



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 21ST DAY OF JUNE, 2022

BEFORE

THE HON'BLE MR. JUSTICE MOHAMMAD NAWAZ

CRIMINAL APPEAL NO.336 OF 2022
C/W
CRIMINAL APPEAL NO.267 OF 2022
&
CRIMINAL APPEAL NO.337 OF 2022

IN CRL.A.NO.336 OF 2022:

BETWEEN

NELSON RAJ,

... APPELLANT

[BY SRI. RAMAKRISHNA SRINIVASAN, ADVOCATE]

IN CRL.A.NO.267 OF 2022:

BETWEEN

1. INDRAJITH C @ AJITH,

2. SUBASH N.,

... APPELLANTS

[BY SRI. RAMAKRISHNA SRINIVASAN, ADVOCATE]

IN CRL.A.NO.337 OF 2022:

BETWEEN

AVINASH,

... APPELLANT

[BY SRI. RAMAKRISHNA SRINIVASAN, ADVOCATE]

AND

1. THE STATE OF KARNATAKA
BY BANASWADI POLICE STATION
THROUGH THE HIGH COURT PUBLIC PROSECUTOR,
5TH 'A' MAIN ROAD, HRBR LAYOUT,
2ND BLOCK, KALYAN NAGAR,
BENGALUR, KARNATAKA – 560 043.

2. SMT. LAKSHMAMMA,

... RESPONDENTS
(COMMON IN ALL APPEALS)

[BY SRI. R.D. RENUKARADHYA, HCGP FOR R.1;
R.2 IS SERVED, UNREPRESENTED]

* * *

THESE CRIMINAL APPEALS ARE FILED UNDER SECTION 14(A)(2) OF SC/ST (POA) ACT, PRAYING TO GRANT AN ORDER OF REGULAR BAIL TO THE APPELLANT HEREIN U/S 14(A)(2) OF SC/ST (POA) ACT IN CR.NO.337/2021 AT BANASWADI POLICE STATION FILED U/S 302, 120(B) AND 149 OF IPC R/W 3(2)(v) OF SC/ST (POA) AND SET ASIDE THE ORDER DATED 25.11.2021 PASSED IN CASE NUMBER SPL.C.NO.1752/2021 BY THE LXX ADDITIONAL CITY CIVIL AND SESSIONS JUDGE AND SPECIAL JUDGE, SMT.SINDHU POTADAR, CCH-71.

THESE CRIMINAL APPEALS COMING ON FOR ADMISSION, THROUGH VIDEO CONFERENCE/PHYSICAL HEARING, THIS DAY, THE COURT DELIVERED THE FOLLOWING:

JUDGMENT

These three appeals are preferred against the impugned order dated 25.11.2021 passed by the Court of LXX Additional City Civil and Sessions Judge and Special Judge, at Bengaluru in Special Case No.1752/2021.

2. Heard the learned counsel appearing for the appellants and learned High Court Government Pleader for respondent/State and perused the material on record.

3. Respondent No.2 is served but there is no representation.

4. Charge Sheet has been filed against accused Nos.1 to 6 in connection with Crime No.337/2021 registered at Banaswadi Police Station, for offences punishable under Sections 302, 120B and 149 of IPC and Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

5. Criminal Appeal No.336/2022 is preferred by accused No.2, Criminal Appeal No.337/2022 is preferred

by accused No.3 and Criminal Appeal No.267/2022 is preferred by accused Nos.4 and 5 respectively.

6. The appellants herein preferred a petition under Section 439 of Cr.P.C., before the Special Court praying to enlarge them on bail, which was rejected vide impugned order. Hence, they are before this Court.

7. Complaint is lodged by one Smt.Lakshamma mother of deceased Harish. It is alleged that on 28.07.2021 at about 1.30 p.m., her son was murdered by one Rakshith and his associates by assaulting him with deadly weapons like long etc., on his head and other parts of the body.

