

KADW010001892020



**IN THE COURT OF THE IV ADDITIONAL DISTRICT AND  
SESSIONS JUDGE, AT: DHARWAD.**

**DATED THIS THE 30<sup>th</sup> DAY OF DECEMBER, 2024.**

**Present:**

**SMT. POORNIMA N. PAI**

**B.Com.,LL.M.**

**IV ADDITIONAL DISTRICT AND SESSIONS JUDGE,  
DHARWAD.**

**SESSIONS CASE No.2 / 2020.**

**COMPLAINANT:**

The State of Karnataka  
(Vidyagiri police station, Dharwad)  
by Chief Investigation Officer,  
Special Investigation Team,  
CID Office, Bengaluru.

(By Special Public Prosecutor)

**Vs.**

**APPLICANTS:**

A-1: Amol A. Kale @ Amol @ Bhaisab  
S/o. Late Aravind Ramachandra,  
Age: 37 years, R/o. Flat No.3,  
'B' Wing, Akshay Plaza,  
Manik Colony, Chnchawad,  
Puna City, State: Maharashtra.

A-2: Ganesh Miskin @ Zerox @ Mithun  
S/o. Dasarath,

Age: 27 years,  
R/o. No.23, Chaitanya Nagar,  
R.N.Shetty Road, Hubballi,  
Dist: Dharwad.

A-5: Sharad S/o. Bahusaheb Kalaskar,  
@ Sharad @ Chote @ Sharavan  
@ Vittal @ Sandeep Patil  
@ Sharad Patil @ Vishnu  
@ Satpal S/o. Bahusaheb Kalaskar  
Age: 25 years,  
R/o. Keshapuri Village,  
Doulatbad Post,  
Tq & Dist: Aurangabad.

(A-1 and 2 by Shri P.K.M., Advocate,  
A-5 by Shri BLP / A.M.Masuti. Advocate)

**ORDER ON BAIL APPLICATION FILED BY THE  
ACCUSED No.1, 2 AND 5.**

The accused No.1, 2 and 5 have filed bail application under Section 439 of Cr.P.C. praying to enlarge them on regular bail in this case.

2. Brief facts of the case of the case, as mentioned in the application, are that, Smt. Roopadarshi D/o. Late M.M.Kalaburgi filed a complaint alleging that, she came to Dharwad to the house of her deceased father

situated at 9<sup>th</sup> Cross, Kalyan Nagar, Dharwad to take him for eye treatment. It is further alleged that, on 30.08.2015 at about 8-45 a.m. to 9-00 a.m., somebody knocked the door of the house. The father of the complainant opened the door and her mother also came behind her father. At that time, one unidentified boy wearing black pant and black shirt seemed to be student was standing in front of the door and called as 'Sir' and mother of the complainant turned back to her work and heard firing sound twice. Immediately, the mother of the complainant rushed and saw that the father of the complainant was lying in the pool of blood. Thereafter, the person, who knocked the door, ran out of the gate and sat on the motorcycle, which was ready, and both of them went on the motorcycle. Meanwhile the complainant ran out of the house on hearing the gunshot sound, wherein she saw both the assailants going in the motorcycle. Thereafter, with the help of neighbours the father of the complainant

was taken to Hospital, wherein the Doctor declared the father of the complainant as dead. The complainant further mentioned that, her father was a Kannada writer who made good name and fame and he was expressing his views and opinion fearlessly and same has created ill-will towards his writing by some persons. But, some unidentified assailants for unknown reason have committed the murder using a pistol.

3. It is further stated that, on the basis of above complaint, a case was registered in Crime No.142/2015 in Vidyagiri Police Station, Dharwad against unknown persons for the offences punishable under Section 302 of IPC R/w. Section 25 of Indian Arms Act. The State Government has constituted a Special Investigation Team (SIT) and during the investigation the accused Nos.1, 2 and 5 were arrested. That, the petitioners / accused Nos.1, 2 and 5 are now in Judicial Custody for more than five years.

Hence, they have filed the present bail application on the following among other grounds:

### **GROUND**

In the grounds, it is stated that, there is no reasonable ground on record to hold that the accused Nos.1, 2 and 5 have committed an offence punishable with death or imprisonment for life. Accused Nos.1, 2 and 5 have been falsely implicated by the complainant and other interested persons. The Police filed the Charge sheet on 14.08.2019 under Sections 120(B), 109, 449, 302, 201 and 35 of IPC R/w. Section 25(1) (A), 25(1)(B), 27(1) of Indian Arms Act, 1959 and the case was committed to Sessions Court. Later charge was framed on 07.09.2021 and the matter was posted for FDT on 28.09.2021. That, on 19.02.2022, the trial was commenced before this Court and the case is being set for leading of prosecution evidence till date. Further, the respondent Police have cited as many as

