

2. Prosecution case, in short, is that accused No.1 was having illicit relationship with respondent No.2. Deceased Prabhakar was the husband of respondent No.2. Deceased used to ill-treat respondent No.2 by consuming liquor. He was obstruction in illicit relationship between accused No.1 and respondent No.2. Therefore, accused No.1, with the assistance of respondent No.2 (accused No.2) committed murder of deceased between 06.07.2020 and 07.07.2020. Respondent No.2 allegedly instigated, aided and abetted accused No.1 in commission of murder of the deceased.

3. Investigation is completed. Charge sheet has been filed. Accused preferred application for bail before the Court of session which has been allowed by order dated 3rd March, 2021. The applicant is original complainant. He is brother of deceased.

4. Learned counsel for the applicant submitted that the learned Sessions Judge has committed error in granting bail to respondent No.2. Accused No.1 and respondent No.2 were in illicit relationship. Motive for committing murder is that the deceased was obstruction in their relationship. Respondent No.2 had instigated accused No.1 to kill her husband. There is evidence to show that respondent No.2 and accused No.1 were in relationship. She had motive to commit murder. Statement of the accused under section 27 of the Evidence Act incriminates and establishes prosecution case against respondent No.2.

5. Learned APP submitted that case is based on circumstantial evidence. Respondent No.2 and accused No.2 were having illicit relationship. CDR report shows acquaintance of accused No.1 and respondent No.2. Learned Sessions Judge has not taken into consideration the incriminating evidence against respondent No.2.

6. I have perused the impugned order passed by the learned Additional Sessions Judge. From the order it is apparent that the learned Judge has taken into consideration the submissions of both sides and even affidavit filed by the complainant. Learned Judge has assessed the documents on record while allowing the application for bail. Investigation is completed and charge sheet is filed. There is no eye witness to the incident. Case is based on circumstantial evidence. One of the circumstance is that respondent No.2 was in relationship with accused No.1. However, there is no material on record in support of the allegation that respondent No.2 had instigated accused No.1 to commit murder of her husband. Learned Sessions Judge, while allowing the said application, had observed that it is not the case of prosecution that respondent No.2 was present at the place of commission of murder of her husband. The allegations against her is that she instigated accused No. 1 to commit murder of her husband since he was obstruction in their relationship. Statement under section 27 of the Evidence Act do not support the allegation that respondent No.2 had instigated co-accused to commit murder of her husband. Photograph/

video clip of accused Nos.1 and 2 in the mobile phone of accused No.1 would at the most reveal that they were together at the relevant point of time. Report of CDR could not be a basis to conclude that respondent No.2 had instigated accused No.1 to commit murder of her husband. The record reveals that accused Nos.1 and 2 are relatives. The documents do not reveal that prior to the incident, there was meeting or talk between accused No.1 and respondent no.2 to connect her with the crime.

7. Considering the nature of material/evidence against, accused/ respondent No.2, learned Additional Sessions Judge was pleased to grant bail to respondent No.2. I do not find any infirmity in the order passed by the learned Judge. No case is made out for cancellation of bail granted to respondent No.2.

8. Hence, I pass the following order :-

ORDER

Application for Cancellation of Bail No.87 of 2021 stands rejected and disposed of.

(PRAKASH D. NAIK, J.)

JPC