



**IN THE COURT OF THE II ADDL. DISTRICT & SESSIONS
JUDGE, UTTARA KANNADA, KARWAR.**

DATED THIS THE 4th DAY OF NOVEMBER-2022

CRIMINAL MISC.CASE NO. 442/2022

PRESENT: Sri. Ganesha B.,
B.Sc., L.L.M.,
II ADDL., District & Sessions Judge,
Uttara Kannada, KARWAR.

PETITIONER: Riyan Rafeeq Shaikh
Age: 24 years, Occ: Business,
R/o. Bandar Road,
Ashurkhan Galli,
Taluk: Bhatkal, U.K.

(By Sri. S.P.K.,Advocate.)

Vs.

RESPONDENTS:

1. The State of Karnataka,
Represented by Public Prosecutor
U.K. Karwar
2. P.S.I., Honnavar Police Station,
Represented by P.P. U.K. Karwar

ORDER

The counsel for the petitioner/accused No.2 has filed the present bail petition under Section 438 of Cr.P.C., seeking anticipatory bail in the event of his arrest in Honnavar police station crime No. 343/2022 for the offences punishable under Sections 323, 324, 341, 354, 504 and 506 r/w section 34 of IPC.

2. The petitioner/accused No.2 has contented in his application that he is innocent and he has not committed any offences as alleged by the police. He is the permanent resident of Bandar Road, Ashurkhan Galli, Bhatkal and having good respect and strong roots in the society. Further, The police are frequently visiting the house of the petitioner and they are threatening the family members of the petitioner stating that they will arrest the petitioner and also put hand cuffs. Thereby, the petitioner is having an apprehension of arrest in the hands of the police. Therefore, the offences alleged against petitioner/accused are though non-bailable, but they are not punishable either with death or imprisonment for life. The accused No.1 is already released on bail. Further, the petitioner is sole bread earner in his family and the petitioner/accused is also ready and willing to co-operate with the investigating officer and further, undertakes that he will not tamper with the prosecution witnesses and he has also undertakes to abide by the conditions that will be imposed against him, by the court and prayed to grant conditional bail.

3. The learned Public Prosecutor has filed objection ascertaining the complaint allegations and contending that there are prima-facie materials available on record regarding commission of alleged offence by the petitioner/accused along

with another accused and further stated that on 23.10.2022 at about 1.00 pm., the accused who were having past ill will against them and are having grudge when her husband was returning to the house, have wrongfully restrained him and they were assaulting him with iron substance and thereby, the complainant asked the accused why they are assaulting, the accused have touched her body and pushed her down and outraged her modesty and they have also scolded them with filthy language and caused bodily pain to them. When the villagers persuaded the quarrel the accused have threatened to their life and went away from the spot. Thereby, the complainant has given complaint to the police and the concerned police have registered the case against the accused and investigation is still in progress and in case the petitioner/ accused is released on bail then he may tamper the prosecution witnesses and he may hamper the trial and there is a chance of absconding. On these grounds, among other grounds it is prayed for dismissal of the bail petition.

4. Heard the arguments canvassed by the learned counsel for the petitioner and the Public Prosecutor.

5. At this stage the following points would arise for my consideration:

- 1) Whether the petitioner/accused has made out sufficient grounds for enlarging him on anticipatory bail in the event of his arrest in Honnavar Police Station Crime No.343/2022?
- 2) What Order?

6. The findings of the Court on the above points are as under:

Point No.1: In the Affirmative
Point No.2: As per final order,
for the following:

REASONS

7. **Point No.1:** I have perused the records. Admittedly, Honnavar police have registered the case against the present petitioner/accused in crime No.343/2022 for the offences punishable under Section 323, 324, 341, 354, 504 and 506 r/w section 34 of IPC. The contents of the complaint discloses that on on 23.10.2022 at about 1.00 pm., the accused who were having past ill will against them and are having grudge when her husband was returning to the house, have wrongfully restrained him and they were assaulting him with iron substance and thereby, the complainant asked the accused why they are assaulting, the accused have touched her body and pushed her down and outraged her modesty and they have also scolded them with filthy language and caused bodily pain to them. When the villagers persuaded the quarrel the accused have threatened

to their life and went away from the spot and thereby, the complainant has lodged the complaint against the accused and thereafter, the Honnavar police have registered the case against the accused for the offences punishable U/sec. 323, 324, 341, 354, 504 and 506 r/w section 34 of IPC.

