

**ORDER ON BAIL APPLICATION FILED BY THE
ACCUSED NO.3 UNDER SECTION 437 OF THE
CODE OF CRIMINAL PROCEDURE, 1973**

The accused No.3 has filed the present bail application under Section 437 of Cr.P.C., praying to enlarge him on bail for the offence punishable under Sections 457 and 380 of I.P.C.

2. It is averred in the application that, the complainant police have registered a false case against the accused No.3. The accused No.3 is an innocent and hails from respectable family. The accused No.3 is sole bread earner of his family. The accused No.3 is permanent resident of Mallar Village, Kaup, Udupi District. The accused No.3 is ready to offer surety and also undertakes to co-operate for investigation and as such, the application be allowed.

3. Per contra, the learned A.P.P. has resisted the bail application by filing objection. In the objection, it is contended that the investigation conducted by the Investigation officer shows that the accused No.3 has committed the offence as alleged. The accused No.3 is a habitual offender and several cases have been registered in various police station. The offences alleged against the accused No.3 are non-bailable and severe in nature. If the accused No.3 is released on bail, he may abscond and destroy the prosecution evidence and threaten prosecution witnesses. There is possibility to flee from justice and in future securing him may be difficult. Hence, the learned Assistant Public Prosecutor has sought for rejection of the bail application.

4. The points that would arise for consideration are:

1. Whether the accused No.3 is entitled for bail as prayed for?
2. What order?

5. I have heard the learned counsel for the accused No.3 and the learned Assistant Public Prosecutor for the State and meticulously perused the materials on record.

6. My answer to the above said points are as follows:

Point No.1: In the Affirmative.

Point No.2: As per final

Order, for the following:-

REASONS

7. **Point No.1:-** After hearing the arguments and careful perusal of the application, objection, I.O. Report and material placed on record, the allegation set forth against the accused that on 15.10.2017 in the intervening night the accused No.3 and other co-accused with an intention to commit theft, entered into Kalyan Mini Store at Suhana Complex, Chara Village and broke open the shutter of the shop and committed theft of Rs. 27,150/-. The learned counsel for the accused No.3 vehemently argued that the accused No.3 has been falsely implicated in this case. The investigation officer was already laid the charge sheet. Therefore, the accused No.3 is not required for further investigation. The alleged offences are neither punishable with death or imprisonment for life. The accused No.3 is ready and willing to abide by any conditions imposed by this Court. On the other hand the learned APP vehemently argued that the investigation conducted by the Investigation

Officer shows that accused No.3 is committed the offence as alleged. The accused No.3 is a habitual offender and several cases have been registered in various police station. If at this stage, the accused No.3 is enlarged on bail, he may destroy the prosecution evidence and threaten prosecution witnesses. There is possibility to flee from justice and in future securing him may be difficult.

8. The offences alleged against the accused are non-bailable in nature and neither punishable with death nor imprisonment for life. **At this juncture it is worth to refer a decision of the Hon'ble Apex Court reported in (2005) 8 SCC 21 in the case of State of U.P. Through CBI –V/s- Amarmani Tripathi, wherein at para No.18 it is held as under:**

18. It is well settled that the matters to be considered in an application for bail are

- i. Whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;
- ii. Nature and gravity of the charge;
- iii. Severity of the punishment in the event of conviction;
- iv. Danger of the accused absconding or fleeing;
- v. Character; behavior, means, position and standing of the accused;
- vi. Likelihood of the offence being repeated;

- vii. Reasonable apprehension of the witnesses being tampered;
- viii. Danger, of course, of justice being thwarted by grant of bail.

9. In view of ratio laid down in the above decision, considering the gravity of offence and material placed on record, the accused No.3 committed the offence or not, the same has to be thrashed out at the time of trial. Now, at this stage the merits of the case cannot be gone into. The investigation officer was already completed the investigating and laid the final report. It is settled law that bail is the rule and committal to jail is an exception. If the accused No.3 enlarged on bail by imposing stringent conditions, the prosecution will not be put to hardship. Therefore, I am of the opinion that, it is just and reasonable to allow the bail application by imposing stringent conditions. Hence, I answer point No.1 in the '**Affirmative**'.

10. **Point No.2**:- in view of discussion and conclusion arrived at point No.1, I proceed to pass the following:

ORDER

The application filed by the accused No.3 U/Sec. 437 of the Cr.P.C. is hereby allowed.

The accused No.3 is enlarged on bail
subject to the following conditions:

1. Accused No.3 shall execute a self-bond for Rs.50,000/-(Twenty Fifty Thousand) with two solvent sureties for the like sum;
2. Accused No.3 shall not prevail upon or terrorize the prosecution witnesses;
3. Accused No.3 shall not indulge in similar offence;
4. Accused No.3 shall attend the Court regularly;

II Addl. Civil Judge & J.M.F.C.,
Karkala.