138 prosecution witnesses, out of which only 10 witnesses are examined by the prosecution in one and half years and some need to be cross-examined among them. Even after one and half year, till date only 10 witnesses have been examined, and as per the witness list provided by the prosecution another 129 witnesses are yet to be examined. So, it is unlikely to complete the trial in a short span of time i.e. in a year or so. The prolonged imprisonment with a delayed trial alienates the individual from the society and makes him a vengeful enemy when he ultimately emerges from the prison cell. The accused Nos.1 and 2, who are also accused in murder of Gowri Lankesh case, were enlarged on bail by the Principal City Civil and Sessions Judge, Bangalore in Spl. C.C.No.872/2018 on 09.10.2024 on the ground of delay in trial. That, the accused Nos.3, 4 and 6 are also enlarged on bail by the Hon'ble High Court of Karnataka in Crl. Petition No.102748/2024 and

Crl.Petition No.101997/2024. Therefore, bail to be granted on parity ground also.

4. It is further submitted by the applicants / accused Nos.1, 2 and 5 that, the Hon'ble High Court of Karnataka in Crl. Petition No.927/2023 in the case of **Amit Degvekar Vs. The State of Karnataka** granted bail for 03 accused who were in jail for more than 06 years on the ground of prolonged delay in trial. Further, in the case of **Indrani Pratim Mukerjea Vs. Central Bureau of Investigation 2022 SCC Online SC 695** the Hon'ble Supreme Court taking into consideration that the accused, who was being tried for the offence punishable under Section 302 of IPC, was in custody for a period of six and half years and the prosecution was yet to examine many more charge sheet witnesses, granted bail to the accused observing that "Admittedly, the petitioner has been in custody for 6 ½ years. We do not intend to comment on the merits of the case which might be detrimental to the

interest of either the prosecution or the defence. Taking into account the fact that the petitioner has been in custody for 6 ½ years and even if 50% of the remaining witnesses are given up by the prosecution, the trial will not complete soon, we are of the considered view that the petitioner is entitled to be released on bail.” Further, the Hon’ble Supreme Court in the case of **Ankur Chaudhary Vs. State of Madhya Pradesh – Special Leave Petition No.4648/2024 decided on 28.05.2024** has held that, failure to conclude the trial within a reasonable time resulting in prolonged incarceration militates against the precious fundamental right guaranteed under Article 21 of the Constitution of India and as such, conditional liberty overriding the statutory embargo created under Section 37(1)(b) of the NDPS Act may, in such circumstances, be considered. Further, the Hon’ble Supreme Court in the case of **Javed Gulam Nabishaikh Vs. State of Maharashtra and Another –**



**2024 SCC Online SC 1693**, has observed that, “19. If the State or any prosecuting agency including the Court concerned has no wherewithal to provide or protect the fundamental right of an accused to have a speedy trial as enshrined under Article 21 of the Constitution then the State or any other prosecuting agency should not oppose the plea for bail on the ground that the crime committed is serious. Article 21 of the Constitution applies irrespective of the nature of the crime.” Even in the said case, the petitioner / accused Nos.1, 2 and 5 are in Judicial Custody from past 06 years. The evidences brought before the Court through the witnesses already examined on oath contradicts the theory of the prosecution and nowhere it corroborates. The accused Nos.1, 2 and 5 have been falsely implicated by the complainant. The accused Nos.1, 2 and 5 are innocent of the offence alleged and they have not at all involved in the commission of an offence. The accused Nos.1, 2 and

5 are ready and willing to furnish acceptable and adequate surety to the satisfaction of this Court to ensure their regular attendance. That, there is no chance of trial to be concluded in near dates. The accused Nos.1, 2 and 5 are languishing in jail from past six and half years. There is utter delay in the trial by the prosecution for which the accused Nos.1, 2 and 5 are suffering. Further, the accused Nos.1, 2 and 5 undertake to comply with any conditions imposed by this Court. Hence, on these grounds, the accused Nos.1, 2 and 5 pray to enlarge them on regular bail.

5. The Special Public Prosecutor on behalf of State has filed objections to the above bail application filed by the accused Nos.1, 2 and 5 contending that, during the course of investigation, the said case was handed over to COD for investigation and after that said case was handed over to SIT as per the directions of the Hon'ble Supreme Court. That, after the investigation, the Investigation Team has filed the Final Report

against the accused under Section 120(B), 109, 449, 302, 201 and 35 of IPC and Section 25(1)(A), 25(1)(B) and 27(1) of Arms Act, 1959. Further, the Special Public Prosecutor has submitted brief facts of the case, as stated above.

