nature of involvement of the accused in the crimes in question, there can be no scintilla of doubt to name him a "history-sheeter". The question, therefore, arises whether in these circumstances, should the High Court have enlarged him on bail on the foundation of parity.*

10. *In Ram Govind Upadhyay v. Sudarshan Singh [Ram Govind Upadhyay v. Sudarshan Singh, (2002) 3 SCC 598: 2002*

SCC (Cri) 688], it has been clearly laid down that the grant of bail though involves exercise of discretionary power of the Court, such exercise of discretion has to be made in a judicious manner and not as a matter of course. The heinous nature of crimes warrants more caution as there is a greater chance of rejection of bail though, however, dependent on the factual matrix of the matter. In the said case, reference was made to *Prahlad Singh Bhati v. NCT of Delhi* [*Prahlad Singh Bhati v. NCT of Delhi*, (2001) 4 SCC 280: 2001 SCC (Cri) 674], and thereafter the Court proceeded to state the following principles: (Ram Govind case [*Ram Govind Upadhyay v. Sudarshan Singh*, (2002) 3 SCC 598: 2002 SCC (Cri) 688], SCC p. 602, para 4)

"(a) While granting bail the court has to keep in mind not only the nature of the accusations, but the severity of the punishment, if the accusation entails a conviction and the nature of evidence in support of the accusations.

(b) Reasonable apprehensions of the witnesses being tampered with or the apprehension of there being a threat for the complainant should also weigh with the court in the matter of grant of bail.

(c) While it is not expected to have the entire evidence establishing the guilt of the accused beyond reasonable doubt but there ought always to be a prima facie satisfaction of the court in support of the charge.

(d) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail, and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail."

11. It is a well-settled principle of law that while dealing with an application for grant of bail, it is the duty of the Court to take into consideration certain factors and they basically are : (i) the nature of accusation and the severity of punishment in cases of conviction and the nature of supporting evidence, (ii) reasonable apprehension of tampering with the witnesses for apprehension of threat to the complainant, and (iii) prima facie

satisfaction of the Court in support of the charge. (See Chaman Lal v. State of U.P. [Chaman Lal v. State of U.P., (2004) 7 SCC 525: 2004 SCC (Cri) 1974.]

12. *In Prasanta Kumar Sarkar v. Ashis Chatterjee [Prasanta Kumar Sarkar v. Ashis Chatterjee, (2010) 14 SCC 496: (2011) 3 SCC (Cri) 765], while dealing with the Court's role to interfere with the power of the High Court to grant bail to the accused, the Court observed that it is to be seen that the High Court has exercised this discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a catena of judgments on that point. The Court proceeded to enumerate the factors : (SCC p. 499, para 9)*

"9. ... among other circumstances, the factors [which are] to be borne in mind while considering an application for bail are:

- (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;*
- (ii) nature and gravity of the accusation;*
- (iii) severity of the punishment in the event of conviction;*
- (iv) danger of the accused absconding or fleeing, if released on bail;*
- (v) character, behaviour, means, position and of the accused;*
- (vi) likelihood of the offence being repeated;*
- (vii) reasonable apprehension of the witnesses being influenced; and*
- (viii) danger, of course, of justice being thwarted by grant of bail."*

...

...

...

15. *This being the position of law, it is clear as cloudless sky that the High Court has totally ignored the criminal antecedents of the accused. What has weighed with the High Court is the doctrine of parity. A history-sheeter involved in the nature of crimes which we have reproduced hereinabove, are not minor offences so that he is not to be retained in custody, but the crimes are of heinous nature and such crimes, by no stretch of imagination, can be regarded as jejune. Such cases do create a thunder and lightning having the effect potentiality of torrential rain in an analytical mind. The law expects the judiciary to be alert while admitting these kind of accused persons to be at large and, therefore, the emphasis is on exercise of discretion judiciously and not in a whimsical manner.*

... ..

18. *Before parting with the case, we may repeat with profit that it is not an appeal for cancellation of bail as the cancellation is not sought because of supervening circumstances. The annulment of the order passed by the High Court is sought as many relevant factors have not been taken into consideration which includes the criminal antecedents of the accused and that makes the order a deviant one. Therefore, the inevitable result is the lancination of the impugned order [Budhpal v. State of U.P., 2014 SCC OnLine All 14815].*

19. *Resultantly, the appeal is allowed and the order [Budhpal v. State of U.P., 2014 SCC OnLine All 14815] passed by the High Court is set aside. If Respondent 2 is at large, he shall be taken into custody forthwith; and if he is still in custody because of certain other cases, he shall not be admitted to bail in connection with the present case. We make it clear that we have not expressed any opinion with regard to other cases and simultaneously we also clearly state that our observations in this case are only meant for purpose of setting aside the order granting bail and would have no impact or effect during the trial."*

Therefore, merely because other accused are enlarged on bail, the petitioner would not get a right to get himself enlarged on bail. The submission that the petitioner/accused No.2 and accused No.5 are

similarly placed is unacceptable as individual overt act by the petitioner has a chilling effect on any petition considered for enlargement on bail. A persuasive parity would not mean that the petitioner would also be enlarged on bail. The medical condition of his father projected is a ruse to get himself enlarged on bail which ground is also unacceptable.

9. For the aforesaid reasons, finding no merit in the petition, the petition stands rejected. However, the petitioner is at liberty to seek his enlargement on bail, on any other changed circumstances, than what is projected in the present petition at any future date before the appropriate Court, in accordance with law.

**Sd/-
JUDGE**

bkp
CT:MJ