

KAMS010038582022



**IN THE COURT OF THE II ADDL DISTRICT AND  
SESSIONS JUDGE, MYSURU**

**Present:** Sri.Hosamani Pundalik,  
II Addl. District & Sessions Judge,  
Mysuru.

Dated this the 11<sup>th</sup> day of August 2022

**SC/203/2022**

**Complainant :**

The State of Karnataka by  
Vidyaranyapuram Police Station,  
Mysuru District.

(By Public Prosecutor)

V/S

**Accused:**

Pavan S/o Ramashetty, Aged about 38  
years, Residing at 1<sup>st</sup> Cross,  
Kondanadwara, Madoor Village,  
Kottekar Beeru, Mangaluru,  
Dakshinakannada.

(By Sri.P.J.D., Advocate)

**ORDER**

This an application is filed by the accused No.6 under Sec.439 of Cr.P.C. for grant of regular bail for the offences punishable under Sections 370(2) and 332 of IPC., and 3 to 6 I.T.P Act.

2. The case of the accused No.6 in brief is as under:

That the accused No.6 is innocent and has not committed any offence as alleged. He is ready to furnish the surety and also abide by the conditions imposed by the Court. Further it is stated that he was on regular bail as per order in CrI.Misc.No.2526/2015 dated 16.01.2016 passed by VII Addl.District and Session Judge and he appeared before the Court regularly till he arresting in another case and prayed for grant of regular bail.

3. Per contra, it is contended by the Learned Public Prosecutor by filing objection that the application filed on behalf of the accused is not maintainable. It is contended that as per the Charge Sheet and records prima-facie the accused has committed the offence alleged against him which are serious in nature. As such, at this stage if the

accused is released on bail, he may tamper the prosecution witnesses and hamper the trial and also there is every chance of absconding and hence prayed to dismiss the application.

4. Thereafter, I have heard the arguments advanced by the learned counsel for the accused No.6 and that of the learned Public Prosecutor for the State.

5. The points that would arise for my consideration in this case are as under:

1. Whether the accused No.6 is entitled for regular bail under Sec.439 Cr.P.C. as sought for ?
2. What Order ?

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

Point No.1 : In the Affirmative

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

### **REASONS**

7. **Point No.1:** The Police Inspector, Vidyaranyapuram police station filed the Charge Sheet against the accused for the offence punishable under Sections 370(2) and 332 of IPC., and 3 to 6 I.T.P Act. The accused No.6 was on regular bail as per order in

Crl.Misc.No.2526/2015 dated 16.01.2016 passed by VII Addl.District and Session Judge. The learned counsel for the accused No.6 submitted that the accused No.6 is innocent and has not committed any offence as alleged. He is ready to furnish the surety and also abide by the conditions imposed by the Court. Further it is stated that he was on regular bail as per order in Crl.Misc.No.2526/2015 dated 16.01.2016 passed by VII Addl.District and Session Judge and he appeared before the Court regularly till he arresting in another case and prayed for grant of regular bail.

8. Per contra, it is contended by the Learned Public Prosecutor by filing objection that the application filed on behalf of the accused No.6 is not maintainable. It is contended that as per the Charge Sheet and records prima-facie the accused No.6 has committed the offence alleged against him which are serious in nature. As such, at this stage if the accused No.6 are released on bail, he may tamper the prosecution witnesses and hamper the trial and also there is every chance of absconding and hence prayed to dismiss the application.

