

IN THE COURT OF LXXIII ADDL.CITY CIVIL AND
SESSIONS JUDGE, MAYOHALL UNIT, BANGALURU.
(CCH.74)

PRESENT:

Sri.Yamanappa Bammanagi, B.A., LL.B., (Spl.,)
LXXIII Addl. City Civil & Sessions Judge,
Mayohall Unit, Bangaluru.

Dated this the 21st day of January 2021.

Crl. Misc. No.25049/2021
(Cr.No.227/2020 of K.G.Halli P.S.)
(CC No.55011/2020)

Petitioner/

Accused No.30:

Mohammed Shahid,
S/o.Mohamed Amjad,
aged about 29 yrs,
R/at.6th Cross, Govindpura,
Bangaluru-45.
Also R/at.No.103, 13th Cross,
Rashad Nagar, Govindpura
Main Road, A.C. Post,
Bangaluru.

(Accused No.30)

(By Sri.Mohammed Wazeer- Adv.)

V/S

Respondent:

State of Karnataka,
K.G.Halli PS.

(By Sri.P.Prasanna Kumar,
Learned Spl. Public Prosecutor)

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

The petitioner has filed this petition for grant of regular bail after charge sheet, in Crime No.227/2020 of K.G.Halli P.S. (C.C.No.55011/2020), registered on the complaint lodged by one Rajesh.H., PSI, K.G.Halli P.S., Bangalore, for the offence p/u/sec. 143, 147, 148, 353, 332, 307 r/w. 149 of IPC against the present petitioner and other accused persons.

2. After investigation, the Investigation Officer has filed charge sheet against the petitioner and other accused persons for the offence punishable U/Sec.143, 147, 148, 353, 332, 333, 307 r/w. 149 of IPC.

3. It is contended in the petition that one Mr.Rajesh.H., P.S.I., K.G.Halli P.S., lodged the complaint stating that on 11.08.2020 at about 9 p.m., he was received information that

around 500 to 600 persons had assembled near D.J.Halli P.S., and they created disturbance and received information from his higher officer and received direction to control the situation at jurisdictional limits of his police station and connecting the limits of D.J. Halli P.S. At about 11.10 p.m., the miscreants 500 to 800 gathered they had made preparation and suddenly rushed and entered into K.G. Halli P.S. Some of them carried weapon like rods and stones, at that time complainant and his staff tried to resist the miscreants, at that time miscreants started to assault to the complainant and his staffs on head, face and tried to kill them. Miscreants entered into P.S., and assaulted complainant, P.C.14099, tried to kill them and damaged Govt. and private vehicles and assaulted complainant and his staffs while they were on duty. The complainant has identified some of the miscreants by namely Abbas Fairoz, Muzammil, Habeeb, Peer Pasha, Zia, Kaleem, Kerchief Sadiq, Javeed, Mujju, Sadiq, Vinobhanagar Asif, Govindapura Syed,

Farhan, Masood, and Saif. On basis of complaint lodged by the complainant Crime No.227/2020 has been registered for the offence punishable u/S 143, 147, 148, 353, 332, 307 r/w 149 of IPC and thereafter, petitioner is arrested by the respondent, produced before the Magistrate and the learned jurisdictional Magistrate has remanded the petitioner to judicial custody. Thereafter, after investigation, I.O has filed charge sheet against the petitioner/accused and other accused persons for the offence punishable u/S 143, 147, 148, 353, 307 r/w 149 of IPC and criminal case has been registered in CC No.55011/2020. Hence, the petitioner has filed this petition for regular bail on the following:-

GROUND

I. The petitioner is innocent, he never involved in the commission of crime and he has been falsely implicated in the crime. No name of the petitioner appeared in the complaint. The petitioner has no bad antecedents and he hails from

respectable family and as the petitioner is the sole bread earner of his family having aged parents and siblings are depending upon the petitioner and petitioner is permanent resident of Bangaluru.

II. The alleged offences are not punishable with death or imprisonment for life. The petitioner undertakes that he will not tamper the prosecution witness, undertakes to appear before the I.O., and before the court whenever called for to do so.

III. The continued detention of the petitioner in the JC with other convicts will affect on the mind of the petitioner. The petitioner not involved in the commission of crime, no criminal cases are pending against the petitioner.

IV. On perusal of the material placed before the court no case has been made out by the prosecution and the name of the petitioner is

not appeared in the FIR and complaint. But, name of the petitioner has implicated after arrest. No material object is recovered from the petitioner. No identification parade was conducted.

