

KACM010026782022



**IN THE COURT OF II ADDITIONAL DISTRICT &
SESSIONS JUDGE AT CHIKKAMAGALURU**

Dated this the 27th day of October 2022

:PRESENT:

**Smt. Bhanumathi B.C., B.A.L., LL.B.,
II Addl. District and Sessions Judge,
Chikkamagaluru.**

Crl.Misc.No.1003/2022

Petitioner : B.S.Bhagavan
S/o B.V.Srinivasachar,
Aged about 71 years,
R/o. Annappa Road,
Tarikere.

[Represented by Sri B.M.Laxmana
Gowda, Advocate]

-V/s-

Respondent : 1. State by Lingadahalli Police.
[Represented by Public
Prosecutor, Chikkamagaluru]

2. Sidde Gowda
S/o Range Gowda,
Aged about 75 years,
Agriculturist,
R/o Kenchapura Village,

Lingadahalli Hobli,
Tarikere Taluk.

[Represented by Sri Gerald
Dias, Advocate]

ORDER

The petitioner, who is arraigned as accused No.2 in Crime No.94/2022 on the file of Lingadahalli police station has preferred this petition under section 438 of Cr.P.C, seeking bail in the event of his arrest in the said case registered against him for the offences punishable under section 304 of I.P.C. and sections 135 and 136 of Electricity (Amendment) Act, 2003.

2. It is contended by the petitioner that he is innocent of the alleged offences, but a false case has been registered against him. The petitioner is nothing to do with the alleged incident. The petitioner had leased the property in favour of Siddappa, the accused No.1 who is alleged to have taken electric connection to the fence of the land belonging to the petitioner. The petitioner had not instructed him to take the electric connection illegally to the fence of his land. He is unaware of the incident. He was not in station when the incident had taken place at Kenchapura village, Kadur Taluk. The petitioner is not involved in the said incident and there are no good grounds to connect him to the said case. Merely because the petitioner is the owner of said land, the police have fixed him in this case. That the petitioner

apprehends his arrest by the respondent police. That the petitioner is permanently residing in the address shown in the cause title having permanent place of abode. That he is respectable person and he has no criminal background. That he is a senior citizen and is suffering from age old diseases. The petitioner undertakes to abide by the terms and conditions that may be imposed by the court for granting bail to him. Inter-alia on these grounds, the petitioner sought for allowing the petition.

3. The learned Public Prosecutor has resisted the above petition by filing statement of objections with case diary and report of Investigating Officer. By reproducing the allegations made in the complaint and FIR, it is contended by the prosecution that in furtherance of investigation, the Investigating Officer visited the spot and conducted detailed mahazar and the investigation is still in progress and the materials placed on record prima facie establishes the involvement of the petitioner in the crime in question. If at this stage, the petitioner is released on bail, he may intimidate, threaten and influence the prosecution witnesses, flee from investigation and hamper the same and he may also involve himself in commission of similar offences. Inter-alia, on these grounds, the Public Prosecutor sought for rejecting the petition.

4. The presence of complainant, who is arraigned as respondent No.2 has been secured to hear

regarding this petition and he opposed granting bail to the petitioner. The respondent No.2 has been represented by Sri.Gerald Diaz, Advocate and he filed statement of objection on behalf of respondent No.2 by reiterating the objections raised by the Public Prosecutor.

5. Heard both sides and perused records.

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

1. Whether petitioner, who is arraigned as accused No.2 in Crime No.94/2022 on the file of Lingadahalli Police Station has made out any ground to avail anticipatory bail in the said case ?

2. What order ?

7. My findings on the above points are as under:

Point No.1: In affirmative,

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

REASONS

8. **Point No.1:-** I have carefully perused entire materials placed on record. This court is conscious of the fact that the court cannot and is not supposed to sift the evidence made available on

record by the prosecution at the time of deciding bail petition. However, only for the purpose of deciding whether the petitioner is entitled for bail or not, I proceed to discuss the facts alleged by the prosecution and whatever I say while disposing this bail application cannot be construed as an expression of opinion on the merits of the main case.