9. It is well settled law that Section 439 Cr.P.C. gives an unfettered discretion to the Hon'ble High Court or Court of Session to admit an accused person to bail,

but that discretion must be exercised judicially. The power of the Hon'ble High Court and of a Court of Session to grant bail is not fettered by the restrictions contained in Sec.437. In every case it is the cumulative effect of all the combined circumstances that must weigh with the Court and those considerations are far too numerous to be classified or cataloged exhaustively. In exercising its discretion under this section, the Hon'ble High Court need not confine its attention to the question whether the prisoner is or is not likely to abscond, as other circumstances may also affect the question of granting bail to persons accused of having committed crimes of a grave and serious nature. The principles underlying Sec.437 are to be kept in view. The previous conviction of an accused for a heinous crime punishable with imprisonment for life, his involvement in other crimes and the quantum for punishment for the offences in which the applicant is seeking bail are all relevant factors to which the Court should consciously advert while taking a decision in the matter of enlargement on bail. The Courts must not be too liberal in granting bail particularly when bail is asked for with regard to a serious crime like murder.

10. It is pertinent to note that Bail is not be withheld merely as a punishment, and the requirements as to bail are merely to secure the

attendance of the accused at the trial. The test is to be applied by reference to the following considerations amongst others; (1) the nature of the accusation; (2) the nature of the evidence in support of the accusation; (3) the severity of the punishment which conviction will entail; (4) the character of the sureties, that is to say, whether they are independent or indemnified by the accused ; (5) the character and the behaviour of the accused. Any allegation that the accused is tampering or attempting to tamper with witnesses and thereby obstructing the course of justice would be a very cogent ground for refusing bail.

11. The decision reported in the case of State of Uttar Pradesh through CBI Vs Amarmani Tripathi, reported in **(2005) 8 SCC 21**, wherein the Hon'ble Supreme Court held that:

"It is well settled principles of law that matters to be considered in an application for bail are (i) Whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) Nature and gravity of the charge; (iii) Severity of the punishment in the event of conviction; (iv) Danger of the accused absconding or fleeing, if released on bail; (v) Character, behavior, means, position and standing of the accused ; (vi) Likelihood of the offence being repeated; (vii) Reasonable apprehension of the witnesses being tampered with and (viii)

Danger, of course, of justice being thwarted by grant of bail".

12. It is well settled law that, at the time of deciding the bail petition, the Court should look at prima-facie material and should not go into merits of the case by appreciation of evidence. It is also well settled principles of law that, Court should avoid elaborate documentation of merits while dealing with an application for bail. While dealing with an application under Section 439 of Cr.P.C, the Court cannot go into details of evidence to find out whether the evidence will be sufficient in establishing the guilt of the accused.

13. I have perused the material available on record, it reveals that the Prosecution though stated in the objection that if the accused No.6 is released on bail he may abscond and tamper the witnesses, but it was urged on behalf of accused No.6 that he is ready to abide by the conditions and he is ready to furnish sureties and also undertakes to abide by the conditions that may be imposed by this court, therefore there is no chance of absconding. The accused No.6 is in judicial custody. The apprehension of the prosecution may be dispensed with by imposing suitable conditions. Moreover earlier the accused No.6 was released on bail in Crl.Misc.No.2526/2015 dated 16.01.2016. In view of

the facts and circumstance of the case, I am of the view that, the accused No.6 has made out reasonable and sufficient grounds which warrant this court to enlarge the accused No.6 on regular bail at this stage. Hence, the bail application deserves to be allowed. Accordingly, I answered the point No.1 for consideration in the **Affirmative**.

14. **Point No.2:** In view of my finding on the above point, I proceed to pass the following:

### **ORDER**

The application filed by the accused No.6 under Sec.439 of Cr.P.C. is allowed.

The accused No.6 is released on bail on his execution of personal bond for Rs.5,00,000/-, with one surety for the likesum with following conditions:

1. The accused No.6 shall not tamper the witnesses by threats, inducement or otherwise.
2. The accused No.6 shall appear before Court regularly without fail.

3. The accused No.6 shall not commit similar offences and shall not involve in any other offences.

(Dictated to the Stenographer directly on computer, corrected and signed by me, then order pronounced in the Open Court, on this the 11<sup>th</sup> day of August 2022).

(Hosamani Pundalik)  
II Addl. District & Sessions Judge,  
Mysuru.