V. I.O. has filed charge sheet after completion of investigation. I.O. has recorded statements as many as 22 witnesses, there is no direct or indirect involvement of the accused/petitioner in commission of crime. No grievous injuries suffered by persons in the crime. No persons are treated as indoor patient.

VI. The petitioner is ready and willing to abide by the conditions, which may be imposed by the court while granting bail. It is contended that in the same crime accused No.19 has filed bail petition in Crl.Misc. No.26052/2020, same was allowed by this court. With this, the learned counsel for the

petitioner sought for allowing the petition.

4. On the other hand, the learned Special Public Prosecutor has filed objection to the petition. It is contended in the objection that, on 11.8.2020, at about 19.45, one Firdosh Pasha, resident of D.J.Halli, approached the DJ Halli police and filed a complaint against one Naveen for having circulated derogatory message on prophet Mohammed Paigamber. On receipt of the complaint the DJ Halli SHO immediately registered an FIR in Cr.No.194/2020, against the Naveen for the offence punishable u/S 295-A and 153-A of IPC.

5. Further, contended in the objection that, about 300 peoples were gathered near DJ Halli P.S., as one Naveen has posted derogatory comments in his facebook about prophet Mohammed Paigamber, to confirm about the said Naveen and to assault him. The said miscreants formed unlawful assembly armed with knives, stones, bricks and iron rods in

front of DJ Halli P.S., after notice of the unlawful assembly the police had warned them through mega phone to disperse from the spot, when miscreants did not heed the request of the police, the Commissioner of Police declared curfew u/S 144 of Cr.P.C. Despite of declaration of Section 144 of Cr.P.C., the miscreants started throwing stones at police station, at police personnels and started to set fire on the platoon outside the police station. When situation went uncontrol and miscreants gave a life threat to police personnel, in order to protect themselves and protect the public property, the police personnel used minimum force.

6. Further contended in the objection that, about 75 police officers on duty at the time of incident, have been inflicted with serious injuries and are currently undergoing treatment. In all, 67 government vehicles have been burnt and damaged by the unlawful assembly.

7. Thus, the learned Special Public Prosecutor has contended in the objection that looking to the facts and

circumstances, manner in which the attack was taken place by the miscreants on law enforcing agency, which has been extended to cause damage to the private and public property and the miscreants have burnt the vehicles belonging to government and private persons, more than 300 to 500 accused persons are involved. The petitioner is not entitled for the bail, since, the accused person has been clearly identified through CCTV footage, video recordings and other material evidence collected by the I.O. Further contended that the petitioner was present in the unlawful assembly and committed crime, hence, the petitioner was arrested and produced before the Magistrate and Investigation Officer has filed charge sheet before the jurisdictional Magistrate.

8. Further the learned SPP has contended in the objection that during investigation I.O. has recorded further statement of complainant Mr.Rajesh and along with other staffs. C.W.1, 2, 7 to 10, 15, 17 & 18 are the eye witnesses and identified the petitioner who was present in the crime

and assaulted the complainant on head and eyes and other vital part and Manjunath, P.C., was also sustained injury and they were taken treatment at Dr.B.R.Ambedkar Medical College and Hospital. The Manjunath, P.C., sustained injuries over the scalp, swelling over the right eye and nazal bleeding and he was subjected undergo CT brain scan. Further he contended that further investigation in the crime under Section 173 (8) of Cr.P.C. is pending and eye witnesses have identified the petitioner through CCTV and in the form of video recording by media and CCTV has been collected and sent to FSL.

I.O. has investigated the crime and after completion of the investigation, has filed detailed charge sheet with respect to the Crime No.227/2020. In spite of Section 144 of Cr.P.C., the accused started pelting stones at police officers and assaulted with club, iron rod and set fire to Govt. properties, and police station doors, windows. The respondent officials had warned miscreants through megha phones. In spite of

warning the miscreants did not dispersed. Hence, the police officials had used minimum force, such as tear gas, mild lottee charge and some of miscreants sustained injuries and two persons succumbed. The petitioner conspired with various accused persons of more than 500 to 800 miscreants and petitioner had assaulted complainant and his staff with club and iron rods, said rods, clubs, stones have been recovered in PF No.107/2020 on 12.8.2020. I.O has recorded the statement of eye-witnesses and eye-witnesses have identified the petitioner, who were present at the spot. More particularly, C.W.1, 2, 7 to 10, 15, 17 & 18 have identified the petitioner at the scene of offence armed with petrol filled bottles which were used to set fire a car and two wheelers. Thus, the petition filed by the petitioner is liable to be rejected.

