

KAKP420009092022



**IN THE COURT OF THE 1st ADDL. DISTRICT AND
SESSIONS JUDGE, KOPPAL (Sitting at Gangavathi).**

Present : Sri.M.G.Shivalli,
B.Sc. LL.B (Spl.)
1st Addl. District & Sessions Judge,
Koppal (Sitting at Gangavathi).

Dated this the 14th Day of October 2022

Criminal Misc.No.990/2022

Auto Shankar S/o.Lachamappa, Age:
44 Years, Occ: Agril., R/o.Mehaboob
Nagar, Santebayalu, Gangavathi, Dist:
Koppal.

.....Petitioner/Accused No.2.

(By Sri.H.N.Kumbar, Advocate.)

-V/s-

State through Gangavathi Rural
Police represented by Public
Prosecutor, Gangavathi.

.....Respondent

O R D E R

This is the **Petition filed u/s.438 of Cr.P.C.**, by the
Petitioner/Accused No.2 seeking for grant of **Anticipatory**
Bail to him in **Crime No.143/2022 of Gangavathi Rural**

Police Station registered for the offence punishable **u/s.78 (3) of the Karnataka Police (Amendment) Act, 2021** pending on the file of **Prl.Civil Judge & J.M.F.C Court, Gangavathi** as prayed for by allowing the Petition in the interest of justice.

2. In brief, the case of the Petitioner/Accused No.2 is as follows:-

The Petitioner apart from reiterating the entire case of the Complainant/Prosecution as detailed in his Petition has contended that he is a peace loving law abiding citizen thereby having not at all committed any of the offences as alleged in the false/baseless Complaint which is far away from truth. The perusal of the FIR/Complaint clearly spells out that there is no mention of any role played by the Petitioner in the commission of the alleged offence on the basis of the cock & bull story putforth by the Complainant. There is no cause made out by the Complainant against the Petitioner in the absence of there being no direct/indirect materials placed before the Court to connect the Petitioners with the present crime. The alleged offence though non-

bailable is not punishable either with death or with imprisonment for life. Petitioner who is having no any bad antecedents or criminal records is a permanent resident of Gangavathi City having movable/immovable properties at his native place in view of which there is no chance of his fleeing away from the clutches of justice. The parents of the Petitioner are age old and he is the only earning member of his entire family consisting of women folk/minor female children and is the only earning member of his entire family. Petitioner who is having good image in the eyes of the society, if arrested and sent behind the Bars, his image in the society will be spoiled. The Petitioner is ready/willing to furnish sufficient surety to the satisfaction of this Court besides is ready to abide by the conditions that may be imposed upon him in the event of grant of pre-arrest bail. On all these grounds, the Petitioner has prayed for grant of Anticipatory Bail to him in the above said Crime number registered for the above said offence by allowing the Petition in the ends of justice.

3. The learned Public Prosecutor has filed her objections

along with the Report of the IO to the above said Bail Petition of the Petitioner.

4. The learned Public Prosecutor for the prosecution apart from reiterating the Case of the Complainant/ Prosecution as morefully stated in her Objections has contended that the evidence collected till date prima facie reveals of the Petitioner having committed heinous offence in view of which he is not entitled to be released on Bail. Petitioner has made the gambling activity as his profession thereby causing inconvenience to the poor coolies by involving the general public in the gambling game thereby instigating the general public at large to commit illegal gambling activity thereby destroying the environment of the society. If the Petitioner is admitted on Bail there is remote chance of his attendance to the Court due to his abscondance resulting in the culmination of this case into LPC Case. If the Petitioner is admitted on Bail he is likely to threaten the Complainant/Prosecution Witnesses thereby destroying the Prosecution evidence by repetition of commission of similar offences. If the Petitioner is admitted on Bail he is likely to continue his old habit of gambling

profession pursuant to which he is not entitled to the benefit of Bail. If the Petitioner is admitted on Bail there is every chance of he threatening the Complainant/Prosecution witnesses thereby destroying the prosecution evidence. The Petitioner is a habitual offender as several cases are registered against him under the provisions of K.P Act in their Police Station and other Police Stations as per the documents available on record. The Petitioner if admitted on Bail is likely to repeat the commission of similar offences without any fear of law. The Report of the IO be treated as part & parcel of these Objections. On all these grounds the learned Public Prosecutor has prayed for rejection of the Bail Petition of the Petitioner in the interest of society & justice.

5. I have heard the arguments of the learned advocate for the Petitioner and the learned Public Prosecutor for the Prosecution at length. Perused the records of this case.

6. The only point that arises for my consideration is as under:-

1) Whether the Petitioner/Accused No.2 is entitled to be released on Anticipatory Bail as prayed in the Petition?

2) What Order?

7. My answers to the above said Points are as under:-

Point No.1 : In the Affirmative.

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

REASONS

8. **Point No.1:** On perusal of the Petition averments, Objections of the learned P.P, Report of the IO, FIR/ Complaint in Crime No.143/2022 of Gangavathi Rural P.S it appears that the Complainant on receipt of credible information on 19/05/2022 at about 11-00 a.m., in the morning has secured two Panchas through his Staff and along with his staff as morefully narrated in their Complaint has left their office at about 11-20 a.m., in the morning in their Govt.Jeep No.KA-37/G-520 and has reached Danapur village. Thereafter the Complainant has parked his aforesaid vehicle and has proceeded by walk along with his staff/ Panchas to the place of information received by him and has stood at some distance from the public place situated infront of Beerlingeshwara Temple of Danapur village and noticed of Accused No.1 having involved himself in the game of

gambling activity. Thereafter on enquiry, Accused No.1 revealed of he giving the collected amount to the Petitioner herein pursuant to which the Complainant has seized the gambled collected amount of Rs.1100/- along with other materials from the possession of Accused No.1 as per the Panchanama conducted in between 12-00 to 1-00 p.m., in the afternoon. Thereafter the Complainant has lodged the Complaint against the Petitioner for having committed the aforesaid offence. This is the case of the Complainant/ Prosecution as pointed out by the learned P.P during the course of her arguments.

