

KADK010005122024



**IN THE COURT OF THE III ADDL. DISTRICT & SESSIONS
JUDGE, D.K., MANGALURU**

Present

Smt. Sandhya S., M.A., LL.B.(spl.)

III Additional District & Sessions Judge,
D.K. Mangaluru.

Dated this the 9th day of January, 2025

SC/5/2024

Complainant/ Respondent:	The State of Karnataka, Mulki Police Station, Mangalore. (Rep.by learned Public Prosecutor, D.K., Mangaluru)
Versus	
Accused No.1 :	Raghu S. @ Raghavendra, Aged 30 years, S/o. Shivanna S.S, R/at. 28, Bapuji Badavane, Honnuru, Malashetty Village, Davanagere. (By Adv.: G. Vasudeva Gowda)

Order on bail application under section 439(2) of Cr.P.C.

The counsel for **accused No.1** has filed this bail application under section 439(2) of Cr.P.C, to release him on bail, consequent upon his remand to judicial custody in the case registered against him on the complaint of Smt. Vasanthi Shetty, for the offence punishable under section 397 and 395 r/w 34 of Indian Penal Code in Crime No.84/2023 of Mulki Police Station, in the interest of justice.

2. The brief facts of the prosecution case as seen in the prosecution materials are that on 17-09-2023, at about 11-00 a.m. accused persons came to the complainant's house and asked for empty bottle, in order to fill petrol, the complainant has given him an empty bottle. Further alleged that thereafter, accused person who had taken the bottle, came again and asked for another small bottle. When the complainant opened the door, two accused persons put knife on the complainant's neck and threatened her and fled along with two other accused persons by pulling the karimani gold chain(Mangal suthra) worth Rs.1,70,000/- weighing about 39.670 gms. Further alleged that Accused No.1 and 2 along with other accused persons forcibly pulled the Karimani chain, causing pain to the complainant's neck and her left ear was bleeding. Thereby, on such complaint, police have

investigated the case and laid up charge sheet against accused No.1 and other accused persons for the offence punishable under section 397 and 395 r/w 34 of Indian Penal Code and this case is committed to this court.

3. The counsel for accused No.1 has sought interim bail in his favor on the following grounds:

a. That accused No.1 is innocent and has not committed any offences as alleged in the complaint.

b. That accused No.1 is patient and he is suffering from T.B disease since 4-5 years and he was taking treatment in the private hospital of Chetana Multy Speciality Hospital at Davanagere. That he is patient and he was under treatment prior to his arrest.

c. That accused No.1 is hailed from the respectable family and he has to look after his old aged parent and other family members if he will kept in judicial custody and his whole family will sink in starvation.

d. That the Hon'ble Supreme Court of India has ordered to release accused, who was suffering from disease which is reported in Sathyendra Kumar Jain vs. Enforcement Directorate.

e. That accused person is working as the labourer and also doing the social services and also helping to the poor people and suppressed people and he is abiding any conditions imposed by this court to appear before this court on or before the S.H.O of the Mulki Police Station for all hearing dates and as and when required.

On such grounds and for other grounds as urged in the bail application, accused No.1 has prayed to enlarge him on bail.

4. The notice of this bail petition is given to the learned Public Prosecutor and he has filed objection in detail submitting that the petition is not maintainable in law or on facts of the case. There are sufficient material placed on record to prove the involvement of accused No.1 in this case. Further that these offences are committed against the society and that too against woman who are staying alone in the house. If he be released on bail, there is likelihood of them committing similar offences. Further that the if petitioner is released on bail, he may abscond and tamper with the prosecution witnesses. Further that bail application filed by other accused persons in Crl.Mis.case No.1021/2023 was dismissed on 20.12.2023, bail application in Crl. Mis Case No.989/2023 was dismissed on 21.11.2023, again bail

application in Crl.Mis case No.19/2024 was dismissed on 23.01.2024. Further bail application filed by this accused in Crl.Mis Case No.1027/2023 was dismissed on 20.12.2023. Further bail application filed by accused No.4 in Crl. Mis case No.1106/2023 was dismissed on 04.01.2024. Further that the bail application filed before Hon[ble High Court of Karnataka by this accused was also dismissed. On these grounds, the learned Public Prosecutor has prayed for rejection of the bail application.

5. Heard the arguments on both sides and perused all the materials on record.

6. The following points that arise for consideration of this Court are as under:

1. Whether accused No.1 has made out grounds for his release on bail application at this stage as sought for ?
2. What order?

7. This Court has answered the above points are as under:

<u>Point No.1:</u>	In the Negative,
<u>Point No.2:</u>	As per final order, for the following;

REASONS

8. Point No.1: On considering all the papers on record, it is evident to note that, the Mulki police have registered the case against accused persons for the offence punishable under section 397 and 395 of Indian Penal Code on the complaint of Smt. Vasanthi Shetty alleging that accused No.1 along with other accused persons have committed offence as alleged supra. Hence this bail application is filed by accused No.1 for his release from judicial custody.

9. The argument for counsel for accused No.1 is that accused No.1 is hailing from the respectable family and accused No.1 is prepared to offer surety to release him on bail and there is no question of jumping the bail. Further argued that Hon'ble Supreme Court of India has ordered to release accused, who was suffering from disease which is reported in Sathyendra Kumar Jain vs. Enforcement Directorate. Further argued that accused person is working as the labour and also doing the social services and also helping to the poor people and suppressed people and he is abiding any conditions imposed by this court. Further argued that accused is having T.B and requires treatment for the same, for which he wishes

to go to his native for treatment. Hence, interim bail be granted is the argument of learned counsel for accused No.1.

