

**IN THE COURT OF THE V ADDITIONAL DISTRICT AND  
SESSIONS JUDGE, D.K. MANGALURU, SITTING AT  
PUTTUR, D.K.**

**Dated : This the 8<sup>th</sup> day of November, 2022**

: PRESENT :

**Sri R. ONKARAPPA, B.Sc., L.L.B.,**  
V Additional District And Sessions Judge,  
D.K., Mangaluru, sitting at Puttur D.K.,

**Crl. Misc. No.5216/2022**

**Petitioner :**           -   **Ananda U.S., [A.4]**  
Aged about 40 years,  
S/o. Sathyadevan,  
R/at. Aletty House,  
Aletty Sullia Taluk,  
D.K. District.

**(By Sri. S.P.A., advocate)**

**V/s.**

**Respondent :**           -   **The State,**  
By SHO, Sullia Police Station,  
Sullia Taluk, D.K.,

**[By : Public Prosecutor]**

**: ORDER :**

The present bail petition under Section 438 of Cr.P.C., has filed by the petitioner for an order of anticipatory bail in the event of his arrest in CC No.528/2022 (Crime No.62/2022) of the respondent police station for the alleged offence punishable U/Sec.109, 324, 307 R/W 34 of IPC and Section 3, 25 and 27 of Arms Act pending on the file of learned Senior Civil Judge and JMFC Court, Sullia, D.K.

2. In the bail petition it is contending that, the petitioner in the above case is innocent of the offences alleged against him and he is falsely implicated in the above case. The offence alleged against the petitioner is neither punishable with death nor punishable with imprisonment for life. The name of the petitioner was not found in FIR or in the remand report of the arrested accused. In the remand report it was not alleged that petitioner has abetted to commit the offences. This clearly shows that the petitioner has made as scapegoat in the above case without any legally admissible evidence. The statement recorded under Section 161 of Cr.P.C., of the witness also does not disclose anything about the abatement of this petitioner in the alleged crime. Hence the only evidence which is available on prosecution papers is the confession of accused No.1 to 3 which is inadmissible under evidence Act. Hence there is no prima-facia legally admissible

evidence as against this petitioner to connect him to the alleged case. The petitioner is working as PWD contractor at Sullia and as per the police investigation if the police got any evidence they would have issued notice under Section 41 of Cr.P.C., to assist the investigation. But no such notice has been issued to the petitioner herein. Which also clearly creates doubt about the genuineness of the case of prosecution. The victim Mahammad Shayi has not at all got bullet injury as show in the would certificate. The wound certificate shows a superficial injury on the body of the victim and he was treated as out-patient in the hospital. If at all he has bullet injury then residuals of gun shot would have been spread to the body of the injured. Hence false story created by the complainant could not be ruled out. That false case has been foisted by the complainant with an ulterior motive as there is enmity between accused No.1 and the complainant. That no such incident has taken place as alleged by the complainant. Only there was verbal altercation between the complainant and accused No.1. Since the police was inimical towards accused No.1 this case has been foisted to see the petitioners behind bars. There is delay in lodging the complaint. Hence concoction of false story cannot be ruled out. The alleged incident is not at all taken place as alleged by the complainant. The complainant given a coloured version to small incident to see the petitioners to be harassed and kept behind the bars. That alleged dispatch of the FIR to the Magistrate

itself speaks about the complainant concocted a false story as the complainant is rich person having political influence. Hence he with the help of police typed a complaint making false allegations. Those allegations has to be proved before the trial court after full pledged trial. The petitioner herein is of young age having wife and children and also having old aged parents who are depending on these petitioner for their livelihood. The petitioners is permanently residing in the address shown in the cause title. He will not flee from justice. There are no chances of tampering the witnesses by this petitioner and the petitioner is ready to furnish surety to ensure his regular attendance before the concerned Court. Inter alia, on these grounds, the petitioner prays for allowing of the bail petition.

