

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

Present

Smt. PREETHI K.P.

B.A., LL.M.

II Addl. District & Sessions Judge,
Dakshina Kannada, Mangaluru

Dated this the 28th day of April 2023

Sessions Case No.43 of 2022

(Barke P.S. Cr.No.17/2021)

Complainant:

The State – through
Police Inspector,
Barke Police Station, Mangaluru

**(Rep. by learned Public Prosecutor,
D.K., Mangaluru)**

Versus

Accused No.12:

Mohammed Iqbal
Aged about 52 years
S/o. S. Ibrahim
R/at Modamkapu, B. Mooda village,
Bantwal Taluk, D.K.

(By Sri G.V.G., Advocate)

ORDER
ON BAIL APPLICATION OF ACCUSED No.12 FILED
UNDER SECTION 439 OF Cr.P.C.

The accused No.12 has filed bail application under Section 439 of Cr.P.C. for grant of regular bail.

2. In brief, the contents of the bail application may be stated as under:

Based on the complaint lodged by Jail Superintendent dated: 25.04.2021, Barke Police have registered Cr.No.17/2021 for the offences punishable u/s.143, 147, 148, 353, 332, 324, 307 r/w Section 149 of IPC. It is alleged in the complaint that the accused No.12 who was under-trial prisoner at Mangaluru District Prison along with other accused attacked on the police officers and jail staff. But, he is innocent of the alleged offences, he has been falsely implicated in the said case. The allegations made in the complaint are totally false and no specific overt act has been attributed against the accused. The alleged offences are not punishable with death or imprisonment for life. Accused is ready to abide by the conditions if any imposed and ready to offer surety to the satisfaction of the court. With other several contentions, it is prayed for allowing the bail application.

3. The learned Public Prosecutor filed detailed objections opposing the bail application along with report of

the Investigating officer and contended that if bail is granted, he may commit similar offence, he may threaten the prosecution witnesses and he may abscond and thereby cause hindrance to the disposal of the case and prayed for rejection of the same.

4. I have heard the learned counsel for the accused No.12 and learned Public Prosecutor and perused the materials available on record and therefore, the following points arise for my consideration:

1. Whether the bail application filed under Section 439 of Cr.P.C. deserves to be allowed?
2. What Order?
5. My findings to the above points are:

Point No.1. In the affirmative
Point No.2. As per final Order

for the following:

REASONS

6. **Point No.1:** It is case of the prosecution that on 25.04.2021 during morning hours, in 'A' block 1st floor room No.5, the under-trial prisoners by name Mohammad Jainuddin and Mohammed were assaulted by the accused No.1 to 5 with deadly weapons with an intention to commit the murder and at about 10.15 a.m. to 10.30 a.m. the Jail

Superintendent, staff of the jail and PSI of Barke police station reached the said spot. They went towards the room No.3 of block 'A', opened the lock and advised it is not proper to assault other prisoners when they were under-trial prisoners. At that time, the accused No.1 took steel glass rolled in the clothes and assaulted Mr. Moula Sab Nadaff, on his head and caused injuries. At that time, Mr. Imam Kasim and Moula Sab were assaulted by accused No.1 through hands and caused injuries. The accused No.2 to 4 took broken carom board reap and asked the staff of the jail to leave the spot, otherwise they would kill them. The accused No.5 to 30 also questioned the jail staff about their work in the said spot and also criminally intimidated them . After investigation the Investigating officer has filed charge-sheet against 30 accused for the offences punishable u/s.143, 147, 148, 353, 332, 506, 307 r/w Section 149 of IPC.

7. It is pertinent to note here that I Addl. District & Sessions Judge, D.K., Mangaluru by order dated: 05.01.2022 passed in Crl.M.C.No.1173/2021, granted bail to accused No.3. Further, this court by order dated, 23.03.2022 granted bail to the accused No.2. This court by an order dated 12.05.2022 also granted bail to accused No.5. Accused No.26 and 30 are already granted bail by the Hon'ble High Court of Karnataka, Bengaluru in Criminal Petition No.4970/2021 c/w Crl. Petition No. 4988/2021. Further accused No.9 has

been released on bail by order dated: 18.03.2023. It is contended on behalf of accused No.12 that on the ground of parity, the accused No.12 is also entitled for bail.

8. Investigation is completed and charge-sheet has been filed. Keeping the accused No.12 in the judicial custody would amounts to pre-trial punishment which is not permitted under law. Accused No.2, 3, 5, 9, 26 & 30 are already on bail. Therefore, on the ground of parity, accused No.12 is entitled for bail. Further custodial detention of Accused no 12 is not required. The apprehension of the prosecution can be met by imposing stringent conditions. Considering the facts and circumstances of the case, in my opinion, there are no grounds to reject the bail application filed on behalf of this accused. Therefore, I have answered the point under consideration accordingly.

9. **Point No.2:** For the forgoing reasons, I proceed to pass the following:

ORDER

The bail application filed on behalf of accused under Section 439 of Cr.P.C. is hereby allowed.

The accused No.12 – Mohammed Iqbal, who is in judicial custody in Cr.No.17/2021 of Barke Police station for the offence punishable under

Sections 143, 147, 148, 353, 332, 506, 307 r/w
Section 149 of IPC, is ordered to released on bail
subject to the following conditions:

1. He shall execute bail bond of Rs.2,00,000/-
with two male sureties for the like sum;
2. He shall not threaten the prosecution
witnesses in any manner;
3. He shall not involve in any criminal
activities;
4. He shall co-operate for the speedy disposal
of this case;
5. He shall be regular to the court.

(Dictated to the Judgment Writer on computer, typed by her, corrected and then
pronounced by me in the Open court, on this the 28th day of April 2023)

(Preethi K.P.)

II Addl. District & Sessions Judge,
D.K., Mangaluru