

**IN THE COURT OF THE PRL.DISTRICT & SESSIONS
JUDGE, UDUPI DISTRICT, UDUPI**

Present

Sri C.M. Joshi, B.Sc., L.L.M.

Prl. District & Sessions Judge, Udupi.

Dated this the 30th day of July, 2019

S.C.No.5/2019

Complainant:

The State rep. By
C.P.I. Kapu Circle,
Kaup

(By Public Prosecutor)

Vs..

Accused No.2:

Shankar Lagman Kale,
Aged about 37 years,
S/o Lagman Kale,
R/at Andora Post and Village,
Via Kanrvadi, Kalam Taluk,
Usmanabad District,
Maharashtra State.

By Sri Abubakkar Sidiq.M, Advocate

ORDER

The accused No.2 has filed this application under section 439 of Cr.P.C.

2. The accused No.2 contends that he is innocent and he has been falsely implicated and there are no reasonable

grounds to believe that the accused No.2 has committed any offences punishable with death or imprisonment for life. He contends that there is no further necessity of interrogation or custodial detention and there is no prima facie case against him. It is contended that alleged offences are non bailable and they are exclusively triable by this court and he has got family with school going children to look after. It is stated that accused No.2 being sole earning member of their family, he may be granted bail and he is ready and willing to abide by any conditions that may be imposed by this court. It is contended that the accused No.2 is having deep roots in the society and several documents showing the same is produced before this court. It is stated that he has no criminal antecedents and hence, he may be granted regular bail.

3. The bail application is opposed by the learned Public Prosecutor contending that there is prima facie case and accused No.2 had committed offence under section 395 of I.P.C. by breaking open the lock of Dhanalaxmi Jewellers at Padubidri and later he along with other accused also break open the shutter of mobile shop and took away 32 mobile phones. It is stated that there is prima facie case and

C.C.T.V. footages of ATM and the evidence of security guard is available and if this accused No.2 granted regular bail, he may threaten the prosecution witnesses causing impediments for the investigation. Hence, she prays for rejection of bail application.

4. I have heard both sides.

5.The only point that arises for my consideration is:

“Whether accused No.2 is entitled for regular bail and if so, on what conditions?”

6. My finding on the above point is in the negative for the following:

REASONS

7. The facts as may be ascertain from the charge sheet papers is that the accused had committed offence under section 395 of Cr.P.C. and the criminal law was set in motion by the complaint filed by the security guard of Karnataka Bank ATM. The Padubidri Police have registered a case on the basis of the complaint filed by one Laxmana S. Poojary on 2-9-2018, wherein it was alleged that he was working for last 3 years as a security guard and he was posted at Karnataka Bank ATM, situated at Kelaginapete of Padubidri. It is stated

that on 1-9-2018, at about 6-00 P.M., he took charge as Security Guard at the said ATM and at about 1-00 A.M., 4 – 5 people, aged about 25-30 years came inside the ATM Cabin and showed a knife to the complainant stating that he should not shout. It is stated that one of the persons held him and another person wrapped a cloth around his face and prevented the complainant from shouting. Thereafter, both his hands were tied at the back and he was brought outside the ATM and they tied up his legs also, but removed the cloth around the face, threw him into a bush and went away. The complainant could not shout and they also snatched away a small mobile phone. It is stated that hearing the sound of suffering, a paper boy Suresh came at about 5-30 A.M. and rescued the complainant. It is stated that by the side of the ATM Cabin there is a Jewellery Shop of one Narayana Achary and later the complainant came to know that they also tried to commit theft in the said Jewellery shop by broke opening the lock of the shutter. It is also stated that later he also came to know that a Mobile Shop by name Ever Green was also broke open and 15 – 20 mobiles were stolen. It was stated that he is capable of identifying the assailants as he had seen them in the light of the ATM Cabin. Therefore, he

has sought for action against the assailants. Hence, the Padubidri Police registered the said case and launched investigation. During investigation 5 of the accused were arrested and certain mobile phones were recovered and after completion of the investigation, the charge sheet has been filed by the Investigating Officer.

8. The offence under Section 395 of I.P.C. is punishable with imprisonment for life or rigorous imprisonment for 10 years and fine. Considering the prima facie materials available in the charge sheet, in the form of CC Camera Footage, it is evident that if accused No.2 is released on bail, it would be difficult to secure his presence. Moreover, apprehension of the learned Public Prosecutor that this accused No.2 may abscond and cause impediment for the trial, cannot be ruled out. Four other accused, who are involved in the commission of the offence, are still at large, and the Investigating Officer has filed charge sheet only against 5 of the accused, who are arrested. Therefore, the apprehension of the learned Public Prosecutor that this accused No.2 may abscond and cause impediment for trial cannot be ruled out. The fact that he may also caution other

accused and make them not available for investigation cannot be ruled out. It is evident that sole ocular evidence is that of the security guard and such vital evidence is amenable for tampering by the accused No.2. This court has perused the entire charge sheet papers and also voluntary statement of the accused. Hence, this court is not convinced that the apprehensions of the learned Public Prosecutor can be met with by imposing suitable conditions. The contention of the learned counsel for the accused No.2 that accused No.5 has been granted bail and therefore, on the ground of parity, the present application for bail of the accused No.2 has to be allowed cannot be accepted by this court. The A.5 was granted bail on health grounds. It is relevant to note that this is 4th bail application being disposed of by this court. Unless there are valid grounds, the bail cannot be granted. The accused are liable to face trial and only thereafter, the circumstances would be reviewed by this court for grant of bail. Hence, the above point is answered in the negative and hence, the following order is passed:

ORDER

*The bail application filed by the accused No.2
U/s 439 of Cr.P.C. is rejected.*

(Dictated to the Judgment Writer, the transcript thereof is corrected and then pronounced by me in the Open court, this the 30th day of July, 2019)

(C.M. Joshi)

Prl. District & Sessions Judge,
Udupi.