6. The Special Public Prosecutor further stated that, the Charge sheet and the objection of I.O. may be read as part and parcel of the objection. That, there are sufficient materials against the accused Nos.1, 2 and 5 in the form of eye witnesses and circumstantial evidence and scientific evidence. That, during the course of investigation the complainant has identified the person who shot her father and the person who waiting for the person outside the house (A-3). The investigation reveals that, all the accused have hatched conspiracy, pre-planned and predetermined to commit the crime. There are ample material to show that accused No.1 is the mastermind who has hatched the whole plan. That, after framing

of charge, accused have filed several applications to delay the proceeding. The prosecution has examined in all 18 witnesses, now the case is posted for evidence of C.W.36 to 42. That, P.W.1 to P.W.4 are eye witnesses to the incident. P.W.1 and P.W.2 have seen accused No.2 who shot and accused No.3 who was on motorcycle. P.W.3 and P.W.4 have identified the accused Nos.1, 2, 3 and their evidence is intact. The prosecution has examined in all 18 witnesses, who have supported the case. Absolutely prosecution has examined witnesses without taking any time and there is no delay in examining the witnesses. Due to filing of applications by defence counsel to protract the proceeding, other circumstances, which are mentioned in the order sheet of the Court. Looking to the evidence and Charge sheet material, there are strong and sufficient material against the accused Nos.1, 2 and 5. The evidence of P.W.1 to P.W.4 shows the involvement of accused Nos.1, 2, 3 directly in Crime

and active participation by all the accused in hatching the conspiracy and committing the murder. That, the accused No.1 is mastermind for horrible crime. The witnesses already examined have identified the accused No.1 who came to the spot. Accused No.1 who has handed over the motorcycle to accused No.2 and 3 in this crime. There are material witnesses yet to be examined, they are C.W.39, 40, 41, 42, 50, 51, 106, 109, 111, 114, 135 and others. Hence, at this stage bail application has to be rejected in the interest of justice. The Accused No.5, who is the member of the conspiracy wherein the pistol used in the murder of M.M.Kalburgi, Gouri Lankesh and Pansare is the one and the same, to this effect sufficient material is there in the charge sheet and also accused No.5, who has separated the pistol barrel and slides, and thrown in to the river creak situated on Mumbai-Nasik high way, to this effect sufficient material are placed in the Charge sheet. Further, accused No.5 has been convicted in

Pune Deevan Police Station Crime No.184/2013 for the offence of Section 302, 120(B), 201 and Arms Act for the murder of Mr. Dr. Dabolkar. Further, the bail petition filed by the accused Nos.1, 2 and 5 is devoid of merits and there are no strong grounds to enlarge them on bail. The vehicle, which was used in the crime, was taken to Mumbai, same was seized in Kala Chowki P.S. Crime No.11/2018, during the investigation the SIT has taken the custody of vehicle. Same has been identified by the witnesses in the trial and marked as M.O. The above said accused are involved in the following cases as submitted by the Investigating Officer in his objections:

(1) Accused No.1 and 2 in Maharashtra Rajarampuri Police Station Crime No.39/2015 under Section 302, 120(b) of IPC and Section 3 and 20 of Arms Act, 1959, for the murder of Govind Pansale, same is numbered as S.C.No.3/2016.

(2) Accused No.5 in Pune Deccan Police Station Crime No.184/2013 for the offence of Section 302, 120(B), 201 and Arms Act and convicted for life.

(3) Accused No.1, 2 and 5 in Mumbai ATS Case – Kala Chowki P.S.Crime No.11/2018 under Section 4 and 5 of Explosive Substance Act and Section 120(B) and Section 16, 18, 20 of Prevention of Unlawful Activities Act.

(4) Accused No.1, 2 and 5 in Bengaluru Gowri Lankesh case in Rajarajeshwari Nagar P.S.Crime No.221/2017 under Section 302, 120(b), 114, 118, 109, 201, 203,204, 35 of IPC and Section 25, 27 and 3 of Arms Act, case has been numbered as Spl.S.C.No.872/2018 and same is posted for evidence.

(5) Accused No.1 and 2 in Hubballi Rural Police Station Crime No.308/2018 under Section 379 of IPC, vehicle was used in the commission of murder of M.M.Kalburgi.

(6) Accused No.1 in Bengaluru Upparpet P.S.Crime No.45/2017 for the offences under Section 120(B), 37 of IPC and Arms Act (C.C.No.19618/2018) it is for trial.

(7) Accused No.5 in Belagavi Khade Bazar P.S. Crime No.7/2018 under Section 143, 201, 426, 436, 120(B), 201, 149 of IPC R/w. Section 3(A), 4, 5 of Explosive Substances Act, 1908 and 9-B of Explosive Act.

(8) Accused No.2 in Hubballi Kasabapeth P.S. Crime No.111/2013 under Section 144, 143, 147, 148, 323, 324, 353, 332, 336, 427, 504, 149 of IPC and Section 3, 4, 7 of Prevention of Damage to Public Property Act, wherein Charge sheet is filed.

(9) Accused No.1 in Kodagu District Bailkuppe P.S. Crime No.139/2018 under Section 420, 468, 34 of IPC, wherein Charge sheet is filed.