3. Per contra, the learned Public Prosecutor has filed the objection along with I.O. report. In an objection learned Public Prosecutor contended that, the investigation so far as made by the I.O., reveals that, the petitioner and other accused persons have committed offences punishable U/Sec.109, 324, 307 R/W 34 of IPC and Section 3, 25 and 27 of Arms Act. In this case the accused No.1 is a habitual offender and so many Criminal cases are pending against accused No.1 in Crime No.45/2019 of Madikeri Rural Police Station and in Crime No.14/2022 of Madikeri police station. The offence alleged against the petitioners though not exclusively punishable with death or imprisonment for life,

the same offences are all triable by the court of session. The accused persons are used the Nadakovi at the time of commission of offense. If at this stage, the petitioner is granted with bail, there is every possibility of the petitioner threatening the prosecution witnesses or he committing similar kind of offences and possibility of the petitioner absconding himself and fleeing away from justice cannot be ruled out. Inter-alia, on these grounds, the learned Public Prosecutor prays for dismissing of the bail petition.

4. Heard both sides. Perused the record.

5. Following points arise for consideration of this Court:

i. **Whether the petitioner has made out substantial or reasonable ground to enlarge him on anticipatory bail under Section 438 of Cr.P.C.?**

ii. **What Order?**

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

Point No.1 :: In the **negative**,

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

**: REASONS :**

7. **Point No.1:-** The FIR registered before the respondent police station in Crime No.62/2022 (CC No.528/2022) of the respondent police station for the

alleged offence punishable U/Sec.109, 324, 307 R/W 34 of IPC and Section 3, 25 and 27 of Arms Act on the basis of the complaint lodged by the complainant.

8. **In the Police complaint it is alleged that** on 05/06/2022 at about 10:30 p.m., the complainant after finishing marriage function he came to Sullia and he stopped his Creta Car bearing Reg.No.KA-21-P-6869 on Mani-Mysore State Highway near Venkatramana Society, Jyothi Cricle, Sullia Taluk and went to his sister Raziya's old house and in turn came back near to his Car, at the time four persons came in Scorpio car bearing Reg.No.KA-12-N-718 from Jyothi circle and fired the bullets towards the defacto complainant from pistols with intention to kill the complainant. The same bullets fired from pistol hit the back left side of the complainant and later brushed on the right side of the middle portion of the Car door. Other all allegation the complainant police have charge sheeted the petitioner and other accused persons for the aforesaid offence.

9. The learned counsel for the petitioner and the learned Public Prosecutor have argued as per their contentions taken in their respective petition and objections. I have carefully perused the contents of bail petition, documents produced along with it and objection filed by the learned Public Prosecutor.

10. On go through the petition and other papers, the petitioner has not tendered any of the documents to show the present condition of the victim and about to him discharge from the hospital. On the other hand, the learned Public Prosecutor vehemently arguing and specifically contended in I.O., report that the complainant has sustained severe injuries. The petitioner and other accused persons are used the Nadakovi at the time of commission of offense. Further, the petitioner is absconding since from 05/06/2022. Hence, the learned public Prosecutor seek for rejection of bail petition. After go through the rival submission and record available on case file, I am of the view that, there is no force in the argument of the counsel for the petitioner.

11. After go through case record and submission of the both side that, I am of the viewed that there are prima facie material against the petitioner. The offence leveled against to the petitioner is punishable U/Sec.109, 324, 307 R/W 34 of IPC and Section 3, 25 and 27 of Arms Act. The same offence are exclusively triable by the court of session. The offence punishable U/Sec.307 of IPC though not punishable with death or with compulsory life imprisonment, the modus operndi of the petitioner hereby declined me to grant the bail to the petitioner.

12. According to the prosecution, the investigation though completed and if the petitioner is released on bail there is possibility of the petitioner threatening the prosecution witnesses and there is chance of he abscond and there is possibility of the petitioner destroying the prosecution evidence which will hamper the fair investigation. In this case the gravity of the offences does not weighed the personal liberty of the petitioner. In view of this, I am of the opinion that, there is no force in the arguments canvased by the Counsel for the petitioner. Accordingly, I answer point No.1 in the **Negative**.

13. **Point No.2** :- In view of my findings on point No.1, I proceed to pass the following:

**: ORDER :**

**The bail petition filed by the  
petitioner under Section 438 of  
Cr.P.C., is hereby rejected.**

(Dictated to the Stenographer on computer, typed by him corrected by me and then pronounced in the open Court on this the 8<sup>th</sup> day of November 2022)

**(R. Onkarappa)**

V Addl. District and Sessions Judge,  
D.K., Mangaluru, sitting at Puttur, D.K.