

*IN THE COURT OF I ADDITIONAL SESSIONS AND
SPECIAL JUDGE AT CHIKKAMAGALURU.*

*Present: Smt. **Bhanumathi B.C.**, B.A.L, LL.B.,
I/c I Addl. Sessions & Special Judge,
Chikkamagaluru.*

Dated this the 19th Day of October 2022

Criminal Misc. No.990/2022

Petitioners

- 1. Mani @ Manikanta S/o Raju,
Aged about 34 years, Coolie,*
- 2. Raju A S/o Armugam,
Aged about 65 years, Coolie,*

*Both are R/o Chandravalli, Bidare
Village and Post, Kandya Hobli,
Chikkamagaluru Taluk.*

(Represented by Sri. B.M.Laxmana Gowda, Advocate)

Vs

Respondents

- 1. State by Balehonnur Police.*
- 2. Hariprasad S/o Angara,
Aged about 30 years, Coolie, R/o
Karadikhan Estate, Bidare Village,
Chikkamagaluru Taluk.*

*(Respondent No.1 by the Public Prosecutor, Chikkamagaluru and
respondent No.2 by Sri.D.B.Deepak., Advocate)*

ORDER

*The petitioners have filed this petition under
Section 438 of Cr.P.C. for enlarging them on bail*

in the event of their arrest in Crime No.110/2022 registered by Balehonnur police for the offences punishable under Sections 504, 324, 323, R/w Section 34 of I.P.C., and under Section 3(1)(r), 3(1)(s), 3(2)(va) of SC & ST (Prevention of Atrocities) Amendment Act.

2. As per the recent decision of Hon'ble High Court of Karnataka rendered in Crl.Petition No.200315/2020 C/w Crl.Petition No.200318/2020 between Mareenna @ Mareppa Vs. State through Shahapur police station, the victim had to be made as a party. Accordingly, notice was issued to the victim. Notice was duly served on the complainant/victim, who appeared before the Court through his counsel and filed objections to the bail application.

3. The brief facts of Prosecution case are that on 25.09.2022 the complainant asked the petitioner No. 1 to return the amount of Rs.5,000/-, which was due by him. The petitioner No.1 did not pay the amount and he has assaulted the complainant due to which he sustained injuries for which he has taken treatment at Balehonnur Government Hospital and thereafter at Koppa Government Hospital. In this regard, he has lodged a complaint to Balehonnur police and the police in turn have drawn a mahazar at Balehonnur Government Hospital. Again on 26.9.2022 when

the complainant was returning to his house at 8.30 p.m., the petitioners wrongfully restrained him and abused him as “ಹೊಲೆಯ ನಿನ್ನಿಂದ ಏನು ಕಿತ್ತುಕೊಳ್ಳೋಕೆ ಆಗೊಲ್ಲ” and threatened him. Being aggrieved by the same, the complainant has lodged the complaint against the accused.

4. The petitioners have moved this bail petition pleading their innocence. According to them, they have not committed any offence alleged against them and police have lodged false case against them. That the petitioners apprehend their arrest by the respondent police. That they are the permanent residents of cause title address having permanent place of abode. That they are respectable persons and they have got no criminal background. That they would abide by the conditions that may be imposed by the court. Accordingly have sought the benefit of anticipatory bail.

5. The learned Public Prosecutor has filed objections stating that there is a prima-facie case against the petitioners. That there is a clear bar to grant anticipatory bail to the petitioners under Section 18(2) of SC & ST (Prevention of Atrocities) Act. That the petitioners have failed to make out sufficient grounds for grant of anticipatory bail. That there are possibilities of the petitioners tampering the case of the

prosecution. That the petitioners may abscond and they may not be available for investigation, if they are enlarged on bail. Accordingly the prosecution sought for rejection of the bail petition.

6. The respondent No. 2 has filed objections in line with the objections filed by the learned Public Prosecutor and contended that if the petitioners are released on bail, there is every chance of threatening the witnesses and destroying the evidence. Hence prayed to reject the bail petition.

7. In the facts and circumstances of the case, the points that arise for consideration of this court are:

1. Whether the petitioners are entitled for the benefit of anticipatory bail under section 438 of Cr.P.C.?

2. What order?

8. Having heard the arguments of both side and on perusal of the records, my findings on the above points are as under:

Point No.1 : In the affirmative

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

REASONS

9. **Point No.1:-** *On the basis of the written complaint lodged by respondent No.2, the respondent police have registered the case in Crime No.110/2022 against the petitioners herein alleging commission of the offences punishable under Sections 341, 504, 506 R/w Section 34 of I.P.C., and under Sections 3(1)(r), 3(1)(s), 3(2)(va) of SC & ST (Prevention of Atrocities) Amendment Act.*

10. *In the complaint, informant has alleged that on 25.09.2022 the complainant asked the petitioner No. 1 to return the amount of Rs.5,000/-, which was due by him. The petitioner No.1 did not pay the amount and he has assaulted the complainant due to which he sustained injuries for which he has taken treatment at Balehonnur Government Hospital and thereafter at Koppa Government Hospital. In this regard, he has lodged a complaint to Balehonnur police and the police in turn have drawn a mahazar at Balehonnur Government Hospital. Again on 26.9.2022 when the complainant was returning to his house at 8.30 p.m., the petitioners wrongfully restrained him and abused him as “ಹೊಲೆಯ ನಿನ್ನಿಂದ ಏನು ಕಿತ್ತುಕೊಳ್ಳೋಕೆ ಆಗೊಲ್ಲ” and threatened him. With these allegations, the complainant sought for action against the petitioners herein.*

