

KAKP420009252022



**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 28th Day of October 2022

Criminal Misc.Nos.1011 & 1012 of 2022.

Crl.Misc.No.1011/2022

Timmanna S/o.Kanakappa Bandli, Age:
Major, Occ: Agril., R/o.Kanakagiri, Tq:
Kanakagiri, Dist: Koppal.

.....Applicant/Accused No.6.

(By Sri.S.M.Sajjihola, Advocate.)

-V/s-

State by Kanakagiri PS through P.P,
Koppal/Gangavathi.

..... Opponent.

Crl.Misc.No.1012/2022

Holiyappa S/o.Holiyappa Gollar @
Venkatesh, Age:22, R/o. Kanakagiri village,
Tq: Kanakagiri, Dist: Koppal.

.....Applicant/Accused No.4.

(By Sri.S.M.Sajjihola, Advocate.)

-V/s-

State by Kanakagiri PS through P.P,
Koppal/Gangavathi.

..... Opponent.

COMMON ORDER

The Applicant/Accused No.4 in Crl.Misc.No.1012/2022 has filed the **Petition u/s.438 of Cr.P.C** for grant of **Anticipatory bail** to him while the **Applicant/Accused No.6** in **Crl.Misc.No.1011/2022** has filed the **Petition u/s.439 of Cr.P.C** for grant of **Regular Bail** to him in **Crime No.99/2022 of Kanakagiri Police Station** registered for the offences punishable **u/s.143, 147, 148, 323, 324, 326, 307, 504, 506 r/w.sec.149 of I.P.C** pending on the file of **Addl.Civil Judge & J.M.F.C Court, Gangavathi** as prayed for by allowing the Petitions in the interest of justice.

2. Since the above said both Petitions arise out of the same Kanakagiri P.S Crime No.99/2022 pending on the file of Addl.Civil Judge & J.M.F.C Court, Gangavathi and as the learned Public Prosecutor for the Respondent has filed similar Objections in Crl.Misc.Nos.1011 & 1012 of 2022, in view of which with the consent of the learned Advocate for

the Applicants in the above said Petitions and the learned P.P, in order to avoid the repetition of facts and for the sake of convenience, above said both Petitions are heard together and are disposed off by this Common Order.

3. The brief facts necessary for the disposal of the above Petitions which are more or less similar in nature are as follows:-

The Applicants have contended in their Bail Petition that they are innocent peace loving citizens having good reputation in the society thereby having not at all committed any of the offences as alleged by the Police against them on the basis of the false case registered against them for the aforesaid offences. The Applicants are having old age parents besides are the only earning members of their families and if not enlarged on Bail their families will be put to greater hardship. The Applicants are permanent residents of Kanakagiri Taluka, Dist: Koppal having movable/immovable properties therein. The Applicants are ready to furnish sufficient surety to the satisfaction of the Court besides are ready to abide by the conditions that may be imposed by this Court. That except the offences punishable u/s.307 & 326

of I.P.C being non-bailable in nature the rest of the offences are bailable in nature much less not punishable with death or imprisonment for life. The Accused No.1 has lodged a Complaint against Hoovappa at Crime No.98/2022 pursuant to which the other Accused have foisted this false Crime. The other Accused persons have been granted Anticipatory Bail as per the Order passed in Crl.Misc.No.912 & 913 of 2022 on the file of this Court. The Applicants are ready to abide by any of the conditions that will be imposed upon them besides are ready to furnish sufficient security/surety to the Hon'ble Court. On all these grounds the Applicants have prayed for grant of Anticipatory/Regular Bail to them in the aforesaid crime number registered for the above said offences as prayed for by allowing the Petitions in the interest of justice.

4. The learned Public Prosecutor has filed her detailed Objections which are more or less similar in nature in the above said both Petitions.

