

KACM010026502016



**IN THE COURT OF II ADDITIONAL DISTRICT  
& SESSIONS JUDGE AT CHIKKAMAGALURU**

**Dated this the 26<sup>th</sup> day of June, 2023**

**:PRESENT:**

**Smt. Bhanumathi B.C., B.A.L., LL.B.,  
II Addl. District and Sessions Judge,  
Chikkamagaluru.**

**S.C No.118/2016**

**Complainant : State by N.R Pura Police,  
(Represented by Public  
Prosecutor)**

**-VS-**

**Accused : A-4 Benakesha,  
S/o Veerappa,  
Aged about 28 years,  
Agriculturist,  
R/o. Benakanahali village,  
Honnali Taluk,  
Davanagere District.  
(Represented by H.A.T  
Advocate)**

**ORDER**

The accused No.4, who has been taken to custody for violating the terms and conditions imposed by the court while letting him on bail by continuously and frequently remaining absent from the court proceedings, has filed this application under section 439 of Cr.P.C for enlarging him on bail in the above case registered against him and others for the offences punishable under sections 395, 109 and 397 of IPC.

2. It is contended by the accused No.4 that he has not committed any of the offences alleged against him and the complainant police have registered a false case against him. He is permanent resident of Honnalli Taluk, Davanagere District, having movable and immovable properties and he hails from respectable family and is deep rooted in the society and hence there is no chance of abscondance if he is let on bail. The accused No.4 was on bail, but as he was suffering from jaundice and as such, he could not appear before the court and his absence is bonafide. The accused undertakes to abide by the terms and conditions that may be imposed by the court for granting bail to him. Inter-alia on these grounds, the accused sought for allowing the petition.

3. The learned Public Prosecutor has resisted the above application by filing statement of objections. By reproducing the allegations made in the charge sheet, it is contended by the prosecution that after

completing investigation, the respondent police have submitted charge sheet against the accused and the materials placed on record prima-facie discloses the involvement of this accused in the crime in question. The trial is in initial stage and if at this stage, this accused is released on bail, he may involve himself in the commission of similar offences and he may threaten and intimidate the prosecution witnesses as he is economically and politically powerful. He may also flee from justice and thereby he would hamper the trial and further having regard to the nature and gravity of offence alleged against this accused, the Public Prosecutor sought for rejecting the application.

4. Heard arguments and perused the records.

5. The points that arise for the consideration of this court are:-

### **POINTS**

1. Whether the accused No.4 has made out any ground to enlarge him on bail in the above case?

2. What order?

6. My findings on the above points are as follows:

**Point No.1 : In negative,**

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

## **REASONS**

7. **Point No.1** : I have carefully perused entire materials placed on record. This court is conscious of the fact that the court cannot and is not supposed to sift the evidence made available by the prosecution at the time of deciding the bail application and moreover, this accused was already enlarged on bail on merits. Hence, only for the purpose of deciding whether the accused is entitled for bail or not, I proceed to discuss the facts alleged by the prosecution and whatever I say while disposing this bail application cannot be construed as an expression of opinion on the merits of the main case.

8. In this case, the accused herein and other five accused persons have been charge sheeted for the offences punishable under sections 395, 109 and 397 of IPC with the allegations that 28.10.2015 night at 10.00 p.m, the accused Nos.1 to 5 went near the house of complainant Prasad K.Nair situated at Mathimara-Bale village, N.R Pura Taluk in a Maruthi Ertiga car bearing registration No.KA-17/B-6860 and when the complainant opened the door, the accused Nos.4 and 5 enquired about the price of rubber saplings and asked water and when the complainant went inside to bring water, accused Nos.2 to 5 entered into his house, demanded money, accused No.3 assaulted him with long on his forehead and left forearm, caused bleeding injury and accused No.1

took away a TV, accused No.2 took computer, accused No.3 took charger light, accused No.4 took carbon company mobile and computer CPU and accused No.5 took two current induction stoves and accused No.6 gave the aforesaid vehicle to accused Nos.1 to 5 to commit the offence.