9. It is seen from the records that on 04.10.2022, the respondent police registered a case in Crime No.94/2022 against one Siddappa and the petitioner herein on the basis of complaint lodged by the complainant Sidde Gowda for the offences punishable under section 304 of IPC and sections 135 and 136 of Electricity (amendment) Act, 2003 and the investigation is in progress.

10. In the aforesaid complaint, it is alleged by the complainant/respondent No.2 that his land is situated adjacent to the land of this petitioner and about 2 years back, this petitioner had given his land on lease to one Siddappa, the accused No.1 for cultivation. Said Siddappa/accused No.1 had grown Jowar in the said land and in order to protect the crop from wild animals, he had unauthorizedly obtained electric connection to the fence. When such being the case, the son of complainant by name Raghukumar, who was working in a Private Company at Bangalore had come to their village for Dasara Holidays. On 4.10.2022 at about 4-00 p.m., said Raghukumar had gone to the land to see the same, but he did

not return for quite some time. Thereafter the complainant had tried to contact him over phone, but there was no response. Thereafter the complainant, his wife and granddaughter by name Nisarga had gone in search of Raghukumar. At about 6-00 p.m., when they went near the land, they saw his son lying near the fence. Immediately they shifted Raghukumar to Tarikere government hospital and on examination, the doctor declared him as dead.

11. As per the averments made in the complaint and the materials placed on record, specifically it is not the case of prosecution that the petitioner himself had obtained electric connection to the fence said to have been erected in his land. Further, in the first information statement, it is specifically stated that said land was leased by this petitioner to accused No.1 about two years back. Further, the land at which the incident has allegedly taken place is situated at Kenchapura village, Tarikere taluk, but this petitioner is shown to be a resident of Tarikere town in the FIR. Having regard to these aspects, this court is of the humble view that whether this petitioner had illegally obtained electricity connection to the fence of his land or about his knowledge of obtaining said connection to the fence of his land and whether he possessed intention or knowledge, which is an essential ingredient for invoking the offence punishable under section 304 of IPC is yet to be unearthed in the investigation.

12. 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, though the allegations made against the petitioner are non-bailable in nature, those are not punishable with death or imprisonment for life. Further it is not the case of prosecution that the petitioner herein has criminal antecedents. As the case has been registered for non-bailable offences, the apprehension on the part of this petitioner appears to be well founded and until the veracity of the allegations is tested in the investigation, the possibility of petitioner becoming subject of humiliation if arrested cannot be ruled out.

13. Furthermore, the petitioner is shown to be a resident of Tarikere town 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 veracity of the allegations leveled against the petitioner 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 petitioner. The apprehension on the part of prosecution can be safeguarded by imposing suitable conditions. Hence, this court is of the humble opinion that the petitioner has made out a ground to exercise

discretion to grant anticipatory bail to him. Accordingly, I answer Point No.1 in the ***Affirmative.***

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

ORDER

This petition filed under section 438 of Cr.P.C., by accused No.2 in Crime No.94/2022 on the file of Lingadahalli police station is hereby allowed.

The petitioner is ordered to be enlarged on bail in the event of his arrest in the said case registered against him for the offences punishable under section 304 of I.P.C and sections 135 and 136 of Electricity (Amendment) Act, 2003 with the following conditions:-

- 1) The petitioner shall appear before investigating officer within ten days from today and shall execute personal bond for a sum of Rs. 50,000/- (Rupees fifty thousand only) with one surety for the like sum to the satisfaction of the investigating officer.
- 2) The petitioner shall not directly or

indirectly make any inducement, threat or promise to any person acquainted with the facts of case so as to dissuade him from disclosing such facts to the court or to any police officer.

- 3) The petitioner shall make himself available for interrogation by the police officer as and when required.
- 4) The petitioner shall not involve himself in any criminal activity.
- 5) 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, typed by him, corrected and pronounced by me in the open court on this 27th day of October 2022].

Sd/-

[Bhanumathi B.C]

***II Addl. District and Sessions Judge
Chikkamagaluru.***

