

BEFORE THE III ADDITIONAL DISTRICT AND SESSIONS JUDGE
AT HASSAN

Present: Sri. Chandrashekhar Margoor,
B.Sc. LL.M.,
III Addl. District & Sessions Judge,
Hassan.

Dated this the 31st day of October, 2018

:S.C. No.127/2018:

Complainant :: State by
 Goruru Police Station

 (Rep. by learned P.P.)

V/S

Accused : Shabaj Ali Khan S/o. Humayan
 Khan, Aged about 23 years, No.310,
 6th Cross, 1st Stage, Kesare,
 Rajendra Nagara, Mysore.

 (Rep. by Sri K.V.Y., Advocate)

: ORDER ON REGULAR BAIL APPLICATION :

The advocate for the accused has filed bail application U/sec. 439 of Cr.P.C., and prayed to enlarge him on Regular Bail.

2. The gist of the prosecution case is as under:-

It is alleged by the prosecution that on 08-05-2015 at about 2.00 a.m. in the cattle shed that situated at Kithne Village, the Complainant has become awakened due to the disturbance caused to the cattles in the cattle shed and proceeded towards the said cattle shed, this Accused No.6

and accused No.1 to 5 have sprinkled, the chilly powder on the face of the complainant and one amongst these assailants has put the knife at his neck and threatened to kill him if he shout and made him to sit on the deevan cot and has robbed away the Nokia mobile and Pharm China company set mobile by the accused No.5, and the said assailants have made a search with the focus of the torch light and entered into the room wherein C.W.'s.2 and 3 were sleeping and also committed robbery of Nokia Mobile and gold ornaments from the neck of the C.W.1 including sacred chain by the accused no.3 on the point of iron rod and also committed robbery of gold chain, 5 gold rings, a pair of ear studs with jumki and 3 gold bangles and also cash worth Rs.21,540/- from the almerah by breaking open it with the help of iron rod. This Accused No.6 and Accused No.1 to 5 have committed dacoity on the point of knife and iron rod and booty worth of Rs.3,38,750/-. On the strength of the complaint that lodged by the complainant, the Gorur Police have registered the crime in their P.S Cr.No.74/2015 for the offences punishable U/Sec.395,397 of IPC. The Investigating Officer has investigated the crime and laid charge sheet for the said offences. The Accused No.6 was enlarged on bail during crime stage. The Accused No.6 has again jumped the bail on 21-04-2018 in S.C.No.7/2016, and hence, this Court has issued NBW against accused No.6, and ordered to register a separate split up S.C. against the Accused No.6 on 11-07-2018. Accordingly, S.C.No.127/2018 came to be registered against the instant Accused No.6. He was produced under warrant on 21.10.2018.

3. The learned Counsel for the accused has contended in the bail application that, this accused has not committed any offences as alleged by the police but he has been falsely implicated in this case only with

malafide intention, even though there is no nexus between this accused and the instant case. The police have arrested this accused and he is in J.C. since the date of his arrest. This accused was enlarged on bail by the Court, but it was not possible for him to attend before the Court due to his ill health and also his mother has been hospitalised. Therefore, this Court has cancelled the bail and has remanded this accused to J.C. and he is in J.C. since a month. The I.O. has already laid the charge sheet and no accusation made against this accused and there are no eye witnesses for the said crime and it entirely rests on the circumstantial witnesses. This accused has no any criminal antecedent and he is the permanent resident of the address as mentioned in the cause title having both movable and immovable properties, and has responsibility to look after his old age parents and also sisters is shouldered on this accused. If at all he detention behind the bar is extended then certainly his dependants would be put to great hardship and there also chances of they throwing to street. The accused is ready to abide by the conditions those going to be imposed by this Court and ready to offer surety to the satisfaction of the Court, in the event, if he is enlarged on bail and also undertaken to appear before the Court on all the hearing dates. Hence, prayed to allow the bail application.

4. The learned P.P. filed objections and reiterated the prosecution version that the police have submitted the charge sheet as against this accused. The said offences are non bailable but the punishment prescribed for the said offences is imprisonment for life. This accused was already enlarged on bail but he has jumped the bail by violating the conditions of bail, and he was secured under the warrant. At this stage, if at all the instant accused is enlarged on bail, he will flee away from justice and

hamper the trial and also threaten the prosecution witnesses. Hence, sought for dismissal of the bail application.

5. From the above facts, the point that arise for my consideration are as under:

1. Whether the accused has made out the grounds to enlarge him on regular bail?
2. What order?

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

Point No.1 : In the Negative.

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

::REASONS::

POINT NO.1:-

7. This Court on perusal of the prosecution papers available on record goes to show that the Gorur Police have submitted the charge sheet against the instant accused and others for an offence punishable U/Sec.395 and 397 of Indian Penal Code. The punishment prescribed for the said offences is imprisonment for life. The accused is in judicial custody since 26.10.2018. He was secured under warrant as he has jumped the bail during April 2018. The trial of the S.C.No.7/2016 was hampered for want of the instant accused even though the accused No.3 and 4 are in J.C. and the instant accused was enlarged on bail during crime stage, but has not chosen to comply the conditions that stipulated in the bail. Therefore, this Court has left with any other option was pleased to order to register a separate split up S.C. against this accused and issued directions to the I.O to furnish split up charge sheet and made this Court

to hold denovo trial as against this accused by securing the witnesses it is the sheer waste of precious time of this Court and witnesses and also loss to exchequer. The accused has not produced any scrap of paper to substantiate his contention that himself was suffering from ill health and his mother was hospitalised. The apprehension of the prosecution is that if at all the instant accused is enlarged on bail, he will flee away from justice and hamper the trial and also threaten the prosecution witnesses may not be ruled out, which will suffice the issue. Therefore, the Point No.1 is answered in the '**Affirmative**'.

POINT NO.2:-

8. In view of my findings delivered on point No.1, this Court proceed to pass the following:-

: ORDER:

The Regular Bail Application filed by the Accused under section 439 Cr.P.C., is dismissed.

(Dictated to Stenographer, transcribed by him through computers, revised by me and after corrections, pronounced in the open Court on this the 31st day of October, 2018)

(Chandrashekhar Margoor)
III Addl. Dist. & Sessions
Judge, Hassan.

:Order Portion on the Regular Bail Petition pronounced in the open Court vide separate order:

:ORDER PORTION:

The Regular Bail Application filed by the Accused under section 439 Cr.P.C., is dismissed.

III Addl. Dist. & Sessions
Judge, Hassan.