

**IN THE COURT OF V ADDITIONAL DISTRICT AND
SESSIONS JUDGE, TIPTUR.**

Dated this 25th day of May 2021

Present:

**Shri. Shivakumara B, B.A. LL.B.,
V Addl. District and Sessions Judge
Tiptur.**

CrI.Misc.No.10142/2021

- Petitioner/s**
- 1. Raju
S/o Channaiah,
Aged about 52 years,**
 - 2. Shivanna
S/o Channaiah,
Aged about 50 years,**
 - 3. Naveena
S/o Shivanna,
Aged about 25 years,**

**All are R/o Shettihalli village,
Kibbanahalli Hobli,
Tiptur Taluk,
Tumkur District. .**

(By Sri. K.B.B., Advocate)

-Vs-

Respondent : State by
Kibbanahalli Police Station,

(Represented by Public Prosecutor)

Order on bail petition in Crl. Misc. No. 10142/2021
filed U/sec 438 of Cr.P.C.,

This bail petition is filed by the petitioners seeking anticipatory bail U/Sec.438 of Cr.P.C., in Cr.No. 44/2021 of Kibbanahalli Police Station, for the offences punishable U/Sec.323, 354(B), 504 R/W Sec.34 of IPC.

2) The brief facts of the case are that:

On 05.04.2021 at about 9.00 P.M., the complainant Kavya W/o Swamy came out of the house for nature call. At that time the accused No.1 attempted to hug her and when she shouted, the accused No.2 and 3 came there. At that time, the accused No.1 dragged the complainant and attempted to outrage her modesty in the public place and also assaulted her by abusing in filthy words. Accused No.2 and 3 also assaulted the complainant. Accordingly, the complainant had lodged the complaint against the accused persons, on which basis the criminal case was registered in Cr.No.44/2021 for the offences punishable U/Sec.323, 354(B), 504 R/W Sec.34 of IPC.

3) The grounds urged by the petitioners are as follows:

The petitioners/accused No.1 to 3 are innocent persons and not committed any offences as

alleged against them. They are law abiding citizens and permanent residents of the address as shown in the petition cause title. The petitioners are apprehending of their arrest by the respondent police at any moment. The offences alleged against the petitioners are not punishable with death or imprisonment for life. They are offering surety and ready to abide by all the terms and conditions that may be imposed by this court. Hence, this petition.

4) Per contra, the learned Public Prosecutor has filed objection and opposed the averments of bail petition by contending that the Respondent police have got registered a criminal case in Crime No.44/2021 against the petitioners for the offences punishable U/Sec.323, 354(B), 504 R/W Sec.34 of IPC., by alleging that the accused persons abused the complainant in filthy words and also assaulted with their hands and accused No.1 made attempt by dragging her. Accordingly, the criminal case was registered.

Sec.354(B) of IPC is non-bailable offence and punishable with imprisonment which may extent to 5 years and shall also liable with fine. The concerned I.O had visited the place of occurrence and conducted spot mahazar and also seized the clothes worn by the

complainant at the time of alleged incident and also seized the articles used by the accused for commission of offence. The investigation is still under progress and some important material to be collected and statement of the eye witnesses and other witnesses to be recorded by the I.O. The accused persons have also lodged the complaint against this present complainant and criminal case was also registered in crime No.45/2021 for the offences punishable U/Sec.143, 354(B), 504, 506 R/W Sec.149 of IPC. Therefore, at this stage, if, the petitioners are granted anticipatory bail, there may be chances of absconding and hampering or tampering the prosecution witnesses. There also may be chances of assaulting the complainant and other persons once again , since, the accused persons are very influential both by politically and economically. Viewed from any angel, the bail petition filed by the petitioners seeking an order for anticipatory bail is not maintainable and same is liable to be rejected.

5) Heard arguments and perused the records.