8. The prosecution claims that CWs.1 to 4 are the eye witnesses to the incident. CW.1 is the first informant and she is the mother of the deceased, CW.2 is the sister and CWs.3 and 4 are the friends of the deceased. The statements of CWs.1 to 4 as well as their further statements have been recorded in the course of

investigation. Further, the statements of CWs.3 and 4 are recorded under Section 164 of Cr.P.C.

9. It is contended by the learned counsel for appellants that after the arrest of the accused persons, the alleged eye witnesses namely CWs.3 and 4 have not identified them. He has contented that there are contradictions in their statements recorded under Section 164 of Cr.P.C. It is further contended that the names of other accused persons except accused No.1 are not in the First Information Report and similarly placed accused No.6 has been enlarged on bail by the Sessions Court. It is also contended that CWs.1 and 2 cannot be the eye witnesses since they have come to the scene of offence after they were informed by CW.3.

10. The learned counsel for appellants has contended that the above as well as other various grounds were urged before the learned Special Judge. However, without adverting to any of the contentions raised, the learned Sessions Judge has mechanically passed the order rejecting the prayer seeking bail. He

submits that the liberty of the appellants has been curtailed in view of their detention in judicial custody.

11. Learned High Court Government Pleader on the other hand has contended that the offence committed is heinous in nature and there being eye witnesses to the incident in question, the learned Special Judge has rightly rejected the prayer seeking bail. He submits that there is threat to the witnesses from the accused and therefore it is not a fit case to enlarge the appellants on bail.

12. It is well settled that the primary considerations which must be placed at balance while deciding the grant of bail are:

- (i) the seriousness of the offence;
- (ii) the likelihood of the accused fleeing from justice;
- (iii) the impact of release of the accused on the prosecution witnesses;
- (iv) likelihood of the accused tampering with evidence.

But, at the same time, the Court has to come to a reasonable conclusion as to whether there is any *prima facie* or reasonable ground to believe that the accused has committed the offence, followed by the nature and gravity of the charge and severity of the punishment. Certain important factors relating to *prima facie* involvement of the accused have to be considered, though no detailed discussion regarding merits of the case is required. Where a Court considering an application for bail fails to consider the relevant factors, an appellate Court may justifiably set aside the order. Bail orders either granting or refusing cannot be passed in a mechanical manner or by a cryptic order, without considering the material aspects of the case. Court is duty bound to give reasons for granting or denying bail, especially in cases involving serious offences.

13. I have perused the order passed by the Special Court rejecting the petition seeking bail filed under Section 439 of Cr.P.C. The impugned order falls

short of such reasoning for dismissing the bail petition. The learned Special Judge has not adverted to the various contentions stated to have been raised by the appellants counsel, except stating that accused are alleged to have committed a brutal murder of deceased and a *prima facie* case is made out against the accused etc. When a bail petition is filed, the Court is bound to take into consideration all the contentions raised and pass an appropriate order. It is necessary to look into the material on record which *prima facie* connects the accused with the crime and adverting to those materials, Court can come to the conclusion as to whether a *prima facie* case has been made out or not and shall assign reasons for either allowing or rejecting a bail petition. The learned special Judge has failed to advert to the various contentions said to have been raised by the Counsel appearing for the accused before the trial Court. The reasons for rejecting the prayer for bail does not appear to be in accordance with law. In that view of the matter the impugned order passed by the trial Court is not sustainable in law. Accordingly, the following

ORDER

The order dated 25.11.2021 passed by the Court of LXX Additional City Civil and Sessions Judge and Special Judge, at Bengaluru in Special Case No.1752/2021 is hereby set aside.

The learned Sessions/Special Judge shall hear the parties concerned afresh and pass orders on the bail application, in accordance with law, as expeditiously as possible.

The public prosecutor is permitted to file statement of objection.

The appeals are disposed of accordingly.

**Sd/-
JUDGE**

HB/-