

**Orders on Application Filed by the Accused No.1 Under
Section 437(2) Cr.P.C.**

The instant application is filed by the accused No.1 when the case is posted for recording of evidence of prosecution witnesses. Through this application the accused No.1 sought permission of the court to go Abroad as he has got job at China and he has to report to his duty on 03.04.2024 and hence he sought four months time to go Abroad and he has undertaken to appear before the court after joining to the duty and hence requested to allow the application.

2. In the application it is also stated that, the prosecution has failed to secure the witnesses in spite of availing sufficient opportunities and hence the case was adjourned and hence he requested to allow the application.

3. On the other hand, the said application is opposed by the prosecution by way of filing objections wherein it is stated that, since the case is in the stage of recording of evidence, if the accused No.1 is permitted to go Abroad, the accused No.1 may abscond and there is chance of prolonging of the case and the accused No.1 has not assigned sufficient and acceptable reasons and hence requested for rejection of the application.

4. Heard both side. Perused the materials on record.

4. Admittedly, the concerned Belur Police have registered the present case against accused No.1 and 2 alleging commission of offences punishable under Section 323, 324, 332, 353, 283 read with Section 34 of IPC. It is also an admitted fact that, the accused No.1 and 2 are on bail and some of the prosecution witnesses

were already examined and now CW-8, CW-10 to CW-12 are yet to be examined. It is also an admitted fact that, in spite of repeated issuance of witness summons from 18.02.2023, the prosecution has failed to secure CW-8 to CW-12. On some of the occasion the witnesses submitted requisition and sought time to appear before the court and to adduce evidence. It is also an admitted fact that, the witnesses now who are remaining and yet to be examined are material witnesses and considering the peculiar facts and circumstances of the case on hand, it is relevant to examine those witnesses.

5. The accused in this application has sought permission of the court to go Abroad and to report to the duty on 03.04.2024 and he has also stated that, if he has not reported to the duty in time he will loose the said job. In support of his application the accused No.1 has furnished copy of notification letter and his passport copy. On perusal of the said document on record it clearly reveals that, the accused No.1 got a job at China and he has to report to the duty within the time as mentioned in the said offer letter. During the course of argument, the learned counsel for accused has submitted that, since the Parliamentary Election is declared now, it may difficult for the prosecution to secure the official witnesses and hence the reasonable time may be granted and permission may be given to the accused No.1 to go Abroad. On the other hand, the learned APP has submitted that, the provision quoted by the accused No.1 is wrong and hence the application may be rejected. Admittedly, while enlarging the accused No.1 on bail, this court has imposed the condition that the accused No.1 shall appear before the court regularly on all adjourned dates of hearing. Hence, if the application is allowed said condition imposed by the court has to be relaxed. Taking into consideration the reasons mentioned in the application and the peculiar facts and circumstances of the case on hand and also taking into consideration the fact that, the Parliamentary Election was declared and the chance of securing the official witnesses before May 2024 is too remote and the court is of the opinion that,

subject to condition if the application filed by the accused is allowed no hardship or prejudice will be caused to the prosecution. Further, if there is proper representation on behalf of accused No.1 there is no impediment to produce d with trial of case and if the accused No.1 is directed to appear before the court during recording of statement under Section 313 of Cr.P.C it would meet the apprehension of prosecution. Hence, the court proceed to pass the following;

:ORDER:

The application filed by the accused No.1 under Section 437(2) Cr.P.C. is hereby partly allowed, subject to the following

:CONDITIONS

1. The accused No.1 has execute personal bond for a sum of Rs.50,000/- with a surety for like-sum.
2. The accused shall file an affidavit stating that he will appear before the court during recording of statement under Section 313 of Cr.P.C and there shall be representation on his behalf on every adjourned date of the case.
3. Further the accused shall state in his affidavit that immediately after reporting to the duty within reasonable time he will appear before the court and he shall give an undertaking that he will appear before the court as and when directed to do so.

Senior Civil Judge &JMFC
Belur