5. The learned Public Prosecutor, in her Objections apart from reiterating the Case of the Complainant/Prosecution as

detailed in her Objections has contended that the injured Basappa has sustained grievous injuries who has been obtaining treatment as an indoor patient in Kanakagiri/Gangavathi Govt.Hospitals. The Statements of the witnesses and evidence is yet to be collected. If the Applicants who are of cruel nature are admitted on Bail there is likelihood of they threatening the Complainant/Prosecution Witnesses intending to commit their murder by destroying prosecution evidence. If the Applicants are admitted on Bail there is remote chance of their attendance to the Court due to their abscondance resulting in the culmination of this case into LPC Case. If the Applicants are admitted on Bail there will be no faith upon the judiciary in the society thereby encouraging the general public to commit similar type of heinous offences punishable with death or imprisonment for life. If the Applicants are admitted on Bail the same will convey a wrong message to the society at large that if any type of offences are committed they will easily secure bail and in order to convey a strong message to the society at large the Applicants who have committed heinous offences punishable with death or imprisonment for life are liable to

be dealt with strong hands by rejecting their Bail Petitions. On all these grounds the learned Public Prosecutor has prayed for rejection of the Bail Petitions of the Petitioners in the interest of society & justice.

6. I have heard the arguments of the learned Advocate for the Applicants and the learned Public Prosecutor for the Prosecution at length. Perused the records of this case.

7. The Points that would arise for my consideration are as under:-

1. **Whether the Applicant/Accused No.4 in Crl. Misc.No.1012/2022 is entitled to be released on Anticipatory Bail, as prayed in the above said Petition?**

2. **Whether the Applicant/Accused No.6 in Crl. Misc.No.1011/2022 is entitled to be released on Regular Bail, as prayed in the above said Petition?**

3. What Order?

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

Point No.1 : In the Affirmative.

Point No.2 : In the Affirmative.

Point No.3 : As per the final order for the following,

REASONS

9. **Point No.1 & 2:** As both the points are inter-related to each other, for the sake of convenience and in order to avoid the repetition of facts, the same are taken for common discussion under one head.

On perusal of the Petition averments, Objections of the learned P.P, CC of FIR/Complaint, Remand Applications dated 11/09/2022 & 12/09/2022, Order Sheet in Crime No.99/2022 along with CC of the Order dated 03/10/2022 passed in Crl.Misc.912 & 913 of 2022 it appears that this Court by taking into consideration all the allegations of the Complainant/Prosecution and that of Applicants has granted Anticipatory Bail to Accused Nos.2, 3 & 6 and Regular Bail to Accused Nos.1, 4 & 5 in Crime No.99/2022 as per the Order dated 03/10/2022 passed in Crl.Misc.Nos.912 & 913 of 2022 on the file of this Court. However as rightly contended by the Applicant/Accused No.6 in ground No.8 of his Bail Petition in Crl.Misc.No.1011/2022 it has been stated wrongly that he has sought Anticipatory Bail in Crl.Misc. No.912/2022 though he is in JC which is a typographical mistake through oversight as submitted by the learned Advocate for

the Applicants during the course of arguments pursuant to which the present Bail Petition moved u/s.439 of Cr.P.C for his release in the aforesaid Crime No.99/2022 deserves to be allowed. Similar is also the case of the Applicant/Accused No.4 with respect to he having moved Bail Petition u/s.439 of Cr.P.C in Crl.Misc.No.913/2022 though he is not in JC pursuant to which the present Petition in Crl.Misc.No.1012/2022 moved u/s.438 of Cr.P.C deserves to be allowed.