11. *The Prosecution has resisted the petition mainly on the ground that as per the provision contemplated in section 18 of of SC & ST (Prevention of Atrocities) Act, there is a bar to grant anticipatory bail and hence the petition is not maintainable.*

12. *In this regard, it is pertinent to note that in the catena of decisions and recently in the case of Prathviraj Chauhan vs Union of India, reported in AIR 2020 SC 1036, the Hon'ble Supreme Court has held that said bar is not absolute and where there is no prima facie case, Courts can exercise its power under Section 438 of Cr.P.C. Said position of law was also laid down by Hon'ble High court of Karnataka in the decision rendered in **Crl. Petition 2433/2020 dated 10th June 2020 between Appoji Reddy and another V/s State of Karnataka.** Therefore it is necessary to see whether there is a prima facie case as against these petitioners.*

13. *It is seen from the records that in respect of the assault said to have been made by the petitioners herein the complainant has already lodged a complaint before the respondent police and the same has been registered in Crime 109/2022 for the offences punishable under sections 504, 324 and 323 R/w section 34 of IPC. In the said FIR, though section 504 and other offences punishable*

under IPC have been invoked, the offence punishable under SC & ST (Prevention of Atrocities) Amendment Act were not invoked. As per averments made in the complaint, the incident is alleged to have taken place on 25.09.2022, when the complainant went near the house of the petitioners to ask them to return his amount of Rs.5,000/-. It is alleged by the complainant that when he was returning home after discharge from the hospital, the petitioners again restrained him on 26.09.2022 at 8.30 p.m and abused him by touching his caste. By considering the facts and circumstances of the case, the possibility of complainant lodging the present complaint only to invoke the offences punishable under SC & ST (Prevention of Atrocities) Amendment Act cannot be ruled out.

14. In addition to this, though the subsequent incident is alleged to have taken place on 26.09.2022 at 8.30 p.m the complaint came to be lodged on 27.09.2022 at 8.45 p.m i.e., after the lapse of 24 hours. Having regard to these aspects, this court is of the humble opinion that the veracity of the allegations made against the petitioners herein is yet to be unearthed in the investigation. In view of these aspects, it is difficult to hold that a prima facie case has been made out by the prosecuting party against these petitioners at this stage. Hence, in view of the

settled position, the provision contemplated under section 18 of SC & ST (Prevention of Atrocities) Act, would not be a bar in the given set of facts and circumstances.

15. It is settled that at the time of considering the petition for anticipatory bail, the court has to consider gravity of offence, antecedents of applicant, the possibility of applicant avoiding the trial by fleeing and the court is also required to consider whether the accusations are made with intention to harass the applicant. In the case on hand, the allegations made against these petitioners though appears to be non-bailable, those are not punishable with death or imprisonment for life. Further it is not the case of prosecution that the petitioners herein have criminal antecedents. The petitioners claim that they are having deep roots in the society. The apprehension on the part of petitioners appears to be well founded and until the veracity of the allegations is tested in the investigation, the possibility of petitioners becoming subject of humiliation if arrested cannot be ruled out.

16. Further, the allegations leveled against the petitioners are not punishable with death or imprisonment for life. Furthermore, the petitioners are shown to be residents in the

*address situated within the jurisdiction of the trial court. Having regard to these peculiar facts and circumstances of this case, this court is of the opinion that the allegations leveled against the petitioners are yet to be unearthed in the investigation and the prosecution has not made out any compelling ground to deny pre-arrest bail to the petitioners. The apprehension on the part of prosecution can be safeguarded by imposing suitable conditions. Hence, this court is of the humble opinion that the petitioners have made out a ground to exercise discretion to grant anticipatory bail to them. Accordingly, I answer Point No.1 in the **Affirmative.***

*17. **Point No.2:** In view of the above findings, I proceed to pass the following:*

ORDER

The petition filed by the accused Nos.1 and 2 under section 438 of Cr.P.C. is allowed.

In the event of their arrest by the respondent police in Crime No.110/2022 on the file of Balehonnuru Police Station, the petitioners shall be enlarged on bail on execution of personal bond for Rs.50,000/- (fifty thousand) each along

with one surety for the like sum subject to the following conditions.

1. The petitioners shall surrender before the Investigating Officer within TEN days from the date of this order.
2. The petitioners shall mark their attendance before the Investigating Officer once in a fortnight preferably on alternate Sunday between 10.00 a.m and 4.00 p.m till filing of final report.
3. The petitioners shall appear as and when called by the investigation officer if so required and shall fully co-operate with the investigation.
4. The petitioners shall not involve in similar kind of offences in future.
5. The petitioners shall not tamper with the prosecution evidence or witnesses in any manner.
- 6) In case of violation of any of the conditions imposed above, the bail granted in favour of the petitioners shall stands canceled.

[Dictated to the Judgment Writer on computer, transcript corrected and then pronounced by me in the open court through on this the 19th day of October 2022].

Sd/-

(Bhanumathi B.C.)

I/c I Addl. District and Sessions Judge,
Chikkamagaluru.

