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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 12<sup>TH</sup> DAY OF JUNE 2018

BEFORE

THE HON'BLE MR. JUSTICE JOHN MICHAEL CUNHA

CRIMINAL PETITION NO.1515 OF 2018

BETWEEN:

MANJUNATHA Y V @ THAMMA MANJA  
S/O VENKATEGOWDA,  
AGED ABOUT 29 YEARS  
R/AT 14<sup>TH</sup> E CROSS,  
BACK TO SINDURA CHOWTRY,  
J.P.NAGAR, 1ST STAGE,  
BENGALURU-78.

... PETITIONER

(BY SRI: MANJUNATH G, ADVOCATE)

AND:

STATE OF KARNATAKA  
BY THALAGHATTAPURA POLICE,  
BANGALORE-562 178  
REPRESENTED BY LEARNED  
SPP HIGH COURT OF KARNATAKA  
BANGALORE-560 001.

... RESPONDENT

(BY SRI: K. NAGESHWARAPPA, HCGP)

THIS CRL.P IS FILED U/S.439 CR.P.C PRAYING TO ENLARGE  
THE PETITIONER ON BAIL IN CRIME NO.247/2017  
(C.C.NO.9886/2017) OF THALAGHATTAPURA POLICE STATION,  
BANGALORE CITY FOR THE OFFENCE PUNISHABLE UNDER

SECTIONS 143,144,147,148,120B,307,302 R/W 149 OF IPC AND SECTIONS 25 AND 27 OF ARMS ACT.

THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 05.06.2018 AND COMING ON FOR PRONOUNCEMENT THIS DAY, **JOHN MICHAEL CUNHA. J**, MADE THE FOLLOWING:-

### **ORDER**

This is the second petition filed under section 439 of Cr.P.C., seeking to enlarge the petitioner on bail in Crime No.247/2017 for the offences punishable under sections 120B, 143, 144, 147, 148, 307, 302 read with section 149 of Indian Penal Code.

2. The investigation is completed and charge-sheet is laid against nine accused persons. The petitioner is shown as accused No.4. The earlier petition filed by the petitioner has been dismissed by a considered order dated 21.02.2018 in Criminal Petition No.664/2018. However, subsequent to the dismissal of the said petition, this court enlarged accused No.7 on bail under section 439 of Cr.P.C., in Criminal Petition No.1514/2018 dated 24.04.2018. Hence, the petitioner has filed the above petition seeking to extend the benefit of the said bail

order to him on the ground of parity as well as on the ground that the earlier order of dismissal was passed by this court at crime stage and since then, investigation is completed and therefore, there is change in the circumstances which entitle the petitioner to sustain the second bail application under section 439 of Cr.P.C.

3. Heard the learned counsel for the petitioner and the learned HCGP.

4. Learned HCGP has not filed any statement of objections, but has orally opposed the petition.

5. At the outset, the learned counsel for the petitioner submits that on account of the submission of the charge-sheet subsequent to the dismissal of the earlier petition, it has given rise to a changed circumstance to maintain second petition for the same relief. Further, the learned counsel points out that this court while enlarging accused No.7 on bail in Criminal Petition No.1514/2018, has observed that in view of the conspicuous absence of the date of recording the statement of CW.10 to

CW.12, the eye witnesses cited by the prosecution, in the remand application submitted by the Investigating Officer, serious doubt is cropped up about very presence of the said eyewitnesses during the occurrence. It is the submission of the learned counsel that in view of the said discrepancy, accused No.7 was enlarged on bail. The case of the prosecution in so far as the present petitioner is concerned is that he stabbed on the stomach portion of the deceased. The said overt acts are sought to be substantiated by the very same eyewitnesses namely CW.10 to CW.12. But as already observed by this Court in Criminal Petition No.1514/2018, the presence of these petitioners at the spot of occurrence is doubtful. Hence on the ground of parity, petitioner is also entitled to be enlarged on bail.

6. In support of his argument, learned counsel has heavily placed reliance on the decision rendered by the Division Bench of the Allahabad High Court in *NANHA S/o. NABHAN KHA vs. STATE OF U.P. (1993 Criminal Law Journal 938)* and also the decisions rendered by this Court in *Criminal Petition No.1658/2018 dated 22.03.2018, Criminal Petition*

*No.201195/2016 dated 29.11.2016, Criminal Petition No.362/2018 dated 23.03.2018 and Criminal Petition No.8592/2015 dated 24.02.2016*, to buttress the point that the principle of parity could be extended even after the rejection of the earlier application filed by the petitioner for the relief under section 439 of Cr.P.C.

