

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 3rd day of March 2025

SPL.C/157/2020

Complainant:

The State – through
Assistant Commissioner of Police,
North Sub-division, Mangaluru.

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

Versus

Accused:

1. Prashantha @ Pacchu
Aged 25 years
S/o. Yadava Sanil.
R/at Shivaganesh Nilaya,
MEZ Colony, Kalavaru village, Mangaluru.
2. Suhas Shetty
3. Deepesh @ Deepu @ Pint
4. Mokshith

5. Dhanraj
Aged 21 years
S/o. Vamana Devadiga,
R/at Sri Bramari, Navagrma
Ashraya colony, Kalavaru village,
Mangaluru.

6. Megharaj @ Meghu (abated)

7. Rathnakara Acharya

(By Sri V.R.A., Advocate)

ORDERS

ON THE APPLICATION FOR CANCELLATION OF BAIL

The Investigating officer has filed requisition praying for cancellation of bail granted in favour of accused No.1 Prashanth @ Pacchu and accused No.5 Dhanaraj.

2. On the receipt of notice of requisition accused counsel filed objection to the requisition.

3. In the requisition the Investigating officer has submitted that accused No.1 and accused No.5 are habitual offenders and involved in heinous offence i.e. murder, attempt to murder. On being afraid of their conduct, witnesses are not coming forward to depose before the

court. Hence they have been acquitted in many cases. Further they had made an attempt to murder Muslim community person as a result of it, the Surathkal premises has been effected by communal violence and there is every possibilities of trigger of communal violence in the said locality which will disturb the public peace and tranquility. They have been projecting themselves as rowdies in the society. Under their leadership, there is every chance of commission of serious offence like Faizal murder case. There is possibilities of causing injury or threatening the witnesses in case of deposing before the court. Surathkal is a very sensitive area and on account of commission of crime by these accused, the city has been distressed. Due to their threat the witnesses scared to appear before the court to give evidence. This court while enlarging the accused No.1 on 03.12.2021 has imposed conditions and one of it is he shall not get involved in any criminal case. Further more Hon'ble High Court while granting bail to the accused No.5 in Criminal Petition No.5695/2020 dated: 11.11.2020 has observed that “if accused No.5 again indulge in similar type of criminal activities the trial court is at liberty to cancel the bail” and after enlarging the accused on bail,

Cr.No.77/2023 for the offences punishable under Sections 143, 147, 148, 504, 324, 323, 307, 506 r/w Section 149 of IPC registered against accused No.5. Similarly, Cr.No.75/2023 of Bajpe police station for the offences punishable under Sections 341, 307, 504 r/w Section 34 of IPC and Cr.No.77/2023 of Surathkal police station for the offences punishable under Sections 143, 147, 148, 341, 504, 324, 323, 307, 506 r/w Section 149 of IPC were registered against the accused No.1 and prays for cancellation of bail of accused No.1 and 5 and also filed xerox copies of bail order dated: 03.12.2021 and FIR in Cr.No.75/2023, first information statement, bail order granted in Crl.M.C. No.540/2023 by Hon'ble Principal District & Sessions Judge, Mangaluru, true copy of FIR in Cr.No.77/2023 of Surathkal police station and first information statement, copy of bail order granted by Hon'ble High Court in Criminal Petition No.5695/2020 and true copy of FIR in Cr.No.77/2023 and first information statement.

4. Per contra in the objection filed by the accused, he has contended that mere registration of FIR against accused No.1 does not conclude that accused has committed the

alleged offence. Subsequent registration of FIR does not constitute accused has committed the offence unless same has been proved before the court. The accused have not violated any conditions put up by this court. Accused are regularly appearing before the court. There is no allegation at any point of time that accused has threatened the prosecution witnesses. Under such circumstances, the apprehension of the prosecution that the accused may threaten the witnesses cannot be accepted. Since no such allegation has been ever made by any of the prosecution witnesses. Prosecution cannot seek cancellation of bail on presumption or hypothetical ground. Preventive detention cannot be employed as a tool by prosecution to deny person from his constitutional right of liberty and prays to dismiss the requisition.

5. Heard both sides.

6. The point arise for my consideration is hereunder:

1. Whether the prosecution has made ground for the cancellation of bail granted to accused No.1- Prashanth @ Pacchu and accused No.5- Dhanaraj?