9. It is seen from the records that this accused was arrested and produced before the court in the course of investigation and subsequently, he was enlarged on bail. As this accused subsequently remained absent before the court, this court issued NBW to secure his presence and in pursuance of NBW the complainant police apprehended this accused and produced before the court on 12.06.2023 and on that day, he was taken to custody as he remained absent by violating the terms and conditions imposed on him while letting him on bail. Since the accused was already released on bail on merits, this court is not supposed to look into the merits or demerits of the case. Hence, I proceed to consider whether the accused, who remained absent from the court proceedings and whose presence has been secured under NBW, has made out any ground to once again enlarge him on bail.

10. It is seen from the records that during trial, this accused frequently and continuously remained absent and as such, non-bailable warrant has been issued on several occasions to secure his presence. To be precise, it is seen from the order sheet that

non-bailable warrant has been issued against this accused on 05.04.2017, 29.06.2018, 25.01.2019, 22.08.2019, 16.01.2020, 22.09.2021 and 22.03.2022 and on the subsequent days, the accused appeared got non-bailable warrant recalled. It is seen from the order sheet that this accused remained continuously absent from 02.03.2022 till 30.07.2022 and on said day, he appeared before the court and got recalled the non-bailable warrant issued against him by the court.

11. It is also seen from the order sheet that from the next hearing date onwards, the accused remained absent till 09.02.2023 and his counsel filed application to exempt his physical presence and by considering the same, the physical presence of accused was exempted till 09.02.2023. Thus, after getting the non-bailable recalled on 30.07.2022, the accused was not present physically before the court till 09.02.2023. Finally on 09.02.2023, the learned counsel for accused No.4 submitted that he has no instructions from the accused to file application seeking exemption of his presence and consequently, the court issued non-bailable warrant against accused No.4 on that day to secure his presence. But inspite of issuing warrant on several hearing dates after 09.02.2023, the presence of accused could not be secured by the complainant police and ultimately, by securing the presence of accused No.4 under non-bailable warrant, the complainant police produced him before the court on 12.06.2023, on which he was

taken to custody as he patently violated the conditions imposed on him by the court for letting him on bail by continuously and repeatedly remaining absent. Now the accused No.4 has come up with this application to enlarge him on bail.

12. In the application filed by the accused, it is contended by him that he could not appear before the court as he was suffering from jaundice. Except the said statement, the accused has not produced any material to show his ailment for his continuous absence before the court. Thus, the accused has not made out any ground to explain his continuous and frequent absence from the court proceedings by violating the terms and conditions imposed on him by the court while admitting him on bail.

13. The danger of accused fleeing from justice is one of the important factor to be kept in mind at the time of considering the bail application. It is to be noted that if an accused person obtains an anticipatory bail or regular bail, it is obligatory on his part to make himself available for investigation and later for trial and he having obtained the benefit of bail, cannot make himself scarce by remaining absconding. Further in the case on hand, when the accused is very much aware of the pendency of case and terms and conditions stipulated by this court at the time of granting bail to him coupled with the fact that the accused has not assigned any reason for his absence, this court

is of the humble opinion that in facts situation, the accused loses his right to seek bail since he apparently violated the terms and conditions granted earlier by this court by making himself unavailable from the court proceedings.

14. In addition to this, it is to be noted that this matter is of the year 2016 and the matter is still at the stage of evidence due to frequent and repeated absence of this accused as well as other accused persons. In the case on hand, the prosecution witnesses have supported its case and the evidence of Tahsildar, who conducted test identification parade of the accused and the investigating officers is yet to be recorded and as such, the presence of this accused would be necessary during the trial for the purpose of identification. If at this stage, the accused is again let on bail, the possibility of he again fleeing from justice and causing hindrance for the disposal of the matter cannot be ruled out. Further, since the matter is of the year 2016 and only the recording of evidence of four witnesses is pending and the same would be disposed of at the earliest on priority subject to the cooperation of the accused. Having regard to these aspects and further having to regard to previous conduct of this accused after he was admitted on bail, this court is of the humble opinion that this accused has not made out any ground to enlarge him on bail. Accordingly, I answer Point No.1 in negative.

15. **Point No.2:** In view of the above findings on point No.1, I proceed to pass the following:

**ORDER**

The application filed by the accused No.4 under Section 439 of Cr.P.C. is hereby rejected.

(Dictated to Judgment Writer directly on computer, script corrected and then signed by me on this the 26<sup>th</sup> day of June, 2023)

Sd/-  
(BHANUMATHI.B.C)  
II Addl. District & Sessions Judge,  
Chikkamagaluru.