7. Learned HCGP, however, has disputed the submissions and would submit that all the contentions urged by the petitioner were canvassed before this Court in the earlier petition and the same have been considered and negatived by this Court and therefore, merely because a co-accused has been enlarged on bail, the benefit of the said order cannot be extended to the petitioner. In other words, the submission of the learned HCGP is that on account of the rejection of the similar contentions, the subsequent order does not furnish a changed circumstance so as to maintain the second petition on the same grounds.

8. I have bestowed my careful attention to the submissions made at the Bar and have perused the order passed

by this Court in Criminal Petition No.664/2018 dated 21.02.2018 and the order passed in Criminal Petition No.1514/2018 dated 24.04.2018.

9. In order to appreciate the above contentions, it is necessary to refer to the relevant portion of the earlier orders passed by this Court on the petitions filed by accused No.4 and accused No.7. In para 4 of the order dated 21.02.2018 in Criminal Petition No.664/2018, this Court has observed thus:

"4. *Learned counsel for the petitioner during the course of his arguments has submitted that the name of the petitioner is not figured either in the complaint or in the FIR. Though it is the case of the prosecution that C.Ws.10, 11 and 12 are said to be the eye-witness, but looking into the remand application though every details are mentioned but about recording of statement of these three eye-witnesses is not mentioned in the said remand application. He also submitted that statement of injured Madhu came to be recorded on 07.09.2017, wherein there is a specific averment insofar as Vajresh/accused No.1 is concerned, but there is no specific mention about the assault made by*

*petitioner/accused No.4. Hence, referring to these materials he submitted that if really the statement of alleged eye-witnesses was recorded on 23.08.2017 i.e., on the next day of the incident, same could have been reflected in the remand application. Therefore, it raises a doubt about the prosecution case. He has also submitted that even while furnishing the history before the Doctor in Sanjay Gandhi Hospital and Research Centre, it is mentioned as assault by unknown persons. Therefore, specifically the name of petitioner is not at all mentioned even before the Doctor also, hence, there is no prima-facie case against the petitioner. Investigation is completed and charge sheet has been filed and from the date of arrest petitioner is in custody, hence, he may be enlarged on bail.*

This contention is answered in para 8 of the order as under:

*8. With regard to the contention of the learned counsel for the petitioner that there is no mention in the remand application about the said fact is concerned, it is for the prosecution to explain about the same during the course of trial and the Investigating Officer has to answer the same and at this stage, the*

*Court has to consider whether there is a prima-facie material placed by the prosecution about the involvement of petitioner. As per the Doctor, who conducted autopsy over the dead body of deceased Raghu, the death is because of multiple injury sustained. Therefore, even the medical opinion is consistent about the alleged assault made on the deceased Raghu. In view of such statement by three eye-witnesses, which was also said to be recorded on the very next day of the incident, I am of the opinion that it is not a case for grant of bail in favour of the petitioner. Accordingly, petition is hereby **rejected**.*

10. But, contrary to the above reasoning, in the petition filed by accused No.7 seeking bail on the very same grounds in Criminal Petition No.1514/2018, the Single Judge Bench of this Court has taken a diametrically opposite view on the very same material. The reasoning of the learned Single Judge finds place in para 5 of the order. It reads:

*5. It is true that if the statements of these witnesses are read, they give a picture as if they are the eye witnesses to the incident and they clearly speak about the overt-act of*



*the petitioner in their statements. If the remand application is silent about their statements being recorded on 23.08.2017 itself, as rightly contended by the learned counsel for the petitioner, at this stage, it can be said that it is a discrepancy which leads to doubt whether the said three witnesses are really eye witnesses or not. Added to this, the investigation is completed and charge sheet is filed. The presence of the petitioner could be secured for the purpose of trial.*

11. Thus, it could be seen that there is disparity in the reasoning of the two Benches of this court. Here itself it must be noted that the order in Criminal Petition No.1514/2018 came to be passed two months after the rejection of the Criminal Petition No.664/2018. In both these cases, the State was represented by the very same High Court Government Pleader and it is unfortunate that the learned High Court Government Pleader failed to bring to the notice of the court the rejection of the earlier petition filed by the co-accused.