2. What Order ?

7. My findings to the above raised points are:

Point No.1: In the Negative

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

REASONS

8. Point No.1: In the present case the charge framed for the offence under Sections 143, 147, 148, 504, 506, 323, 324, 307, 341, 302 r/w Section 149 of IPC and Section 3 (2) (va) of SC/ST (POA) Act against the accused. Earlier the accused No.1 was granted bail as per order dated: 03.12.2021 and accused No.5 was granted bail by Hon'ble High Court in Criminal Petition No.5695/2020 dated: 11.11.2020. The first contention raised by the prosecution is that after the involvement of the accused No.1 & 5 in the present case, accused No.1 has involved in two more cases and two separate FIR have been registered against him in Cr.No.75/2023 of Bajpe police station for the offences punishable under Sections 341, 307, 504 r/w Section 34 of IPC and Cr.No.77/2023 of Surathkal police station for the offences punishable under Sections 143, 147, 148, 341, 504,

324, 323, 307, 506 r/w Section 149 of IPC. In so far as accused No.5 is concerned, the prosecution has alleged that criminal case Cr.No.Cr.No.77/2023 of Surathkal police station for the offences punishable under Sections 143, 147, 148, 341, 504, 324, 323, 307, 506 r/w Section 149 of IPC was registered against him. As rightly pointed out by learned Public Prosecutor, if the accused commits the similar offences, it is a ground for cancellation of bail. But the question is whether mere a registration of FIR can be construed as commission of similar offences by the accused. In this regard, the judicial precedents are found that mere registration of FIR cannot be considered as indulging in similar offences unless the court take cognizance on it and applies its mind and proceeds further more particularly by framing charge. In this regard Division Bench of the Hon'ble Rajasthan High Court in the case of **State of Rajasthan vs. Mubin and others** reported in **2011 CrL.L.J. 3850** has observed as hereunder:

“9. The primary question which is to be considered by us in this case is as to whether the accused applicants had committed any offence, during the pendency of the appeal, on account of lodging of some first information reports. In other

words, can it be said that a person has committed an offence when a first information report is lodged against him. In our considered opinion, merely lodging of a first information report, does not amount to commission of an offence and it is only accusation/allegation which can be said to be leveled against the accused person at that stage. As a matter of fact, the question as to whether an offence has been prima facie committed or not is considered when an opinion is formed by the court after applying mind on the material before it. That stage would come only at the time of framing of charge. It would be relevant to mention here that the legislature, in its wisdom, has clearly laid down the distinction in the provision under Section 228 of Cr.P.C. and the terminology used at the stages prior to it. The relevant provision of the code of Criminal Procedure is as under:-

“228. Framing of charge;- (1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which-

- (a) is not exclusively triable by the Court of Session, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate or any other Judicial Magistrate of the first class and direct the accused to appear before the Chief Judicial Magistrate, or, as the case may be, the Judicial Magistrate of the first class, on such date as he deems fit, and thereupon such Magistrate shall try the offence in accordance with the procedure for the trial of warrant-cases instituted on a police report;

(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused.”

In other words, an accused can be said to have committed an offence only when a court, after considering the material before it and hearing the parties, forms an opinion to that effect, at the time of framing of charge. It is only after judicious consideration by a Court and an opinion is formed by it for presuming the commission of an offence that an accused can be said to have committed an offence. Therefore, an offence can be said to have been committed only at the stage of framing of charge when the concerning court forms an opinion for presuming that the accused has committed the offence and not any earlier point of time. The word ‘commit’ as per Pohnson Dictionary means “to be guilty of a crime”.

In such a view of the matter, merely on filing of first information reports against the accused applicants, it cannot be said that they had committed any offence during the period of bail. Consequently, they did not breach the conditions so imposed by the Court while granting order of bail on 12.09.2006.

10. For the aforesaid reasons, we are of the view that the accused applicants had not committed any breach of conditions imposed on them on 12.09.2006. Moreover, the accused applicants were awarded acquittal by the learned trial court on 05.05.2006 and it is against the said judgment that the prosecution had preferred the present appeal in which they were given the benefit of bail, during the

pendency of the same. The accused applicants are in custody since 12.06.2008.”