(10) Accused No.1 in Kodagu District Bailkuppe P.S. Crime No.144/2018 under Section 420, 468 of IPC, wherein Charge sheet is filed.

(11) Accused No.2 in Vijayapur P.S. Crime No.29/2018 under Section 468 and 471 of IPC, wherein Charge sheet is filed.

7. It is further stated that, during the course of investigation, Police (SIT) have recovered the list of persons to whom the accused want to murder. If the



accused are released on bail, they may try to kill the persons who are in the list. The above said accused are having criminal antecedents and as they are cruel. That, the Charge sheet reveals that they have taken training in firing to achieve their goals. The alleged offences are punishable with death and life imprisonment as the said offences are grave. If the accused are released on bail, they may tamper the prosecution witnesses and give threat to the witnesses and there is life threat to the complainant's family. Hence, at this stage, accused Nos.1, 2 and 5 are not entitled for the bail. That, there is material to show that the accused persons had strong motive to kill M.M.Kalburgi. That, the Charge sheet material discloses that the accused No.1 and 2 have come to Hubballi for several times and met accused No.3 at Glass House (Indira) at Hubballi and preplanned the conspiracy. That, the objection of I.O. has been enclosed with the objection separately with citations.

On these grounds, the learned Special Public Prosecutor prays to reject both the bail application.

8. The counsel for the applicants / accused Nos.1, 2 and 5 has produced the following bail orders and citations:

1. Crl. Petition No.101997/2024 in the case of Vasudev Bhagawan Suryavamshi @ Vasu @ Mechanic S/o Late Bhagwan Vs. The State of Karnataka.
2. Spl. S.C.No.872/2018 and Crl. Misc. Nos.5593, 6969 and 6970 of 2024 in the case of State of Karnataka Vs. Amol Kale and others.
3. Crl. Petition No.102748/2024 in the case of Sri. Praveen @ Masalawala Chatur S/o Prakash Chatur Vs. The State of Karnataka.
4. Crl. Petition No.1627/2022 in the case of Indrani Pratim Mukerjea Vs. Central Bureau of Investigation dated 18<sup>th</sup> May, 2022.
5. Crl. Appeal No.2787/2024 in the case of Javed Gulam Nabi Shaikh Vs. State of Maharashtra and Another.
6. Crl. Petition No.927/2023 in the case of Sri. Amit Digvekar Vs. State of Karnataka.

9. The learned Special Public Prosecutor has relied upon the following citations:

1. Criminal App. No.2079-2020 of 2023(Slp (Crl) No.3445-3446 of 2023), in the case of Rohit Bishnoi Vs. The State of Rajasthan and Another.
2. Criminal Appeal No.658/2022, in the case of Imran Vs. Mr. Mohammed Bhava & Anr.
3. Criminal Appeal No.2782/2023 (Slp Crl. No.6347/2023) in the Case of Shiv Kumar Vs. The State of UP and Another.
4. Criminal Appeal No.324/2004 in the case of Kalyan Chandra Sarkar Vs. Rajesh Ranjan Alias Pappu Yadav and Another dated 12<sup>th</sup> March, 2024
5. Criminal Appeal No.70/2022 in the case of Ishwarji Nagaji Mali Vs. The State of Gujarat and Another.
6. Criminal Appeal No.1248/2005 in the Case of State through C.B.I Vs. Amaramani Tripathi on 26<sup>th</sup> September 2005.

7. Criminal Appeal No.601/2017 in the case of Virupakshappa Gouda and Another Vs. The State of Karnataka and another.

8. Criminal Appeal No.571/2021 and 572 and 573 of 2021 in the case of Kumer Singh Vs. State of Rajasthan and another.

9. Criminal Appeal No.\_\_\_\_\_of 2023 (SLP (Crl.) No.9431/2023 in the case of Tarun Kumar Vs. Assistant Director Directorate of Enforcement.

10. Criminal Petition No.11041/2023 in the case of Almas Pasha S/o Late Mohammed Ibrahim Vs. The State of Karnataka.

10. Now, the points that would arise for my consideration are as under:

- 1. Whether the accused Nos.1, 2 and 5 are entitled for regular bail as per the grounds alleged in the application?**
- 2. What order ?**

11. My findings to the above points are as follows:

Point No.1 : In Affirmative.