8. The counsel for the petitioner/accused has argued that the petitioner/accused has been falsely implicated in this case due to the previous enmity and therefore, the offences alleged though non-bailable but not punishable with death or imprisonment for life and accused No.1 is already released on bail and thereby, the petitioner/accused is the permanent resident of Bandar Road, Ashurkhan Galli, Bhatkal Taluk and the chances of absconding from the investigation is very remote and the accused undertakes to abide by the conditions that may be imposed by against him. Hence, he has prayed to allow the petition by imposing necessary conditions.

9. The learned Public Prosecutor has argued that the petitioner/accused has committed the offences against him and therefore, the offences alleged against the accused are prima facie made out and the IO has collected the sufficient evidence so as to establish the same and the investigation is not completed and the petitioner/accused was absconding and his presence is very much required for investigation and if the

anticipatory bail is granted, the investigation will be hampered and the possibility of abscondence of the accused from the investigation and tampering the prosecution witnesses cannot be ruled out. Therefore, the PP has prayed to reject the bail application.

10. After hearing the arguments advanced by the counsel for the petitioner/accused and also the learned Public prosecutor and on careful reading of the case papers it will disclose that on 23.10.2022 at about 1.00 pm., the accused who were having past ill will against them and are having grudge when her husband was returning to the house, have wrongfully restrained him and they were assaulting him with iron substance and thereby, the complainant asked the accused why they are assaulting, the accused have touched her body and pushed her down and outraged her modesty and they have also scolded them with filthy language and caused bodily pain to them. When the villagers persuaded the quarrel the accused have threatened to their life and went away from the spot and thereafter, the complainant has lodged the complaint to the police and the Honnavar police have registered the case against the accused for the offences punishable U/sec. 323, 324, 341, 354, 504 and 506 r/w section 34 of IPC.

11. However, the accused has filed this application and prayed to enlarge him on anticipatory bail apprehending arrest and he is ready to offer sufficient surety for his appearance and availability for the investigation. However, the Public Prosecutor has opposed the same, saying that his release will hamper the investigation. Under these circumstances, whether the petitioner/accused has committed the above alleged offences or not, has to be thrashed out at the trial and therefore at this stage, the court has to consider whether the presence of the accused can be secured and whether the presence of the accused are required for investigation. In this aspect of matter, it is evident from the case papers that the investigation is not yet completed and it is also forthcoming from the case papers that the offences alleged against the petitioner/accused are triable by Magistrate and it is also forthcoming from the documents produced by the petitioner/accused that the accused No.1 is already on bail. Therefore, when the petitioner is the permanent resident of Bandar Road, Ashurkhan Galli, Bhatkal by imposing suitable conditions his presence can be secured at the time of investigation and also at the time of trial and therefore, merely because the investigation is pending, the same is not a ground for rejection of the bail. Therefore, as rightly argued by the counsel for the petitioner/accused that though the offences alleged against the accused are non-bailable but they are not

either punishable with death or imprisonment for life and therefore, the objection raised by the prosecution can be met with by imposing suitable conditions. Under these circumstances, I am of the opinion that it is just and necessary to grant the anticipatory bail to the petitioner/accused by exercising the discretion of this court by imposing certain conditions. Hence, I proceed to hold the above point No.1 in the **Affirmative**.

12. **Point No.2:** In view of findings on point No.1, I proceed to pass the following:

:ORDER :

The anticipatory bail petition filed under Section 438 of Cr.P.C by the petitioner/accused No.2 is hereby allowed.

1. In the event of arrest of the petitioner/accused, the concerned police are hereby directed to release the accused on bail on execution of bail bond for Rs. 50,000/-, with a surety for like sum.
2. The petitioner/accused shall mark his attendance before the investigating officer on alternative Sunday commencing from 13.11.2022 between 10.00 am., to 5.00 pm., till charge sheet is filed.
3. The petitioner/accused shall appear before Investigating Officer whenever he is called for investigation and shall co-operate in the investigation.
4. The petitioner/accused shall not tamper with the prosecution evidence as well as witnesses.

In case of any of these conditions are violated the prosecution is at liberty to seek for cancellation of bail.

(Dictated to the Stenographer directly on computer, typed by her, revised and corrected by me, signed and then pronounced in the Open Court on this the **4th Day of November-2022**)

(Sri. Ganesha B.)
II Addl. District & Sessions Judge,
Uttara Kannada, Karwar

Order pronounced in the open court vide detailed order.

O R D E R

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II ADDL. District & Sessions Judge,
Uttara Kannada, Karwar.