

KAUP300000882013



**IN THE COURT OF ADDITIONAL DISTRICT AND
SESSIONS JUDGE, UDUPI (SITTING AT
KUNDAPURA)**

DATED THIS THE 18th DAY OF AUGUST, 2025

PRESENT:

**Sri Abdul Rahim Hussain Shaikh,
B.Sc., B.Ed., LL.B.(Spl.)
Addl. District and Sessions Judge,
Udupi (sitting at Kundapura)**

S.C.No.2/2013

Accused	Ummer Farook B, 43 years, S/o Muhammed, R/o Ballur House, Mogralputhur PO Kudlu Kasargod, Kerala (By Sri/Smt: M. D. Shetty, Advocate)
	AND
Respondent	State by S.H.O., Shankaranarayana Police Station (By the learned Public Prosecutor)

ORDER ON BAIL PETITION FILED U/S.439
OF Cr.P.C.,

The accused/petitioner has filed this bail petition U/s.439 of Cr.P.C., to release him on bail consequent upon his remand to judicial custody in the case registered against him by the respondent police on the complaint of Showkat Ali for the offence punishable U/s. 395 of IPC in Crime No.159/2004 in the interest of justice. In the instant case, after the investigation, the charge sheet has filed against the present accused and other accused persons which is numbered as C.C. No.332/2005 before Addl. Civil Judge and J.M.F.C. Court, Kundapura and after committing the case to the Hon'ble Principal District and Sessions Court, Udupi, the case is registered as S.C. No.9/2005. Thereafter the case against the present accused was split up and separate case was registered which is numbered as S.C. No.27/2007. Later it was transferred to this Court by the order No.ADMN:94/2013 dated 03-06-2013 and it was renumbered as 2/2013 and issued warrant against the accused and the present accused remained abscond, hence LPC No.1/2018 was registered and now the present accused is arrested and produced before this Court on 29-07-2025 and was remanded to judicial custody.

3. The accused claims innocence and submit that he has been falsely implicated in the said case even though he has not committed any offences as alleged in the complaint. Further it is contended that there is no prima facie case against the accused. It is further contended that initially he had obtained bail and thereafter he could not appear before the Court due to his ill-health and subsequently he was under the impression that the case is closed since no notice, summons, warrant served upon him. It is further contended that he had no intention of absconding from Law and he was not at all aware of the case pending against him. It is further contended that the accused is already in the custody since 29-07-2025 for a period of 21 days. It is also contended that he is having deep roots in society. He is the sole bread earner of his family. It is also contended that the offences alleged are not punishable with death. Therefore, the petitioner has prayed for allowing this petition.

4. Learned Public Prosecutor has filed objection to this bail petition in detail along with the report of I.O., by submitting that this petition is not

maintainable in law or on facts and for the reasons stated in the objection. It is further contended that if the petitioner is once again released on bail, there is likelihood that he would once again abscond and hamper the trial. Hence the bail application has to be rejected.

5. Heard the arguments on both sides and perused the materials on record.

6. The following points that arises for my consideration are :

1. Whether the accused has made out any grounds for his release on bail at this stage as sought for?

2. What order?

7. My answer to the the above points are as under :

Point No.1 : In the Affirmative

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

REASONS

8. Point No.1: On considering the papers on record, it is evident to note that the respondent police have registered case against the petitioner/accused in

Crime No. 159/2004 for the offence punishable U/s.395 of IPC on the complaint of complainant.

9. It is the case of the prosecution that on 26-12-2004 the accused persons hired a car bearing registration No.KA-05-Z-2476 from Thirthahalli to Shankaranarayana and when they reached near Hosangadi, the accused persons threatened the driver to stop the car and assaulted him with rod and fled away from spot on the said car belonged to the complainant. Accordingly, the complainant filed the complaint.

10. The contention of petitioner is that the accused is already in the custody though he has not committed any offences as alleged. It is also contended that the offences alleged are not punishable with death. It is also contended that the petitioner being bread earning member of the family and if he is detained in the prison, hardship will be caused to his family while he is ready to furnish surety and abide by the conditions.

11. It is pertinent to note that even for the sake of argument, it is accepted that there is prima facie case

against the accused/ petitioner for the offence punishable U/s. 359 of IPC, the said offence though non-bailable, but is not punishable with death, but it is exclusively triable by this Court.

12. I have carefully considered the submissions made by the Learned counsel for the petitioner/accused and the Learned Public Prosecutor. It is found that the accused is already in custody from 29-07-2025 and charge sheet is already filed.