Point No.2 : As per final order,  
for the following,

### **REASONS**

12. **Point No.1:**           Section    439       of       Cr.P.C.

empowers this Court to grant regular bail as under:

*439. Special powers of High Court or Court of Session regarding bail.—(1) A High Court or Court of Session may direct,— (a) that any person accused of an offence and in custody be released on bail, and if the offence is of the nature specified in sub-section (3) of section 437, may impose any condition which it considers necessary for the purposes mentioned in that sub-section; (b) that any condition imposed by a Magistrate when releasing any person on bail be set aside or modified: Provided that the High Court or the Court of Session shall, before granting bail to a person who is accused of an offence which is triable exclusively by the Court of Session or which, though not so triable, is punishable with 184 imprisonment for life, give notice of*

***the application for bail to the Public Prosecutor unless it is, for reasons to be recorded in writing, of opinion that it is not practicable to give such notice.***

13. The counsel for the accused No.1, 2 and 5 argued at length and submitted a memo with certified copies of order passed in Criminal Petition No.927/2023 c/w. Criminal Petition No.9417/2023, Criminal Petition No.9465/2023 dated 16.07.2024 granting bail to accused persons in Gowri Lankesh murder case of Crime No.221/2017 registered by Rajarajeshwari Police Station, Bengaluru. He has also produced order of Hon'ble High Court of Karnataka, Dharwad Bench in Criminal Petition No.101997/2024 granting bail to Vasudev Bhagwan Suryavamshi, who is accused No.4 in this case, and Amit Baddi @ Amit, who is accused No.6 in Crime No.142/2015 of Vidyagiri Police Station. He has also produced order of Hon'ble High Court of Karnataka, Dharwad Bench in Criminal Petition No.102748/2024 granting bail to

Praveen @ Masalavala Chatur, who is accused No.3 in this case in Crime No.142/2015 of Vidyagiri Police Station. He has also produced order of Hon'ble Principal City Civil and Sessions Judge, Bengaluru in Special C.C.No.872/2018 and Crl.Miscellaneous No.5593, 6969, 6970 of 2024 dated 09.10.2024 granting bail to Amit Baddi, Vasudev Bhagwan Suryavamshi, Ganesh Miskin and Amol Kale, who are now seeking bail in the present case. It is argued that, they are initially arrested in Gowri Lankesh Case, which is Special C.C.No.872/2018, and taken into Body Warrant in this case.

14. The learned Special Public Prosecutor has argued in length for rejection of bail application as no reasonable grounds are made out for allowing the same. He also argued that, it is a serious crime of murder wherein accused persons are not entitled for any parity or leniency in granting the bail. He has relied upon the following citations:

1. **Criminal Appeal No.2079-2020 of 2023** (Slp (Crl) No.3445-3446 of 2023), in the case of **Rohit Bishnoi Vs. State of Rajasthan**, wherein, a cryptic bail order was passed without assigning any reasons in a serious offence where the Hon'ble Supreme Court has given direction that when no proper reasoning was given by the Hon'ble High Court and when the trial is at the initial stage, the allegation against the accused would not have been crystallized as such and bail order was cancelled and set aside in the said case.

2. **Criminal Appeal No.658/2022**, in the case of **Imran Vs. Mr. Mohammed Bhava & Another**, wherein the anticipatory bail granted by the High Court of Karnataka in a murder case was challenged before the Hon'ble Supreme Court which cancelled the bail considering the fact that High Court while granting the bail failed to consider the nature of accusation and relevant evidentiary material against them.

3. **Criminal Appeal No.2782/2023** (SLP Crl. No.6347/2023) in the Case of **Shiv Kumar Vs. The State of UP and Another**, wherein the order passed by the High Court of Judicature at Allahabad granting regular bail to the accused under Section 302 of IPC was challenged in a double murder case. In the said



case, a direction was given to the prosecution to try and decide all cases arising out of principal crime before the same Judge instead of being bifurcated and sent for trial to different Courts. The appeal was allowed and bail order was cancelled.

4. **AIR 2004 Supreme Court, 1866** (Crl. Appeal No.324/2004) in the case of **Kalyan Chandra Sarkar Vs. Rajesh Ranjan Alias Pappu Yadav and Another** dated 12<sup>th</sup> March, 2004 and argued that, the fact that accused was in custody for certain period of time by itself is not a ground to grant bail in matter where the accused is involved in heinous crimes. In the said citation, the Hon'ble Supreme Court observed that, successive bail applications filed by the accused was rejected by the High Court and even it was confirmed by the Hon'ble Supreme Court. There was no fresh grounds mentioned by the Hon'ble High Court to grant the bail, for which reason the same was cancelled.

5. **Criminal Appeal No.70/2022** (Supreme Court) in the case of **Ishwarji Nagaji Mali Vs. The State of Gujarat and Another**, wherein the principle to be considered while granting bail in heinous offences is explained. In a case of committing under Section 302 R/w. Section 120(B) IPC and in a case of hatching

conspiracy to kill his wife, having deep root in the society, no apprehension as to flee away or escape the trial or tampering the evidence can hardly be a ground to release the accused on bail.