9. Heard the argument of the learned counsel for the petitioner. In support of his argument the learned counsel for the petitioner has produced entire charge sheet in xerox copy.

Further the learned counsel for the petitioner has filed memo stating that, in the same crime in Crl.Misc.No.26052/2020 this court has allowed the bail petition.

10. The learned Special Public Prosecutor has submitted his argument. In support of his case the learned Spl. Public Prosecutor has produced statement of eye witnesses recorded by the I.O. u/S 161 of Cr.P.C. Further the learned S.P.P. relied on the order passed by the Hon'ble High Court in Crl. Petition No.5785, 4606 and 6358/2020 and further the learned SPP has produced daily orders passed by the Hon'ble High Court of Karnataka in W.P.No.9287/2020.

11. I have perused the grounds made-out in the petition and objection filed by the learned Special Public Prosecutor and material placed before the court and I have also considered the arguments advanced by the learned counsel for the petitioner and the learned Special Public Prosecutor for the respondent. On perusal of the same the points that would arise for my consideration are as follows:-

1. Whether the petitioner has made out a grounds to show prima facie that he is entitle for the bail in the Crime No.227/2020 of K.G.Halli PS?

2. What order?

12. My answer to the above points are as follows:-

Point No.1: *In the Affirmative,*

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

REASONS

13. **POINT No.1:** The brief facts of the prosecution case is that, one Naveen has posted derogatory comments on prophet Mohammed Paigamber, on his facebook. On account of which, the peoples belongs to Muslim community had gathered near D.J.Halli P.S. and asked for handing over the said Naveen to the peoples gathered in front of police station. For that the D.J.Halli police officials told that they have already registered the case against the said Naveen and assured for arresting him and necessary action will be taken. But, the peoples who were gathered wanted to hand over the Naveen to

them. Meanwhile, the said message has been spread to all the community peoples, for that there were more than 300 people gathered, when police personnel did not handed over the said Naveen to the unlawful assembly, the members of the unlawful assembly has started pelting stones at police station and at police personnel and attacked on the police personnel, assaulted them, set fire to the police station, vehicles belonging to government, parked in front of police station and set fire to the basement of the police station and all vehicles have been burnt. Further the miscreants set fire to the private vehicles parked outside and inside the police station, and set fire to the house belonging to local MLA and house belonging to said Naveen and house of the MLA and said Naveen completely burnt. More than 100 vehicles of private persons have been set fire. Thus, the unlawful assembly had caused loss to public and private property and assaulted to the public servant while discharging their duty as a public servants attached to the D.J. and K.G.Halli police station.

14. In respect of said incident the crimes have been registered in both police station against the unlawful assembly members of more than 300 persons. During the investigation the present petitioner and other persons have been arrested and produced before the learned judicial Magistrate and sent them to the judicial custody.

15. The learned counsel for the petitioner would contended in his argument that there is no material before the court to connect the petitioner in the commission of crime and no material object shown in the remand application and there is no mentioning of use of weapons by the petitioner. Further the learned counsel for the petitioner submitted that already some accused have been released on bail in Crl.Misc. No.25565 & 25614/2020 as per the order passed by the learned XXVI Addl. City Civil and Sessions Judge, on 19.09.2020, hence the petitioner is entitled for bail on the ground of parity.

16. Further the learned counsel for the petitioner

submitted that, this court has allowed the bail petition in Crl.Misc.No.26052/2020 to the accused No.19 in this crime.

17. Further contended that, the respondent/complainant in all crimes has not been stated the names of the accused persons involved in the commission of crime in FIR, complaint, there was no recovery of any material object from the petitioner and no allegation against the petitioner in the complaint and in the FIR and no overtact of the petitioner found in the complaint and FIR. Thus, when there is no material before the court to connect the petitioner with the incident, taken place on 11.8.2020 at D.J.Halli and K.G.Halli police station and other place, then the petitioner is entitled for the grant of bail. With this, the learned counsel for the petitioner submitted that petition filed by the petitioner may be allowed.

