

**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 8th day of July 2020

Crl.Misc.No.25369/2020

Petitioner:

Ganesh @ Koti,
S/o Venkatesh,
Aged about 26 years,
R/at No.33,
1st Cross, I Main Road,
Krishna Temple Road,
1st Stage, Indiranagar,
Bengaluru-560 038.

Also R/at:

No.106,
Binnamangala Imperial,
1st Stage, Indiranagar,
Bengaluru-560 036.

(Pleader By : Sri. R. Venu)

.. Vs ..

Respondent:

The State of Karnataka by
Bayappanahalli Police Station,
Bengaluru.

(By Public Prosecutor)

ORDERS

The present Petition is filed by the Petitioner who is the accused No.2 in this case under Section 439 of Cr.P.C., for bail on the ground that, the Respondent Police have registered case in Cr.No.57/2020 for the offences punishable under Section 307, 323, 341 r/w Section 34 of IPC.

2. The case of the Prosecution is that, on the basis of the complaint filed by one Ramesh alleging that he is working as Driver in FEDEX, his brother P. Rajesh is working as Security Manager in ITC Company. On 8.5.2020 at about 8.30 p.m., the Complainant, Ajith and Promod were standing in front of the house of Ajith. At that time, Raj Dorai, Koti, Sathish and others were came and Koti punched with his hands upon the Complainant's left side face. By that time, his brother P. Rajesh came to the rescue and told them not to assault the Complainant and intervened to pacify the same, then Raj Dorai came telling that I am a rowdy of this Area and showed knife towards his brother and told to finish-off and assaulted upon the right side neck of his brother and caused bleeding injuries. At that time, others surrounded them and assaulted with hands

and kicked with their legs and thereafter left the place, due to which his brother felt unconscious and he was shifted to CMH Hospital in the Auto and for further treatment shifted to Manipal Hospital. Thus he sought the Respondent Police to take action against them. Hence, this Complaint.

3. During the course of investigation, the Respondent Police have arrested the Petitioner and produced before the X ACMM, Mayohall, Bengaluru and the learned Magistrate remanded the Petitioner to judicial custody. The Petitioner has contended that he is innocent of the alleged offences and he has got valid and tenable defence in his favour. The name of the Petitioner do not figured in the FIR or in the complaint of the Complainant. The Respondent Police have falsely implicated the name of the Petitioner in the remand application at the later stage of the investigation. The Petitioner is totally a stranger to the alleged crime, he was not aware about the same, he also not known to the other accused persons in the instant case nor colluded with them for the commission of the above said offences. He neither directly nor indirectly involved in the above said case. Even though, the Petitioner is no way concerned to

the alleged crime, the Respondent Police have falsely implicated the name of the Petitioner in the remand application instead of arresting the real culprit who were held responsible for the same. He doesn't know to the Complainant and the injured in the above case nor did he have any type of friendship or relationship with them to do the said act upon them. The Petitioner was not present at the place of incident and held responsible in causing any type of injury upon them. The Petitioner was not present at the place of incident and held responsible in causing any type of injury upon them. There was no previous ill-will or rivalry to commit the same. There was no motive or intention to do the said act. Looking over the complaint, it clearly discloses that the Complainant has specifically lodged complaint against Raja Dorai, Koti, Sathish and others, but not against the Petitioner. The name of the Petitioner nowhere stated by the Complainant. There are no eye witnesses to show that the Petitioner is guilty of the offences. Hence, the ingredients of Section 307 of IPC is not attracted. At no point of time, the Petitioner wrongfully restrained the Complainant and injured persons and assaulted upon anybody. Hence, the ingredients of Section 341, 323 of IPC are not

attracted. The Complainant has not disclosed the names of other persons who were along with Raja Dorai, Koti & Sathish, their parent's name, approximate age, address, colour, height-weight, personality and their full details and particulars. On the alleged incident date what type of dress they worn and its colour. This shows that the Petitioner is no way concerned to the alleged crime. Hence, the question of involvement or committing the offence does not arise at all. The Complainant alleged in his complaint that on the alleged incident date, the Complainant, Ajith and Pramod were present in front of the house of Ajith. At that time, Raja Dorai, Koti, Satish and others came to the said place. Among them Koti punched with his hands upon the Complainant's face. At the same time, the injured came and requested not to assault his brother and intervened to pacify the galata. Then, the accused No.1 assaulted upon the injured with knife and caused bleeding injury and others were assaulted with their hands and kicked with their legs, but the Complainant has not stated about the presence of the Petitioner what was the role or part played by the Petitioner. The Complainant has not specifically seen or identified the presence of the Petitioner at the spot. This indicates that the Petitioner is no way concerned

to the alleged crime. The Complainant has made direct allegation against the above named Raja Dorai, Kote, Sathish and others who were played major part of the role in the commission of the above said offences. Even though the Complainant has made allegations against the above said persons, but not stated for what reason the alleged incident occurred, whether due to ill-will, rivalry or for any other reason. The Police without conducting proper investigation have falsely implicated the name of the Petitioner. The above named Raja Dorai, Koti, Sathish and others were came and assaulted the Complainant and injured. The incident occurred in the public place, at that time, Ajith and Pramod were also present, but they never intervened into the matter to pacify the galata. Moreover, the Complainant has not sustained any type of injury on any vital parts of his body and undergone medical treatment at any hospital as in-patient or out-patient. This shows that the above named persons were held responsible for the same. The Respondent Police have not conducted the Test Identification Parade of the Petitioner in the presence of the Complainant, injured, Ajith, Pramod, public or others to show the guilt of the Petitioner and none of them have made allegation against the