6. **Criminal Appeal No.1248/2005** (Arising out of SLP Crl.No.3503/2004) (Supreme Court) in the case of **State through C.B.I Vs. Amaramani Tripathi** on 26<sup>th</sup> September 2005, wherein bail granted by the Hon'ble High Court was cancelled by the Hon'ble Supreme Court, as High Court gravely erred in granting bail to Amarmani Tripathi without assigning reasonable grounds.

7. **AIR 2017 Supreme Court 1685** (Crl. Appeal No.601/2017) in the case of **Virupakshappa Gouda and Another Vs. The State of Karnataka and another**, wherein refusal by the High Court of Karnataka to grant bail was questioned in Spl. Leave Petition.

8. **Criminal Appeal No.571/2021 and 572 and 573 of 2021** (Hon'ble Supreme Court) in the case of **Kumer Singh Vs. State of Rajasthan and another**, wherein the Prosecutor argued that, merely because accused are in custody for approximately for 01 year and 06 months High Court ought not to have released the

accused on bail. Moreover, the appeal was allowed for the reason that it was a one paragraph order and a cryptic order in a heinous offence which was the reason for setting aside the same.

**9. Criminal Appeal No.-- of 2023 (SLP (Crl.) No.9431/2023** in the case of **Tarun Kumar Vs. Assistant Director Directorate of Enforcement**, wherein learned Prosecutor argued that, grant of bail to the appellant on the ground that other co-accused, who were similarly situated, have been granted bail cannot be accepted. Parity is not the law, while applying the principle of parity, the Court is required to focus upon the role attached to the accused whose application is under consideration.

**10. Criminal Petition No.11041/2023** in the case of **Almas Pasha S/o. Late Mohammed Ibrahim Vs. The State of Karnataka**. wherein parity was a ground to seek bail when co-accused is granted bail and the Hon'ble High Court held that merely because other accused are enlarged on bail the petitioner would not get a right to get himself enlarged on bail and application was rejected.

This Court has given anxious consideration to all these citations filed by the learned Special Public Prosecutor and the law laid down in each case is carefully considered while deciding the present bail application.

15. On the other hand, the Advocate for the accused has relied the decision reported in **Javed Gulam Nabi Shaikh Vs State of Maharashtra & another (2024 SCC OnLine SC 1693)** wherein the accused was prosecuted under the provisions of the Unlawful Activities (Prevention) Act, 1967. Hon'ble Apex Court observed that “.... If the State or any prosecuting agency including the Court concerned has no wherewithal to provide or protect the fundamental right of an accused to have a speedy trial as enshrined under Article 21 of the Constitution then the State or any other prosecuting agency should not oppose the plea for bail on the ground that the crime committed is serious. Article 21 of the Constitution applies irrespective of the nature of the crime.....”.

16. Further, the Advocate for the accused has relied upon on the decision in the case of **Indrani Pratim Mukerjea Vs. Central Bureau of Investigation 2022 SCC Online SC 695** the Hon'ble Supreme Court taking into consideration that the accused, who was being tried for the offence punishable under Section 302 of IPC, was in custody for a period of six and half years and the prosecution was yet to examine many more charge sheet witnesses, granted bail to the accused observing that **"Admittedly, the petitioner has been in custody for 6½ years. We do not intend to comment on the merits of the case which might be detrimental to the interest of either the prosecution or the defence. Taking into account the fact that the petitioner has been in custody for 6 ½ years and even if 50% of the remaining witnesses are given up by the prosecution, the trial will not complete soon, we are of the**

**considered view that the petitioner is entitled to be released on bail.”**

17. Further, he has relied upon the decision of Hon'ble Supreme Court in the case of **Ankur Chaudhary Vs. State of Madhya Pradesh – Special Leave Petition No.4648/2024** decided on **28.05.2024**, wherein it is held that, “failure to conclude the trial within a reasonable time resulting in prolonged incarceration militates against the precious fundamental right guaranteed under Article 21 of the Constitution of India and as such, conditional liberty overriding the statutory embargo created under Section 37(1)(b) of the NDPS Act may, in such circumstances, be considered”.

18. After hearing both parties and after going through the law laid down in the citations of Hon'ble Supreme Court in cases referred supra, this Court has gone through the entire order sheet and the trial

already conducted so far. Upon going through the order sheet of Committal Court, accused No.2-Ganesh Miskin was produced before Committal Court under Body Warrant from main case Crime No.221/2017 of R.R.Nagar Police Station, Bengaluru on 15.09.2018 along with accused No.6 Amit Baddi. Accused No.1 Amol Kale was produced before Committal Court under Body Warrant on 28.05.2019 and after Police Custody, all these accused were sent back to their original custody in Crime stage. After completing the investigation, Charge sheet was filed before the Committal Court on 26.08.2019. The Chief Investigating Officer, SIT, CID, Bengaluru filed requisition to issue Body Warrant to accused Nos.1, 2, 4, 6 and also requested to issue Fresh Body Warrant against accused No.5 Sharad Babusaheb Kalaskar, who was in J.C. in Mumbai Arther Road Jail under UTP No.9705/2018. The Committal Court issued the Body Warrant and accused Nos.2, 4 to 6 produced

before the Committal Court on 04.10.2019. It is observed that, none of the accused persons were taken into Judicial Custody in this case at any stage and they are shown as “produced under Body Warrant” even at the stage of committal on 05.11.2019.

