

**ORDER ON BAIL APPLICATION FILED BY THE
ACCUSED NO.1 & 2 UNDER SECTION 437 OF THE
CODE OF CRIMINAL PROCEDURE, 1973**

The accused No.1 and 2 have filed the present bail application under Section 437 of Cr.P.C., praying to enlarge them on bail for the offence punishable under Sections 457 and 380 of I.P.C.

2. It is averred in the application that, accused No.1 and 2 are in custody since the date of their arrest. The case is

posted for trial and accused undertakes that they will not hamper or tamper the witness. The accused No.2 is suffering from cancer and he intends to take treatment in his native place. The accused No.1 and 2 are 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.1 and 2 have committed the offence as alleged. The accused No.1 and 2 are habitual offender and several cases have been registered against them. The offences alleged against the accused No.1 and 2 are non-bailable and severe in nature. If the accused No.1 and 2 are released on bail, they may abscond and destroy the prosecution evidence and threaten prosecution witnesses. There is possibility to flee from justice and in future securing them 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.1 and 2
are entitled for bail as prayed for?

2. What order?

5. I have heard the learned counsel for the accused No.1 and 2 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.1 and 2 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.1 and 2 vehemently argued that the accused No.1 and have been falsely implicated in this

case. The investigation officer was already laid the charge sheet. Therefore, the accused No.1 and 2 are not required for further investigation. The alleged offences are neither punishable with death or imprisonment for life. The accused No.1 and 2 are 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.1 and 2 are committed the offence as alleged. The accused No.1 and 2 are habitual offender and several cases have been registered against them. If at this stage, the accused No.1 and 2 are enlarged on bail, they may destroy the prosecution evidence and threaten prosecution witnesses. There is possibility to flee from justice and in future securing them 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.1 and 2 have 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 investigation 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.1 and 2 are 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.1 and 2 U/Sec. 437 of the Cr.P.C. is hereby allowed.

The accused No.1 and 2 are enlarged on bail subject to the following conditions:

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

4. Accused No.1 and 2 shall attend the Court regularly;

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