9. The above observation of the Hon’ble Rajasthan High Court was approvingly referred by our Hon’ble High Court in the case of **Khajim @ Khajimulla Khan vs. The State of Karnataka** relied upon by the accused counsel. In the aforesaid decision our Hon'ble High Court in para No.13 has held hereunder:-

“13. Merely because condition has been imposed while granting the anticipatory bail, then automatically it should not be cancelled on technical grounds. Be that as it may. Even the material facts indicates that the accused has granted anticipatory bail and thereafter he has appeared before the court and regally he is attending the Court and already many more witnesses have been examined and when there is no hurdle or misuse of the liberty granted by the accused in the said case wherein the bail has been granted, merely because some other cases have been registered and in that light if the bail is cancelled, then automatically it is going to affect the liberty of a particular person which is granted under Article 21 of the Constitution. The Court while

dealing with liberty of a person under Article 21 of the Constitution has to keep in mind all the above facts and if any reasonable apprehension that the liberty granted is going to be misused, then under such circumstances the Court can exercise its power and cancelled the bail.”

10. The learned counsel appearing for the accused also relied upon the decision of Hon'ble Supreme Court rendered in the case of Subhendu Mishra vs. Subrat Kumar Mishra and another, 1999 AIR (SC) 3026. Wherein the Hon'ble Supreme Court has observed hereunder:

“3. We have perused the order of the High Court and heard learned Counsel for the parties.

4. In Dolat Ram v. State of Haryana while drawing a distinction between rejection of bail in a non-bailable case at the initial stage and the cancellation of bail already granted, it was opined by this Court :

...Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of the bail, already granted. Generally speaking, the grounds for cancellation of bail, broadly (illustrative and not exhaustive) are : interference or attempt to interfere with the due course of administration of justice or evasion or attempt to evade the due course of justice or abuse of the concession granted to the

accused in any manner. The satisfaction of the Court, on the basis of material placed on the record of the possibility of the accused absconding is yet another reason justifying the cancellation of bail. However, bail once granted should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during the trial. These principles, it appears, were lost sight of by the High Court when it decided to cancel the bail, already granted. The High Court it appears to us overlooked the distinction of the factors relevant for rejecting bail in a non-bail-able case in the first instance and the cancellation of bail already granted.”

Therefore it is well settled law that mere registration of FIR cannot be construed as accused are indulged in similar offences unless the prosecution is able to show that the court has taken note of it and even framed charge against the accused. In the present case, the prosecution has not produced further proceedings held in the FIR registered against the accused No.1 & 5 subsequent to the grant of bail in the present case. Therefore on this ground bail granted to the accused cannot be cancelled.

11. The second contention urged by the prosecution is that accused are very notorious and troublesome rowdies

and witnesses are scared to appear before the court and give evidence due to their fear and threat. No doubt if the accused involved in such an act or attempted to tamper the witnesses either by influencing the witnesses or by threatening or communicating anything to the witnesses directly or indirectly it is nothing but obstruction in the administration of justice and it is required to be viewed very seriously. If these allegations is proved certainly prosecution is entitled to seek for cancellation of bail granted to the accused. But in the present case except this statement made by Investigating officer there are no material on record to show that the accused have made any such attempt. There is no explanation also in what way accused No.1 & 5 have created a fear in the mind of the prosecution witnesses. The prosecution has also not produced any material to show that the accused No.1 & 5 have threatened any witnesses at any point of time. The prosecution has also not produced affidavit or statement of such witnesses or any of the call details said to be made by the accused or on their behalf creating fear in the mind of the witnesses. Under these circumstances, at this stage there are no sufficient material on record to show the bail

granted in favour of accused No.1 & 5 is required to be cancelled. However, it is made clear that if any grounds are made for cancellation of the bail even in future, the prosecution is at liberty to move application by submitting the details of the grounds without being influenced by the rejection of this requisition. Consequently, the above point No.1 is answered in the negative.

12. **Point No.2** : In the light of above discussion and my answer to point No.1, I pass the following ;

ORDER

The requisition filed by the Investigating officer seeking cancellation of bail of accused No.1 & 5, is dismissed.

(Dictated to the Stenographer Gr-I on computer, typed by her, corrected and then pronounced by me in the Open court, on this the **3rd day of March 2025**)

(Preethi K.P.)

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