19. Upon going through the order sheet after committal before this Court, only accused No.3 is shown as in Judicial Custody at Dharwad Jail and his J.C. is extended from time to time. Remaining all other accused were produced under Body Warrant through Video Conferencing from Central Jail, Bengaluru and Central Jail, Kolhapur, Maharashtra and their Body Warrant was extended from time to time. All the accused were secured under Body Warrant on 07.09.2021 and accused No.3 was produced from J.C. and Charge was prepared in their presence. Since then the case was proceeded for trial.



20. It is also argued by the Advocate for the accused that, even though case was filed in the year 2015, for about 3 to 4 years there was no progress in the investigation and no accused persons were either suspected or arrested during such a long period. C.W.2-Umadevi approached Hon'ble Supreme Court and sought direction that since Local Police have failed to investigate the same, she prayed for forming of SIT Team to investigate the same. Later, the SIT Team which had investigated the earlier case of Gowri Lankesh murder case at Bengaluru, had took up the investigation in the year 2019 and Charge sheet is filed after four years only on the basis of alleged confessional statement of accused persons arrested under KCOCA Act in the said Gowri Lankesh case. It is further argued that, except the confession statement, there is no independent, cogent evidence to connect the accused persons to the alleged murder. The Advocate for the accused had once filed

application for conducting pre-trial conference as per the direction of Hon'ble Supreme Court, which was opposed by the Special Public Prosecutor, and same was rejected by this Court. Upon going through the order sheet, it is revealed that, both prosecution as well as Advocate for the accused have not contributed in delay of the Trial. Due to Covid-19 pandemic, there was no proceedings in this case for nearly two years. Throughout the trial, the accused Nos.1, 2 and 5 are produced under Body Warrant through Video Conferencing from different jails and entire trial was watched by them through Video Conference connected to the respective jails from the Court.

21. At present, before passing the order, the prosecution has totally examined 22 witnesses as P.W.1 to P.W.22 and already this Court has issued summons till C.W.50. The I.O. was given notice for pre-trial conference on 18.12.2024 who filed request letter to drop C.W.4, C.W.5, C.W.6, C.W.7, C.W.8,

C.W.15, C.W.73, C.W.98, C.W.115 and C.W.139 and they are dropped. Even then, the prosecution has to cover nearly 110 witnesses for chief examination and subject them for cross-examination. Considering all these aspects, trial of this case would not be completed in near future in spite of best efforts the prosecution and the Court. Admittedly, accused No.3-Praveen, accused No.4-Vasudev Suryavamshi and accused No.6-Amit Baddi have been granted bail by the Hon'ble High Court of Karnataka as per order already stated above. Accused No.1-Amol Kale, accused No.2 – Ganesh Miskin have been granted regular bail in main case i.e. Special C.C.No.872/2018 by Hon'ble Principal City Civil and Sessions Judge, Bengaluru on 09.10.2024. As already stated, these accused persons are brought under Body Warrant in the present case throughout the trial and now they have been granted bail in the main case.

22. Considering all these above facts and reasons given above, this Court has also relied on following citations of Hon'ble Supreme Court regarding granting bail in heinous offences for accused persons who are in custody for a prolonged period in support of my reasons.

(a). In **Jalaluddin Khan Vs Union of India (2024 SCC OnLine S.C. 1945)** Hon'ble Supreme Court of India has held that “..... The allegations of the prosecution may be very serious. But, the duty of the Courts is to consider the case for grant of bail in accordance with the law. “Bail is the rule and jail is an exception” is a settled law. Even in a case like the present case where there are stringent conditions for the grant of bail in the relevant statutes, the same rule holds good with only modification that the bail can be granted if the conditions in the statute are satisfied....”.

(b). In **Manish Sisodia Vs Directorate of Enforcement (2024 SCC OnLine S.C. 1920)** Hon'ble Supreme Court of India has held that “ .... The right to bail in cases of delay, coupled with incarceration for a long period, depending on the nature of the allegations, should be read into Section 439 of the Code and Section 45 of the PML Act. The reason is that the constitutional mandate is the higher law, and it is the basic right of the person charged of an offense and not convicted, that he be ensured and given a speedy trial. When the trial is not proceeding for reasons not attributable to the accused, the Court, unless there are good reasons, may well be guided to exercise the power to grant bail.....”.