12. Be that as it may, an identical situation was confronted by the High Court of Allahabad in the case of *NANHA*

*S/o. NABHAN KHA vs. STATE OF U.P. (1993 Criminal Law Journal 938).* In the said case, the applicant Nanha's first bail application being Criminal Misc. Bail Application No.6013/1991 was rejected on 6.5.1991 by Hon'ble Mr.Justice N.L.Ganguiy. The second bail application being Criminal Misc. Bail Application No.11017/1991 was again rejected by the same Hon'ble Judge on 9.12.1991. After grant of bail to co-accused Dildar Khan and Iqbal Hussain Khan by the two Hon'ble Judges, Nanha again filed a third bail application and it was urged that on the ground of parity Nanha should also be granted bail. Learned Single Judge who seized of the third bail petition, referred the following question to the Larger Bench for an authoritative pronouncement:

*"Whether an accused is entitled to be released on bail on the ground of parity by moving a second or third application in a circumstance that at a later date a co-accused of the same criminal case with a similar role was granted bail by the another Hon'ble Judge before whom without disclosing the fact that the bail application of another co-accused with similar role had already been rejected, by another Bench, bail was granted?"*

Considering the decisions of the various High Courts and Hon'ble Supreme Court, Hon'ble Mr.Justice G.D.Dube answered the question in paragraph Nos.22 and 23 as under:

*"22. From the cases discussed above, we find that parity alone has not been considered as a ground for release on bail. A Full Bench of this Court as well as the Supreme Court had refused to release an applicant on bail simply because the other co-accused had been released on bail. In the case of Captain Jagjit Singh and Sunder Lal, the Supreme Court and High Court examined the case of each applicant on its own footing, even though co-accused had been released on bail.*

*23. On an examination of the cases cited before us, I am of opinion that the case of an accused has to be examined individually. Simply because the co-accused has been granted bail cannot be the sole criteria for granting bail to an accused. Even at the stage of second or third bail the court has to examine whether on facts the case of the applicant before the Court is distinguishable from other release co-accused and the role played by the applicant is such which may disentitle him to bail."*

But the other Hon'ble Judge differed with the view and came to the conclusion that for the sake of judicial uniformity and non-discrimination it is essential that uniform orders should be passed even in bail matters in case of persons who stand on the same footing. The second Judge was of the view that if the case of the applicant before the court is identical, similar to the accused, on facts and circumstances, who has been bailed out, then the desirability of consistency will require that such an accused also be released on bail. Thus the Division Bench did not arrive at any conclusive opinion with regard to the question raised before it.

13. The right of an accused person to make successive applications for bail is now well recognized. In ***BABU SINGH & Others vs. THE STATE OF UTTAR PRADESH*** in ***AIR 1978 SC 527***, the Hon'ble Supreme Court has observed that in a case, the bail application of an accused has been rejected and second application for bail is moved, the previous order refusing an application for bail does not necessarily preclude another, on a later occasion giving more materials, further development and

different considerations. Thus from the ratio laid down in the above decision, it is clear that parity alone cannot be the sole consideration or the compelling reason to allow the second application. As observed in the above decision as well as in the opinion expressed by the Division Bench of the Allahabad High Court in *1993 Cri.L.J. 938*, parity could be one of the grounds to release the co-accused. The court has to satisfy itself based on the materials placed before it and the subsequent developments and other considerations are sufficient grounds for releasing the applicant on bail.

14. If on examination of the case it transpires that subsequent to the dismissal of the earlier application, a co-accused has been released on bail and the case of the applicant is identical, similar to the accused who has been bailed out, then the judicial uniformity and consistency may require the Court to extend the principle of parity to the co-accused before it. But, in the instant case, as already observed above, there is disparity in the reasoning of the two Benches of this Court and therefore, I am of the view that the principle of parity cannot be applied in

the instant case. While rejecting the earlier bail petition filed by the petitioner, this Court has considered the effect of the statements of the eyewitnesses CW.10 to CW.12 and has also noted that the non-mentioning the date of recording their statements in the remand application requires to be clarified only at the stage of trial and considering the *prima facie* materials produced in support of the accusations made against the petitioner, the first application filed by the petitioner was rejected. I am in respectful agreement with the view expressed by this Court in Criminal Petition No.664/2018. In that view of the matter, I am of the clear view that the petitioner is not entitled to invoke parity to maintain the second application.

15. Even though it is vehemently contended by the learned counsel for the petitioner that Criminal Petition No.664/2018 was filed by the petitioner at the crime stage, but the records indicate that the said petition was filed only after the submission of the charge-sheet. The records indicate that the charge-sheet was finalized on 30.11.2017 against nine accused persons including the present petitioner and same was filed

before the court on 2.12.2017 as per the endorsement made by the II Additional Chief Judicial Magistrate, Bangalore Rural District, Bangalore. Therefore, the contention of the learned counsel that the submission of the charge-sheet provided changed circumstance and a fresh ground for the petitioner to maintain the second application is also liable to be rejected.

16. For all the above reasons, I do not find any justifiable ground to enlarge the petitioner on bail. The petition is liable to be rejected.

Accordingly, the criminal petition is **rejected**.

Sd/-  
JUDGE

Bss.