

**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 21<sup>st</sup> day of September,2019**

**S.C.No.5/2019**

**Complainant:**

The State rep. By C.P.I. Kapu Circle, Kaup  (By Public Prosecutor)
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**Vs..**

**Accused:**

A4. Kalidas Bhaskar Kale, Aged about 32 years, S/o Bhaskar Kale, R/at. Kannervadi Village and Post, Kalam Taluk, Usmanabad District, Maharashtra.
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By Sri Ananada Rao .R, Advocate
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**ORDER**

**T**he accused No.4 has filed this bail application under section 439 of Cr.P.C.

2. The accused No.4 contends that he is innocent and he has been falsely implicated and there are no reasonable

grounds to believe that the accused No.4 has committed any offence punishable with death or imprisonment for life. It is stated that he is innocent person and he had not committed alleged offences. It is stated that he is permanent resident of Usmanabad District of Maharashtra and he is having deep roots in the society. It is alleged that the accused No.4 is ready and willing to abide by any conditions that may be imposed by this court. He would appear before the court without fail. It is contended that the custodial detention is not at all necessary and as such, charge sheet is filed and there is no need for further investigation. It is stated that since the date of arrest, he is in J.C. and the trial was not yet commenced and he is personal liberty would be in jeopardy.

3. The bail application is opposed by the learned Public Prosecutor contending that there is prima facie case and they had committed offence under section 395 of I.P.C. by breaking open the lock of Dhanalaxmi Jewellers at Padubidri and later they 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 these accused are granted regular bail, they may threaten the prosecution witnesses causing impediments for the investigation. The learned Public Prosecutor apprehends abscondance of accused as they hail from Maharashtra and basically they are drivers of lorry.

4. I have heard both sides.

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

“Whether accused No.4 is entitled for regular bail and if so, on what conditions?”

6. My finding on the above point is in the affirmative 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. It is evident that there is prima facie material against the accused No.5 in the form of C.C. T.V camera footages. It is also evident that four other accused who are involved in the offences are still at large and Investigating Officer has filed the charge sheet only against the 5 of the accused.

9. The learned counsel for the accused contends that the accused No.4 is suffering from Rheumatic Chorea with aortic valve affection and he is under treatment. He contends that accused No.1 Subhash Bhima Rao Kale and

accused No.3 Subhash Bhaksar Kale have been granted bail by the Hon'ble High Court in CrI.P.No.4561/209 and 4562/2019 and therefore, the role of the accused No.4 being not different from the role of accused Nos.1 and 3, he may be granted bail on the grounds of parity. It is relevant to note that accused No.4 had not filed any bail application earlier. When the Hon'ble High court of Karnataka has granted bail to the other accused, I do not find any reason to differ with the opinion formed by the Hon'ble High court and such opinion of the Hon'ble High court applicable to the accused No.4 *mutatis and mutandis* and as such, the point is answered in the affirmative and the following order is passed:

**ORDER**

*The bail application filed by the accused No.4 U/s 439 of Cr.P.C. is allowed.*

*The accused No.4 is ordered to be released on bail subject to the conditions that he shall execute a personal bond for Rs.1,00,000/- with two sureties for the likesum to the satisfaction of this court subject to following conditions:*

*1. The accused No.4 shall not indulge in tampering the prosecution witnesses.*

*2. The accused No.4 shall appear before the court on all the dates of hearing unless exempted by the court for any genuine cause.*

*3. The accused No.4 shall not leave the jurisdiction of the court without prior permission of the court till the case registered against him is disposed of.*

(Dictated to the Judgment Writer, the transcript thereof is corrected and then pronounced by me in the Open court, this the 21<sup>st</sup> day of September, 2019)

**(C.M. Joshi)**

Prl. District & Sessions Judge,  
Udupi.