

**IN THE COURT OF THE XXVIII ADDL. CITY CIVIL &
SESSIONS JUDGE**

Mayo Hall, Bengaluru, [CCH.NO.29]

Present: - Sri. Krishnaji Baburao Patil, B.Com.,LL.B.,(Spl.)

Dated: This the 1st day of July 2020

Crl.Misc.No.25363/2020

Petitioner:

Jai Kumar,
Aged about 31 years,
S/o Radha Krishna,
R/at # 5/9, Church Street,
Lingarajapuram,
Bangalore-560 085.

(Pleader By : Sri. T.G. Suresh)

.. Vs ..

Respondent:

The State of Karnataka by
K.G, Halli Police Station,
Bengaluru.

(By Public Prosecutor)

ORDERS

The present Petition is filed by the Petitioner who is the accused No.10, in this case under Section 438 of Cr.P.C., for bail on the ground that, on the basis of the complaint filed by one Bhadrappa the Respondent Police have registered

Cr.No.115/2020 for the offences punishable under Section 143, 147, 188, 436, 120(B), 427, 504, 506 r/w Section 149 of IPC along with Section 2 of Prevention of Destruction and Loss of Property Act, 1981. The Complainant alleged that he is the resident of Garapalli Village, Chincholi Taluk, Kalburgi District, and he came to Bengaluru for the purpose of Coolie. He has constructed a hut in the lake area at Kacharakanahalli, Bengaluru North Taluk and has been residing therein. Similarly placed 250-300 people have been residing there by constructing huts therein. The Complainant alleged that some unknown persons came to the said area and threatened to vacate the said huts. When such being the case on 24.3.2020 many families have returned to their natives due to Corona Virus Pandemic disease. On 28.3.2020 around 5 p.m., 10-15 unknown persons have gathered near the huts and they were taking each other to destroy the huts which are existed near the Lake Area of Kacharakanahalli Village. On the very day, around 9.00 to 9.30 p.m., the said persons have set fire to the huts constructed in the lakebed and the said huts were burned into ashes. Again, on 30.3.2020 around 3.00 p.m., again the said persons destroyed around 60 huts which are situated next to Market area. He

further alleged that on 5.4.2020 around 9.30 a.m., the same persons brought JCB and destroyed around 210 huts except one hut belong to him and other five huts belongs to others as they were residing in the said huts and thereafter they threatened the Complainant that if he or any of the other five huts complained to the Police they will not be spared, by alleging so he on 1.5.2020 has lodged complaint to the Respondent Police against 10-15 unknown persons. On the basis of the said compliant police have registered case in Cr.No.115/2020.

2. The Petitioner has contented that he is innocent of the alleged offences and has not committed any of the offences as alleged by the Police. The allegations made by the Police are false and frivolous. The complaint does not disclose the name of this Petitioner. The Petitioner is the accused No.10 in the present case and in the complaint nowhere the Complainant has mentioned the name of this accused. If the Petitioner is arrested, he will be harassed, humiliated by the Respondent Police and they will defame and tarnish the clean image of the Petitioner and Petitioner will lose his reputation in the society. The accused No.1, 5 and 6 namely Purushotham Reddy, Radhakrishna M and

Muniya are granted in Crl.Misc.No.25327/2020. The Petitioner is having deep roots in the society. The Petitioner is law abiding citizen and there is no previous antecedents of the Petitioner involving in similar crime and he is ready to abide by the conditions imposed by this Court and also furnishing surety to the satisfaction of this Court. Hence, prayed to allow the Petition.

3. For the said application the PP has filed objections reiterating the contents of the complaint and further contended that the Police have seized the ashes of the huts in the presence of the panchas. The Petitioner is accused No.10 who has absconded since from the date of registration of the case against him. The investigation is yet not completed. Hence, the Petitioner is required for the investigation. The offence under Section 436 of IPC is non-bailable in nature and punishable for imprisonment for life if the destruction of the dwelling which is used for the purpose of human dwelling. Hence, the gravity of the offence is so high and the Petitioner is not entitled for bail. The shed belongs to poor labourers in the locality and they have no residence at present due to the act of the Petitioner. The

Petitioner will commit similar offence, if he is enlarged on bail. The Petitioner is not entitled for bail. Hence, prayed to dismiss the Petitioner. PP has also filed CD along with the objections.