10. On the other hand the learned Public Prosecutor has argued that, the alleged offences are serious in nature. Further argued that if accused No.1 is released on bail, there is likelihood of them committing similar offences and may tamper the prosecution witnesses. Further argued that offences are committed against the society and that too against woman who are staying alone in the house. Further argued that few witnesses are examined, who has supported the case. Further argued that the discharge summary of accused No.1 shows that “Patient was planned for CECT abdomen and pelvis, but was unwilling for the same. Patient is now clinically better” and further During stay, patient was unwilling for serial cardiac monitoring, did not provide urine sample for routine testing”. Hence, bail application filed by accused be rejected, is the argument of the Learned Public Prosecutor.

11. On considering the charge sheet materials, the prosecution papers on record, it clearly go to show that there is prima facie case made out as against this accused person.

Now accused No.1 has filed this interim bail application for his release in order to take treatment for T.B in his native. On the other hand, papers reveal that the bail application filed by accused No.1 before the Hon'ble High Court of Karnataka in Criminal Petition No.8836/2024 in the case of Sri. Raghu S @ Raghavendra vs. State of Karnataka dated 24.10.2024 wherein it is held that :

“As per the discharge summary, the petitioner was admitted to Wenlock District Hospital, Mangalore on 09.10.2023 till 19.10.2023 i.e. immediately after his apprehension. At the time of discharge, the Doctor has noticed that his condition was stable and he was advised for follow-up. Except this discharge summary, nothing has been placed on record to show the serious health condition of the petitioner. I do not find any reason to accept the contention of the learned counsel for the petitioner that the petitioner is entitled for bail on medical grounds or even on merits. Looking to the nature and seriousness of the allegations made, I am of the opinion that the petitioner is not entitled for grant of bail”.

Further the Government Wenlock Hospital, Mangalore records and as argued by learned Public Prosecutor both reveal that accused No.1 has denied any further diagnoses

and was unwilling for the same in the Government Hospital, all reveals that although required treatment is available in the Government Wenlock Hospital, Mangalore, accused No.1 without any sufficient grounds has filed this interim bail application which cannot be allowed.

12. Further the offences alleged against accused is exclusively triable by this Court and punishable with imprisonment for life or rigorous imprisonment for 10 years and fine and said offences are heinous offence. In this case, it is not desirable on the part of this Court to come to conclusion at this stage of trial that accused person is innocent of the alleged offence. At this stage, this Court cannot go into merits of the case and also cannot comment regarding anything, which would arise for consideration during the trial of the case and which would arise during final adjudication of the case. Hence, if he is granted bail at this stage, there is chances of them, tampering with prosecution witnesses and thereby the trial of this case will be hampered. Papers reveals that earlier bail application in CrI.Mis.case No.1027/2023 dated 20-12-2023 for accused Nos.1 and 2 is dismissed by this Court and bail application in S.C.5/2024 dated 21-03-2024 and bail application in filed in this case dated 09.07.2024 for accused Nos.1 and 2 are

dismissed by this Court. Further this court has examined 19 witnesses along with the complainant who has deposed in favour of the prosecution. This court at this juncture, cannot discuss anything that would arise during the final adjudication. Therefore, accused No.1 has failed to make out any ground for granting bail at this stage.

13. Further there are prima facie materials against accused No.1 and the allegation are of decoity. It is true that he has in judicial custody from the inception of this case and he is in judicial custody from 17-09-2023 for a period of one year three months until this day. But the offences alleged are under section 397 and 395 of Indian Penal Code against accused are punishable with imprisonment for life. Hence, mere fact that accused persons have been in judicial custody for a period of one year three months cannot be a ground to release him on bail at this stage. Without discussing anything that would arise during the final adjudication in this case, as discussed herein above, there is absolutely no any special ground made out by the accused to grant bail in his favour at this stage.

14. As discussed herein above, considering the allegations made against accused No.1, it is clear that there is prima facie case against accused for the offence punishable

under section 397 and 395 of Indian Penal Code and hence, there is no reasonable ground to grant interim bail in favour of accused at this stage. Therefore, on the facts of the case and also in law, accused No.1 has failed to make out any sufficient, cogent and acceptable ground for their release on bail at this stage as sought for. Further, the trial has been commenced. Considering all these aspects, any of the contentions put forth by accused in the bail petition does not merit consideration. As discussed herein above, the grounds put forth by accused cannot be a reason to grant bail to him at this stage. Thus, accused No.1 has failed to make out any ground for their release on bail. Hence, this court has answered point No.1 in the **Negative**.

15. Point No.2 : In view of answer on point No.1, the application of accused No.1 deserves to be rejected and this Court proceeds to pass the following:-

ORDER

The bail petition filed by accused No.1 under section 439(2) of Cr.P.C. is hereby **Dismissed**.

Issue intimation to concerned Jail Authorities
regarding the disposal of this interim bail
application filed by accused No.1.

(Dictated to the Stenographer directly on the computer, the transcript corrected by me and then pronounced in open Court, this the **9th day of January, 2025**).

(Smt. Sandhya S.)

III Additional District & Sessions Judge,
D.K. Mangaluru.