Petitioner about their involvement in the above case. There are no materials placed on record to show that the petitioner is guilty of the offences, he has been made as scapegoat to the alleged crime to suit the offences and no specific overt act attributed against him. There is no danger to the life and limbs of the injured, as he was already discharged from the Hospital and discharging his as usual work before the incident and now he is hale and healthy. The Respondent Police have not seized any incriminating article from the possession of the Petitioner to show about his involvement. The alleged incident occurred on 8.5.2020, but the Petitioner was arrested on 20.5.2020 after 18 years. Now, he is in judicial custody from the past more than one month, if he detained in the custody, his whole career will be spoiled in the midst of the other criminals in the prison, he is the only sole bread earner to family members. He is having aged mother to look after her who is suffering from severe ailments and he has to provide time to time medicines to his mother. The Petitioner hails from respectable family and has no previous bad antecedents and has got deep roots in the society. He is permanent resident of Bengaluru. He is ready and willing to abide by any terms and conditions imposed upon him. The

Petitioner is ready to offer surety to the satisfaction of this Court. Hence, prayed for allowing the Petition.

4. For the said Petition the Learned PP has filed objections contending that the contents of the Petition are false and denied in toto. On the basis of the complaint Police have registered the case and arrested the Petitioner for the offences punishable under Section 302, 307 r/w Section 34 of IPC. The Complaint, FIR, Charge Sheet and other documents may be treated as part of the objection. The offences are non-bailable in nature and punishable with imprisonment of not less than 10 years and imprisonment of life if death is caused. The Petitioner during the interrogation has admitted that he caused hurt to the injured Rajesh with the knife. The Police have to seize the material object i.e., knife with the help of this Petitioner. The injured person were treated in the Manipal Hospital and the wound certificate is to be received from the said Hospital. Rajesh suffered grievous injury by knife on the vital part of the body which shows that the Petitioner and others shared common intention to make an attempt to the life of Complainant brother. The Petitioner might tamper the prosecution evidence and win

over the witnesses if he is released on bail. This would affect the trial of the case. If the Petition is allowed there is a chance of his abscondance. Hence, prays for dismissing the Petition.

5. 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?

6. 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

7. The Respondent Police have registered Cr.No.57/2020 for the offences punishable under Section 323, 341, 307 r/w Section 34 of IPC. On perusal of the complaint, it is clear that the name of this Petitioner has not been stated in the complaint. It seems that this accused was involved in the present case, on the basis of the voluntary statement of other accused persons. No overt act is alleged against the Petitioner in the present case.

The Petitioner has also produced the documentary evidence to show that the injured has discharged from the hospital on 10.5.2020. Though the Prosecution has contended that the FIR and complaint and other materials may be treated as part and parcel of the objection, the Prosecution has not produced any materials in this regard. Considering the facts and circumstances of the case, the Petitioner is entitled for bail on the ground of parity as prayed in the Petition. The apprehension of the Prosecution has been met with by imposing certain conditions. With this observation, I answer Point No.1 in the Affirmative.

8. **Point No.2**:- In view of the discussion made above, I proceeds to pass the following:-

ORDER

The Petition filed by the Petitioner under Sec.439 Cr.P.C., is hereby allowed.

The Petitioner /accused No.2 Ganesh @ Koti S/o Venkatesh is ordered to be released on bail in Cr.No.57/2020 of Bayappanahalli Police Station on execution of personal bond for

Rs.1,00,000/- with one surety for likesum to the satisfaction of Jurisdictional Magistrate on the following conditions:-

1) The Petitioner shall co-operative with IO in investigation of the present case.

2) The Petitioner shall not tamper the prosecution witnesses in any manner.

3) The Petitioner shall not leave the jurisdiction of the India without prior permission.

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

6) The Petitioner shall produced his original residence proof at the time of execution of surety bond.

[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 **8th day of July 2020**].

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

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

ORDER

The Petition filed by the Petitioner under Sec.439 Cr.P.C., is hereby allowed.

The Petitioner /accused No.2 Ganesh @ Koti S/o Venkatesh is ordered to be released on bail in Cr.No.57/2020 of Bayappanahalli Police Station on execution of personal bond for Rs.1,00,000/- with one surety for likesum to the satisfaction of Jurisdictional Magistrate on the following conditions:-

- 1) The Petitioner shall co-operative with IO in investigation of the present case.
- 2) The Petitioner shall not tamper the prosecution witnesses in any manner.
- 3) The Petitioner shall not leave the jurisdiction of the India without prior permission.
- 5) The Petitioner shall not change his residential address without prior permission of the Court.
- 6) The Petitioner shall produced his original residence proof at the time of execution of surety bond.

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

