

IN THE COURT OF I ADDL. DISTRICT & SESSIONS

JUDGE, AT BALLARI.

**PRESENT : Sri. D. VINAY, B.Com., LL.M., ACS.
C/c. I Addl. District & Sessions Judge,
Ballari.**

Crl.Misc.P. No. 816/2023

DATED : THIS 12th DAY OF DECEMBER, 2023

Petitioner/Accused No.2 :

Haneef S/o. Abdul Basith, aged 47 years, Muslim,
Resident of Ward No.15, Donappa Street, Vaddara,
Ballari.

(By Sri. A. Mohammed Ghouse, Advocate)

Vs.

Respondent :

State by Sub Inspector of Police, Cowl Bazaar
Police Station, Ballari.

(By Learned Public Prosecutor)

ORDER

This is an application filed by the petitioner/accused
No.2 U/Sec. 438 of Cr.P.C. 1973, praying for grant of
anticipatory bail.

2. Brief facts of the case as per the complaint/FIR registered by the respondent police is that, on 08-06-2022 at about 11.00 p.m., accused No.1-Sultan made a phone call to the complainant and asked him to come near his house. When the complainant went near the house of accused No.1, accused No.1 picked up a quarrel with him on the ground that he was dare enough to ask him to join him in a journey in his Car. In furtherance, accused No.1 along with other accused persons attacked the complainant by forming an unlawful assembly equipped with deadly weapons, abused him in filthy language, assaulted with hands, long, hockey bat, soda bottle etc., to the complainant and also threatened him of dire consequences. Thereby, it is alleged that the petitioner/accused No.2 is guilty of having committed an offence punishable U/S's 143, 147, 148, 307, 323, 324, 504, 506 R/W 149 IPC.

- 2(a). The petitioner is apprehending his arrest at any time by the respondent police. He submits that he is innocent of the alleged offence and that he would abide by all the conditions that may be imposed on him, if bail is granted. Accordingly, he has prayed for grant of anticipatory bail in the event of his arrest by respondent police.
3. Learned Public Prosecutor has resisted the bail petition by filing statement of objections and has prayed for dismissal of the petition.
4. I have heard the arguments canvassed by both sides and perused the materials available on record.
5. Now, the following points arise for my consideration and determination:
1. *Whether the petitioner/accused No.2 has made out a prima-facie case for grant of anticipatory bail as prayed for ?*
 2. *What Order ?*

6. My findings on the above said points are as under:

Point No.1 : In the Affirmative.

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

REASONS

7. **Point No.1** :- The petitioner has furnished certified copy of the FIR, Complaint in Cr.No.134/2022 etc.
8. Perusal of these documents clearly evidences that, on the basis of complaint lodged by one Ghouse S/o Mahebu Sab, the respondent police have registered a case in Crime No.134/2022 dated 10.06.2022 against 07 accused persons, where the petitioner herein is arrayed as accused No.2.
9. During the course of arguments, learned counsel for the petitioner has furnished the notarized copies of the In-patient records, MLC sheet and wound certificate of the complainant.

10. On careful perusal of the documents available on record, it is evident that, there is a delay of more than one day in lodging the complaint. On perusal of the medical records, it is evident that the complainant had not sustained any serious injuries and thereby the gravity of the offence was not severe, as exaggerated by him in the complaint. Further, the doctor who has issued wound certificate has opined that the injuries sustained by him are simple in nature and as an impact of blunt force. However, there is no reference of any incise or stab wounds sustained by the complaint. Further, the medical reports discloses that, the complainant was conservatively treated and was not referred to any higher centre/treatment.
11. In this context, it is relevant to refer the decision of Hon'ble Apex Court in the case of ***Siddharam Satlingappa Mhetre Vs. State of Maharashtra and***

others, reported in **(2011) 1 SCC 694**, wherein in the

Hon'ble Apex court held as follows:

122. The following factors and parameters can be taken into consideration while dealing with the anticipatory bail:

i. The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;

ii. The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;

iii. The possibility of the applicant to flee from justice; iv. The possibility of the accused's likelihood to repeat similar or the other offences.

v. Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her.

vi. Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people.

vii. The courts must evaluate the entire available material against the accused very carefully. The

court must also clearly comprehend the exact role of the accused in the case. The cases in which accused is implicated with the help of sections 34 and 149 of the Indian Penal Code, the court should consider with even greater care and caution because over implication in the cases is a matter of common knowledge and concern;

viii. While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;

ix. The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;

x. Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.

Considering the above parameters, this court is of the considered view that, the petitioner has made out a prima facie case for grant of anticipatory bail.

12. Further, it is noteworthy that relief U/s.438 Cr.P.C. is only in the form of interim relief to remain in force for a limited period so as to provide breathing time to the offender to surrender before the jurisdictional police and to appear before the jurisdictional Court.
13. Without prejudice to the foregoing, at this juncture, this Court is of the opinion that there would be no impediment, if the petitioner/accused No.2 is granted bail upon imposing strict conditions.
14. The petitioner/accused No.2 is permanent resident of Ballari at the address mentioned in the cause title. He has also submitted that he is ready and willing to furnish surety for his appearance before the Court. He has undertaken that he will not tamper or hamper with the prosecution witnesses and evidence. Hence, above point No.1 is answered in the affirmative.

15. **Point No.2** :- For the above said discussion, I proceed to pass the following:

ORDER

The Crl. Misc. Petition filed by the petitioner/accused No.2 U/sec.438 Cr.P.C is allowed.

The respondent is directed to release the petitioner/accused No.2 on bail in the event of his arrest, in connection with the Crime No.134/2022 registered by the respondent, subject to the following conditions:

1. *The petitioner/accused No.2 shall appear before the Investigating Officer within 25 days from the date of this order and in that event, the Investigating Officer shall release him on bail by obtaining personal bond for a sum of Rs.1,00,000/- with one local surety for the like sum.*
2. *He shall put his attendance before the respondent police on every Sunday between 10.00 AM to 5.00 PM until the police files final report in the case.*
3. *He shall co-operate with the Investigating Officer during investigation.*
4. *He shall not directly or indirectly make any inducement, threat, promise or influence the witnesses or any person acquainted with the facts of the instant case so as to dissuade him from disclosing such facts*

either to the Court or to the Investigating Officer and shall not tamper the evidence.

5. *He shall furnish an authenticated proof of his residential address mentioned in the cause title of this petition, before the I.O., while executing the bond.*

[Dictated to the Judgment Writer, computerized by her, revised and corrected and then pronounced by me in the open Court on this the 12th day of December, 2023].

[D.Vinay]

C/c. I Addl. District & Sessions Judge,
Ballari.