(c). In **Mohd. Muslim @ Hussain Vs State (NCT of Delhi) (2023 SCC OnLine SC 352)** Hon'ble Supreme Court of India while considering the rigor under Section 37 of NDPS Act for granting bail to the accused person, has held that “..... Incarceration has

further deleterious effects – where the accused belongs to the weakest economic strata : immediate loss of livelihood, and in several cases, scatter in of families as well as loss of family bonds and alienation from society. The Courts therefore, have to be sensitive to these aspects (because in the event of an acquittal, the loss to the accused is irreparable and ensure that trials – especially in cases, where special laws enact stringent provisions, are taken up and concluded speedily..... ”.

(d). In **Satender Kumar Antil Vs Central Bureau of Investigation (2022 10 SCC 51)** Hon'ble Supreme Court of India has held that “..... The general principle governing delay would apply to these categories also. To make it clear, the provision contained in Section 436A of the Code of any specific provision. For example, the rigor as provided under Section 37 of the NDPS Act would not come in the way of such a case as we are dealing with the liberty of a person. We do

feel that more the rigor, the quicker the adjudication ought to be. ...”

23. In the above referred decisions, Hon'ble Supreme Court of India has repeatedly held that speedy trial is a fundamental right implicit in the broad sweep and content of Article 21 of Constitution and that if the period of deprivation of personal liberty pending trial becomes unduly long, the fairness assured by Article 21 of the Constitution would receive a jolt. Hon'ble Apex Court has emphasized that presumption of innocence being a facet of Article 21, it shall ensure to the benefit of the accused. Granting or rejecting bail is the discretion of the Court, but it must be exercised judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of Hon'ble Supreme Court on that point. It is well settled that, among other circumstances, the factor to be borne in mind while considering an application for bail are : (1) Whether

there is any prima facie or reasonable ground to believe that the accused had committed the offence; (2) Nature and gravity of accusation, (3) Severity of the punishment in the event of conviction, (4) Danger of the accused absconding or fleeing if released on bail, (5) Character, behaviour, means, position and standing of the accused, (6) Likelihood of offence being repeated, (7) Reasonable apprehension of witnesses being influenced and (8) Danger, ofcourse, of justice being thwarted by grant of bail (**Prashanth kumar Sarkar Vs. Ashish Chatterjee and Others**) (SC). All these factors are taken into consideration while granting bail in the present case as already explained in preceding paragraphs. In the above circumstances, taking into consideration the legal principles laid down by Hon'ble Apex Court, the period of incarceration undergone by the accused herein as well as benefit of bail extended by Hon'ble High Court of Karnataka to accused No.3, 4 and 6 of present case as well as



there being no chance of concluding trial in the case within a short time, this Court holds that these accused have made out valid grounds to enlarge them on bail. This Court further holds that imposition of the conditions would ensure cooperation of the accused persons in holding further trial in the case as well as protect the interest of the prosecution. The citations relied by the Prosecution, with due respect is not considered in the present case for the reasons stated above and the citations filed by the Advocate for the accused are taken into consideration. Hence, I answer **Point No.1 in the Affirmative.**

24. **Point No.2:** Upon discussion made above, I proceed to pass the following,

### **ORDER**

The bail application filed by the accused Nos.1, 2 and 5 under Section 439 of Cr.P.C. is hereby allowed.

The accused Nos.1, 2 and 5 are hereby enlarged on regular bail in this case on the following conditions:

**CONDITIONS**

1. The accused No.1, 2 and 5 shall execute Personal Bond for a sum of Rs.2,00,000/- each with Two Sureties, who reside within the jurisdiction of this Court, for the likesum to the satisfaction of this Court.
2. The accused No.1, 2 and 5 shall appear regularly before the Court on all the hearing dates unless their personal appearance is exempted for valid reason.
3. The accused No.1, 2 and 5 shall not directly or indirectly threaten or tamper the prosecution witnesses.
4. The accused No.1, 2 and 5 shall not involve in similar offences in future.
5. The accused No.1 and 2 shall not leave the jurisdiction of this Court till disposal of the case.
6. The accused No.1, 2 and 5 shall furnish details of their place of residence pending disposal of the case, registered Mobile Number and e-mail ID, if any, along with supporting documents.

7. In the event of violation of any one of any above conditions, the prosecution is at liberty to seek cancellation of their bail.

On furnishing the sureties by the accused Nos.1, 2 and 5, the same would be sent to Investigating Officer, CID, Bengaluru to verify the correctness of address and authenticity of documents produced by the accused persons and the sureties and a report would be called for from the Investigating Officer in this regard. Only after satisfactory report filed by the Investigating Officer, the sureties would be accepted for bail.

(Dictated to the stenographer directly on computer, typed by him, corrected, print out signed and then pronounced by me in open court on this **30<sup>th</sup> day of December, 2024.**)

**(Smt. POORNIMA N. PAI)**  
**IV ADDITIONAL DISTRICT AND SESSIONS JUDGE,**  
**DHARWAD.**