IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 15TH DAY OF DECEMBER, 2020

BEFORE

THE HON'BLE MR. JUSTICE SREENIVAS HARISH KUMAR

CRIMINAL PETITION NO.5116 OF 2020

BETWEEN:

Sri. Umesh,
Aged about 24 years,
S/o. Sri. Rajanna,
R/o. Kavali Road,
Dodda Elachagere Village,
Halaguru, Malavalli Taluk,
Mandya-571401.
(presently under
Duress at Central Prison
At Mangaluru)

...Petitioner

(By Sri. S.Saravana, Advocate for
Sri. H.C.Shivaramu, Advocate)

AND:

The State of Karnataka
Represented by the SHO,
Belthangady Police Station,
Belthangady Circle & Taluk,
Mangaluru – 574142.
Represented by State Public Prosecutor,
High Court of Karnataka
Dr. B.R.Ambedkar Veedhi,
Bengaluru-560001.

... Respondent

(By Sri. K.S.Abhijith, HCGP)

This Criminal Petition is filed under Section 439 Cr.P.C. praying to enlarge the petitioner on bail in Cr.No.177/2018 (S.C.No.85/2019) of Sathnoor Police Station, Ramanagara District for the offence punishable under Sections 302 and 201 read with 34 of IPC.

This Criminal Petition coming on for orders, through video conferencing this day, the Court made the following:

ORDER

Ordinarily in a case of circumstantial evidence bail is granted, but here is a case where there is no case for granting bail.

2. The brief background of the case is that, on 16.11.2018, one A.P. Swamy made a report to the police stating that his son viz., Manjesh, a student of final year LLB at V.V.Puram Law College, Bengaluru was taken to Dharmasthala on 8.11.2018 by his friend viz., Shekar, i.e., accused no.1. On 11.11.2018, he received a call from his son and came to know that his son was in Mangalore with this friends, his son told him at that time that they would reach Dharmastala on the night of Sunday. Thereafter he

could not contact him. Then he made a call to first accused, but his phone was switched off. Therefore he requested the police to search his son.

3. On 11.11.2018, one Anil Prakash D'Souza of Ujare village made a report to the police that at about 6.15 a.m. when he was having his morning walk, saw a dead body in the road side gutter. He informed this immediately to his brother Sunil D'Souza and a neighbour Ashok Shetty. Thereafter Sunil D'Souza made a call to the police. When they observed the dead body they saw the face of the dead being covered with adhesive tape.

4. The post mortem report states that the death occurred due to external compression of the neck by a ligature, however the final report was kept pending awaiting RFSL Report.

5. The learned counsel for the petitioner argues that the petitioner is accused no.2, he appears to have been

implicated only on the basis of confession statement said to have been made by him. There are no eye witnesses to the incident and the entire case revolves round circumstantial evidence. The first accused is absconding. It was he who brought the deceased to Dharmasthala and the petitioner happens to be the friend of accused no.1. In these circumstances there are no sufficient materials to connect the petitioner with the crime and therefore there is a case for granting bail.

6. Learned Government Pleader Sri. K.S.Abhijith submits that RFSL report has been obtained and according to it, the cause of death is same as what is mentioned in the post mortem report, but however it is further mentioned that the deceased was incapacitated by using Ethyl alcohol and Benzodiazepines (a sedative) drug. He further argues that though accused no.1 brought the deceased to Dharmasthala, both the accused were responsible for causing death. The deceased was made to

drink beer which was mixed with a sedative. Thereafter if accused no.2 held the legs of the deceased, accused no.1 strangulated the deceased and thereafter put a gum tape on the face of the deceased. All the three had stayed in a lodge just before the incident. Their stay in the lodge is not disputed. In these circumstances, the petitioner is as much responsible as the first accused for the homicidal death. There are sufficient materials against the petitioner and therefore bail cannot be granted.

7. Yes, it is true that confession statement cannot be based to arrive at a conclusion about the existence of prima facie materials. However going by the submissions made by the learned counsel for the petitioner, the petitioner does not dispute the deceased being taken to Dharmastala by accused no.1 and all the three i.e., accused no.1, 2 and the deceased staying in a lodge. If according to both the accused they all stayed in a lodge together, it is for them to explain as to when and why the

deceased parted from their company, if at all his involvement in the crime is not to be suspected. The post mortem report clearly shows that the death occurred due to compression of neck. FSL report also indicates the reason for the death and further states that sedative substance was administrated to the deceased to render him incapacitated. Even if the confession statement is ignored these circumstances are not disputed. Thus viewed, there are materials to hold the involvement of the petitioner in commission of crime. Bail cannot be granted. Therefore petition is dismissed.

8. The trial court shall not be influenced by the above observations while appreciating the evidence.

Sd/-
JUDGE

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