13. However, it is well settled principle of law that the granting of bail is discretionary power of the Court and every case should be considered on the basis of facts of each case. At this juncture, I would like to go through the dictum of law laid down by the **Hon'ble Supreme Court in (2012) 1 Supreme Court cases 40 (Sanjay Chandra Vs. CBI)-**

"wherein the Hon'ble Court opined that "every person detained or arrested is entitled to speedy trial-Trial may take considerable time and accused will have to remain in jail longer than the period of detention - Therefore, it is not in the

interest of justice that the accused should be in jail for an indefinite period – Court will have to consider while granting bail about the seriousness of charges and severity of punishment – Merely the offence alleged against the accused is serious one itself should not deter the Court from enlarging on bail when there is no serious contention from the prosecution that if the accused is released on bail, they would interfere with the trail or tamper with the witness.”

And also I would like reproduce the the ruling reported in-

(2011) 1 SCC 784: (2011) 1 SCC (Cri) 409 in state of Kerala V. Raneef has stated (SCC P.789 para 15).

"In deciding bail applications an important factor which should certainly be taken into consideration by the Court is the delay in concluding the trial. Often this takes several years, and if the accused is denied bail but is ultimately

acquitted, who will restore so many years of his life spent in custody? Is Article 21 of the Constitution, which is the most basic of all the fundamental rights in our Constitution, not violated in such a case? Of course this is not the only factor, but it is certainly one of the important factors in deciding whether to grant bail. In the present case the respondent has already spent 66 days in custody(as stated in para two of his counter-affidavit), and we see no reason why he should be denied bail. A doctor incarcerated for a long period may end up like Dr. Manette in Charles dickens's novel A tale of two cities, who forgot his profession and even his name in the Bastille."

14. By applying the above dictum of law and guidelines laid by the Hon'ble Supreme Court of India, the present fact of the case has to be analyzed and considered. I have perused the averments made in the application, order sheet, complaint, F.I.R., charge sheet and other materials produced on record.

In the instant case, after the investigation, the charge sheet has filed against the present accused and other accused persons which is numbered as C.C. No.332/2005 before Addl. Civil Judge and J.M.F.C. Court, Kundapura and after committing the case to the Hon'ble Principal District and Sessions Court, Udupi, the case is registered as S.C. No.9/2005. Thereafter the case against the present accused was split up and separate case was registered which is numbered as S.C. No.27/2007. Later it was transferred to this Court by the order No.ADMN:94/2013 dated 03-06-2013 and it was renumbered as 2/2013 and issued warrant against the accused and the present accused remained abscond, hence LPC No.1/2018 was registered and now the present accused is arrested and produced before this Court on 29-07-2025 and was remanded to judicial custody. It is found that the investigation is completed, charge sheet is filed and when the case was posted for 313 of Cr.P.C. statement, the accused was absconded for which there is no need to keep the accused in the custody when he is ready to furnish sureties for his release. Considering all the aspects, it is found that if stringent conditions are imposed as contended by the prosecution in their objection, it

would meet the ends of justice. Considering the gravity of offence and period of custody of more than 21 days, bail application of accused is taken for consideration. Therefore, the petitioner/accused has made out sufficient grounds for his release on bail at this stage as prayed for. Accordingly, I answer point No.1 in the **affirmative**.

15. **Point No.2:** In view of answer of this Court on point No.1, this court pass the following:-

ORDER

The bail petition filed by the accused/petitioner U/s.439 of Cr.P.C. is hereby allowed.

Consequently the petitioner is hereby ordered to be released on bail on his executing personal bond for Rs.1,00,000/- with two sureties for likesum to the satisfaction of the Court in Crime No.159/2004 of Shankaranarayana Police Station (S.C. No.2/2013 on the file of this Court), subject to the following conditions:-

1.The accused/petitioner shall appear before the Court as and when directed without fail.

2.He shall not directly or indirectly holdout threats to the prosecution witnesses or lure them in any manner.

3.He shall not tamper with prosecution witnesses in any manner.

4.He shall not commit similar offences or any offence during the pendency of the case.

5.He shall not leave the jurisdiction of the India without prior permission of the Court.

6.He shall not change his place of residence as mentioned in the petition without prior intimation to that Court, and

7.He shall furnish his residential ID address proof.

(Typed to my dictation by the Stenographer directly on Computer, corrected by me and then pronounced in open Court on this the 18th **day of August, 2025**)

(Abdul Rahim Hussain Shaikh)
Addl. District and Sessions Judge,
Udupi, (sitting at Kundapura)