6) The points that arise for my consideration are as follows:

- i) **Whether, the petition filed by the petitioners/accused No.1 to 3 U/Sec.438 of Cr.P.C., deserves to be allowed?**

ii) **What order?**

7) My findings on the above said points are as follows:

Point No.1: IN THE AFFIRMATIVE

Point No.2: AS PER THE FINAL ORDER

for the following:

REASONS

8) **POINT No.1:** Both learned counsel for the petitioners and learned Public Prosecutor have reiterated the averments of bail petition and also objection filed thereto in their arguments.

It has been argued by the learned counsel for the petitioners that they are innocent persons and not committed any offences as alleged against them. They are law abiding citizens and permanent residents of the address as shown in the petition cause title. The petitioners are apprehending of their arrest by the respondent police at any moment. The offences alleged against the petitioners are not punishable with death or imprisonment for life. They are offering surety and ready to abide by all the terms and conditions that may be imposed by this court.

9) On the other hand, it has been argued by the learned Public Prosecutor that Sec.354(B) of IPC is non-bailable offence and punishable with imprisonment

which may extent to 5 years and shall also liable with fine. The concerned I.O had visited the place of occurrence and conducted spot mahazar and also seized clothes worn by the complainant at the time of alleged incident and also seized the articles used by the accused for commission of offence. The investigation is still under progress and some important material to be collected and statement of the eye witnesses and other witnesses to be recorded by the I.O. Therefore, at this stage, they are not entitled to be released on bail.

10) I have carefully gone through the records and material available before the court, which speaks that the Respondent- Kibbanahalli police have got registered a criminal case in Crime No.44/2021 against the petitioners/accused No.1 to 3 for the offences punishable U/Sec. 323, 354(B), 504 R/W Sec.34 of IPC., by making allegations against them that the accused persons abused the complainant in filthy words and also assaulted with their hands and accused No.1 made attempt by dragging her to outrage the modesty. Accordingly, the criminal case was registered against the petitioners/accused persons.

11) It is to be noted that in this case, except Sec.354(B) of IPC, rest of the offences are bailable in nature. Though, Sec.354(B) of IPC is non-bailable offence, but, not punishable with death or imprisonment for life. Moreover, all the offences are

exclusively triable by the learned J.M.F.C. As per the version of learned counsel for the petitioners as well as learned public prosecutor the case and counter case have been registered against both rival parties before the respondent police. However, the investigation is still under progress and charge sheet yet to be filed. Under such circumstances and considering the facts of the case, gravity of offences and also for the foregoing reasons, I am of the considered opinion that if, the petitioners are granted anticipatory bail by imposing stringent conditions, the apprehension of the prosecution would meet the ends of justice. Accordingly, I answered the above said point No.1 is in the **Affirmative**.

12) **POINT No.2:** In view of my findings on the above said Point No.1, I proceed to pass the following:

ORDER

Crl.Misc. No.10142/2021 filed

U/Sec.438 of Cr.P.C., is **allowed**.

The Respondent – Kibbanahalli Police is directed to release the petitioners/accused No.1 to 3 on bail in the event of their arrest in Crime. No.44/2021 for the offences punishable U/Sec.323, 354(B), 504 R/W Sec.34 of IPC., on executing

their personal bond for a sum of Rs.40,000/- each, with one surety for the like-sum subject to the following;

Conditions:

- 1) The petitioners/accused No.1 to 3 shall attend the concerned police station in between 10.00 A.M., to 5.00 P.M., on 1st and 15th of every month and mark their attendance till filing of the charge sheet.
- 2) The petitioners shall not hamper or tamper with the prosecution witnesses or evidence in any manner.
- 3) The petitioners shall co-operate with the investigating agency during the course of investigation as and when called upon by the I.O.
- 4) The petitioners shall not commit or involve in similar offences.

(Dictated to the Stenographer, transcribed by her, revised, corrected and then pronounced by me in the open Court on this 25th day of May 2021.)

(SHIVAKUMARA.B)

V Addl. District & Sessions Judge
Tiptur.