4. On the basis of the above, the point that arises for my consideration are:-

1) Whether the Petition deserves to be allowed?

2) What order?

5. My answer to the above points are :

Point No.1 : In the Affirmative

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

REASONS

6. In the present case, the Complainant has filed the complaint against 10-15 unknown persons. The Complainant has not disclosed the names and identity of the persons who have committed the alleged offences. It is pertinent to note that, as per the Complainant the said 10-15 unknown persons came to the place of incident on 28.3.2020 and destroyed about 30 huts.

On that day, no complaint was given by the Complainant. Again the Complainant has stated that the same persons on 30.3.2020 at about 3.00 p.m., came to the said spot and destroyed around 60 huts and even on that day the Complainant has not filed any complaint. The Complainant again contended that on 5.4.2020 at about 9.30 a.m., the same persons came with JCB and destroyed about 210 huts with the help of JCB except one hut belonging to him and other five huts belong to others and they threatened the Complainant and other persons who are present in their huts. Even in respect of the incident dtd: 5.4.2020 complaint was not filed on 5.4.2020. But, the Complainant has filed complaint on 1.5.2020 against some unknown persons. There is no explanation as to why the Complainant has not filed complaint on 28.3.2020, 30.3.2020 and 5.4.2020, though, the Complainant was aware of the incident and he was an eye-witness to the incident as alleged by the Complainant himself. In CD produced by the Prosecutor it is stated that the IO has visited the scene of offence and enquired the witnesses and came to know that the accused person along with other persons committed the said offence. It is not disclosed as to whom the IO has enquired. It is true that, at this stage, the merits of the

case cannot be considered. However, considering the facts and circumstances of the present case, this Court is of the view that the Petitioner is entitled for anticipatory bail as prayed in the present petition. The offences alleged against the Petitioner are not punishable with death or imprisonment for life. In view of the fact that, the name of this Petitioner is included in the remand application, it is clear that the Petitioner is having apprehension of his arrest in the present case. In view of the discrepancies in the complaint and also non-filing of the complaint immediately after the first incident on 28.3.2020, 30.3.2020 and 5.4.2020 creates doubt in the mind of the Court. It is also pertinent to note that, no other persons who are in possession of the alleged huts in the said area have not filed any complaint. The IO has not recorded the statement of any of those persons. It is true, at this stage, the merits of the case cannot be considered. However, in view of these discrepancies, if the Petitioner is arrested, he will be put to irreparable loss. From the case file it is clear that accused No.1, 5 and 6 have been arrested by the Police and produced before the Court and taken for police custody and conducted mahazar and seized the incriminating materials from those accused persons.

Considering the facts and circumstances of the present case, this Court is of the view that this Petitioner is also entitled for the anticipatory bail on the ground of parity as prayed in the Petition. With these observations, I answer Point No.1 in the Affirmative.

7. **Point No.2**:- In the result, this Court proceeds to pass the following:-

ORDER

The Petition filed by the Petitioner under Sec.438 Cr.P.C., is hereby allowed.

The Respondent Police are hereby directed to release the accused in the event of his arrest in Cr.No.115/2020 on execution of personal bond for a sum of Rs.1,00,000/- with one surety for likesum to the satisfaction of Respondent Police subject to following conditions:-

1) The Petitioner shall appear before the IO as and when called for and co-operate with IO in the investigation of the present case.

2) The Petitioner shall not tamper with the Prosecution

witnesses in any manner.

3) The Petitioner shall produced Adhaar Card/Identity Card, contact number, residential address and occupation and also photos of the Petitioner and the surety while executing bail bond.

4) The Petitioner shall not leave the jurisdiction of this Court without prior permission.

5) The Petitioner shall not change his residence without prior permission of the Court.

[Dictated to the Stenographer, thereafter transcribed and typed by the Stenographer and the same was corrected, signed and then pronounced by me in the open Court on this the **1st day of July 2020**].

[Krishnaji Baburao Patil],
XXVIII. Addl. City Civil Judge,
Mayo hall, Bangalore.

Orders pronounced in open court
as under (vide separately):-

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[Krishnaji Baburao Patil],
XXVIII. Addl. City Civil Judge,
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