9. Per contra as pointed out by the learned Advocate for the Petitioner, it is a well settled principle of law that the Statement of the Accused No.1 cannot be made use of against Petitioner for having committed the aforesaid offence in view of which the complaint allegations of the Complainant cannot be accepted at this stage of the case. It is further pertinent to note that the Complainant has not obtained any of the Statements of the general public present near the aforesaid place of occurrence when they were easily

available to him for the reasons best known to the Complainant only and in the absence of the same the self serving testimony of the Complainant as per the Complaint allegations cannot be taken as a gospel truth at this stage of the case unless the evidentiary value of the Complaint allegations are tested during the trial of the case.

10. Be that as it may be whether the allegations of the Complainant made in the Complaint in respect of the commission of aforesaid offence by the Petitioner would fasten him with criminal liability or not would be too early for this Court to State in that regard, as this Court cannot hold a Mini Trial at this stage of the case unless a full dressed trial takes place. Hence, in my view taking into consideration the above said allegations made in the complaint, the offence for which the case is registered against the Petitioner and as the same is not punishable with death or imprisonment for life and triable by the Court of J.M.F.C, in the circumstances of the case without expressing any opinion on the merits of the case the Petitioner is entitled for the relief of Anticipatory Bail. Even

assuming that there is a prima facie case made out by the Prosecution/Complainant against the Petitioner as contended by the learned P.P in her Objections filed to the Bail Petition of the Petitioner what is required to be seen is that, whether the Petitioner would be available at the time of investigation of the Case and would take trial of the Case and whether there are any chances of he tampering the Prosecution witnesses and he absconding from the jurisdiction of the Court. Such being the position of Law, Pre-trial detention of the Petitioner in judicial custody for accusation of the above said alleged offence is not only unnecessary, but also unjust. The possibility of long delay in concluding the trial of the case also cannot be ruled out. No purpose would be served by keeping the Petitioner in judicial custody.

11. Instead of the Petitioner keeping out of the reach of the concerned Police, it would be better to subject him for investigation by granting Anticipatory Bail to the Petitioner so that the investigation of the Case could be completed at the earliest and the trial of the Case could be expedited at

the earliest. Petitioner has pleaded in Ground No.6 of his Bail Petition that he is permanent resident of Gangavathi. The above said facts are not disputed by the Prosecution. Hence, by taking the same into consideration, I am of the view that the presence of the Petitioner could be secured both at the time of the investigation and trial of the Case. In so far, as the apprehension of the Prosecution as contended by the learned P.P in her Objections that the Petitioner is likely to tamper the Prosecution evidence and would abscond from the jurisdiction of the Court thereby causing impediment to the investigation and trial of the case, the same in my view could be dispelled by imposing suitable conditions on the Petitioner, in order to safeguard the interest of the Prosecution. Hence, in view of the aforesaid discussions made by me, I answer Point No.1 in the Affirmative.

12. **Point No.2** : In the result, I proceed to pass the following:-

ORDER

Crl.Misc.Petition filed by the Petitioner/Accused No.2 u/s.438 of Cr.P.C., is hereby allowed.

The Petitioner/Accused No.2 in the event of his

arrest by the I.O in Gangavathi Rural P.S Crime No.143/2022 registered for the offence punishable u/s.78(3) of the Karnataka Police (Amendment) Act, 2021 against him pending on the file of Prl.Civil Judge & J.M.F.C Court, Gangavathi shall be released on bail, on he executing Personal Bond for Rs.25,000/- with one surety for the like sum to the satisfaction of the I.O along with his address proof subject to the following:-

CONDITIONS

- 1) The Petitioner/Accused No.2 shall not tamper with the Prosecution Witnesses nor shall destroy the Prosecution evidence in any manner.**
- 2) The Petitioner/Accused No.2 shall be present before the I.O as and when required by the I.O for the purpose of the investigation of this case.**
- 3) The Petitioner/Accused No.2 shall not indulge in any activities to constitute similar offences.**
- 4) The Petitioner/Accused No.2 shall mark his attendance in the concerned Police Station in between 10-00 a.m., to 4-00 p.m., on every Sunday falling in the first week of every Month for a period of three months or till filing of the Charge sheet whichever is earlier.**
- 5) The Petitioner/Accused No.2 shall take up the trial of the case before the concerned Trial Court by keeping himself present on all hearing dates of this case except in inevitable circumstances beyond his control.**

6) The surety holder shall keep the Petitioner/ Accused No.2 present before the concerned Trial Court on all dates of hearing of the Case except in inevitable circumstances till the conclusion of the trial of the case.

7) That, in the event of violation of the above conditions by the Petitioner/Accused No.2, the Prosecution is at liberty to seek for cancellation of Bail granted to the Petitioner/Accused No.2.

(Dictated to the Stenographer, directly on Computer and corrected by me and then pronounced in the open court today, this 14th day of October 2022.)

(M.G.Shivalli)

1st Addl. District and Sessions Judge,
Koppal (Sitting at Gangavathi)