10. Hence whether the allegations made in the Complaint by the Complainant against the Applicants in respect of the commission of the aforesaid offences would fasten them with criminal liability or not will be too early for this Court to state anything in that regard as this Court cannot conduct a mini trial at this stage of the case unless a full fledged trial is held in that respect. Hence, in my view taking into consideration the allegations made in the complaint, the offences for which the case is registered against the Applicants and as the same are not punishable with death or imprisonment for life and are triable by this Court in the circumstances of the case without expressing any opinion on the merits of the case, the Applicants are entitled for the

relief of Anticipatory/Regular Bail. Even assuming that, a prima facie case is established against the Applicants, the approach of the Court in the matter of bail is not that, the Accused should be detained by way of punishment, as observed in the decision reported in;

AIR 1984 SUPREME COURT 372 = 1984 CrL.L.J 160
(Bhagirathsing Judeja -V/s- State of Gujarat) – wherein it has been held as under;

“It is now well settled by a catena of decisions of the Supreme Court that the power to grant bail is not to be exercised as if the punishment before trial is being imposed. The only material considerations in such a situation are whether the accused would be readily available for his trial and whether he is likely to abuse the discretion granted in his favour by tampering with evidence. If there is no prima facie case there is no question of considering other circumstances. But even where a prima facie case is established, the approach of the court in the matter of bail is not that the accused should be detained by way of punishment but whether the presence of the accused would be ready available for trial or that he is likely to abuse the discretion granted in his favour by tampering with evidence.”

11. As regards, the apprehension of the Prosecution that, if the Applicants are released on Bail, they are likely to threaten the Prosecution witnesses and tamper the evidence

and may abscond and commit similar offences is concerned, this could be met by imposing stringent conditions upon them. Hence, in the facts & circumstances of the case, in my opinion there is no impediment for granting Anticipatory/Regular Bail to the Applicants with suitable conditions by safeguarding the interest of the Prosecution. Hence, in view of the aforesaid discussions made by me, I answer Point Nos.1 & 2 in the Affirmative.

12. **Point No.3 :** In view of my findings on Point Nos.1 & 2 in the Affirmative as above said, I proceed to pass the following,

ORDER

Crl.Misc.No.1011/2022 filed by the Applicant/ Accused No.6 u/s.439 of Cr.P.C., is allowed.

Crl.Misc.No.1012/2022 filed by the Applicant/ Accused No.4 u/s.438 of Cr.P.C., is allowed.

Applicant/Accused No.4 in Crl.Misc.No.1012/2022 in the event of his arrest by the IO and the Applicant/Accused No.6 in Crl.Misc.No.1011/2022 are enlarged on Anticipatory/Regular Bail in Kanakagiri P.S Crime No.99/2022 registered for the offences punishable u/s.143, 147, 148, 323, 324, 326, 307, 504, 506 r/w. sec.149 of I.P.C against them pending on the file

of Addl.Civil Judge & J.M.F.C., Gangavathi on they executing Personal Bond for Rs.50,000/- each with one surety for the like sum to the satisfaction of the concerned IO/Jurisdictional Court along with their address proof subject to the following:-

CONDITIONS

- 1) Applicants/Accused Nos.4 & 6 shall not tamper with the Prosecution Witnesses nor threaten the Complainant and his family members in any manner nor shall destroy the Prosecution evidence in any manner during the trial of the Case.**
- 2) Applicants/Accused Nos.4 & 6 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) Applicants/Accused Nos.4 & 6 shall not indulge in any activities to constitute similar offences.**
- 4) Applicants/Accused Nos.4 & 6 shall mark their 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) Applicants/Accused Nos.4 & 6 shall take up the trial of the case before the concerned Court by keeping themselves present on all hearing dates of this case except in inevitable circumstances beyond their control.**
- 6) The surety holder shall keep the Applicants/Accused Nos.4 & 6 present before the concerned 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 Applicants/Accused Nos.4 & 6 the Prosecution is at liberty to seek for cancellation of Bail granted to the Applicants/Accused Nos.4 & 6.

Keep the Original Order in Crl.Misc.No.1011/2022 and the true copy of the same in Crl.Misc.No.1012/2022.

(Dictated to the Stenographer, directly on Computer and corrected by me and then pronounced in the open court today, this 28th day of October 2022.)

(M.G.Shivalli)

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