18. The learned Special Public Prosecutor would contended in his argument that, it is an horrible incident that, took place in the metro city in which more than 300 peoples

have assembled to do the illegal act and attack on the two police station. Further he argued that when one Naveen has posted a derogatory comment on prophet Mohammed Paigamber, on account of which the people belongs to a particular community has gathered in front of police station, asked for handing over the said Naveen, at that time, the police officials requested the mob that they have already registered the case against the said Naveen and necessary action has already been initiated, but, the members of the unlawful assembly did not heed the request of the police officials and assaulted to the police personnel and set fire to the police station, vehicles belongs to government and private.

Further the learned Special Public Prosecutor submitted that the miscreants had set fire to the residential house of local MLA and residential house of said Naveen and burnt completely. Further the miscreants set fire to the vehicles parked in front of house of the Naveen and house belongs to

local MLA. In such a incident there were more than 300 to near 1,000 persons have participated and caused damage to the public property and private properties and assaulted to the public servant while discharging their duty.

19. With the above submission, the learned Special Public Prosecutor has submitted that looking to the peculiar circumstances, under which crime has been committed by the unlawful assembly, manner in which crime has been committed and the properties belongings to government and private person has been destroyed by setting fire. It is further submitted that it is not only a question of liberty of the petitioners/accused persons, it is also question of right and liberty of the society at large, since, in the case on hand, the members of the unlawful assembly has set fire to the residential house of the local persons who are nowhere concerned and responsible for the incident, that is, message posted by the Naveen and property belonging to private person has burnt for no reason. Further contended that

miscreants have burnt the property belongings to private person for no reasons.

The learned Special Public Prosecutor submitted that already, during the course of investigation, the accused persons have identified by the eye witnesses for his having participated in the commission of crime and produced statement of eye witnesses and brought the notice of the court that the eye witnesses have identified the petitioner. Under such circumstances, the petitioner is not entitled for the bail. Further learned SPP has submitted that, though charge sheet has been filed against the petitioner and other persons, but still the petitioner is required for further investigation in the crime and in the connected crime registered against the petitioner and others.

20. The learned counsel for the petitioner submitted in reply argument that, the prosecution has contended in the objection that, the respondent police have filed detailed charge sheet in respect of the Crime No.227/2020. When

submission of the prosecution clearly discloses that, already I.O has investigated the crime in detail. Then where is the question of further investigation.

21. Further the learned counsel for the petitioner submitted that, if the further investigation is required in the crime even in that event also the petitioner is ready and willing to co-operate with the investigation officer and petitioner is ready to present before the I.O. in case of further investigation of the crime, whenever the I.O. called for to do so. With this the learned counsel for the petitioner prayed for allowing the petition.

22. On perusal of the material placed before the court, and considering the arguments advanced by the learned counsel for the parties, it is clear that the petitioner has sought for grant of bail on the grounds that, the name of the petitioner is not reflected in the FIR, complaint, no recovery from the petitioner and there is no identification of the petitioner for having involved in the incident.

Secondly, on the ground of parity and another ground that, it is a question of liberty of the accused person as there is no material to show the involvement of the petitioner in the commission of crime and further submitted that the accused person is become victim of circumstances.

Further it is clear that, the petitioner sought for bail on the ground that, the investigation has been completed and I.O has filed detailed charge sheet against the petitioner and other accused persons. Thus, there is no requirement of petitioner for any purpose to keep them in the judicial custody.

23. I have perused the material placed before the court. On perusal of the FIR and complaint, it is clear that the name of the petitioner is not appeared in FIR and complaint. But the learned SPP produced statements of eye witnesses. The statement of eye witnesses reflects that eye witnesses have identified the petitioner for having involved in

the crime.

But the learned counsel for the petitioner submitted that, the prosecution has produced statements of eye witnesses only though I.O has recorded the statements of number of witnesses. When prevents the prosecution to produce the entire charge sheet filed against the petitioner and other accused persons. Further what prevents the prosecution to produce the wound certificate of injured persons when charge sheet has been filed. This clearly shows that, there is no case against the petitioner.

24. The learned counsel for the petitioner brought the notice of this court that it is a specific case of the prosecution that one Naveen has posted message in his facebook on prophate Mohammed, on account of which a particular community members have gathered in front of D.J.Halli Police Station to set law in motion against the said person and thereafter, the peoples belongs to particular community had gathered and converted into unlawful assembly and the

members of the unlawful assembly had set fire on private vehicles and vehicles belongs to Govt., and houses and caused damage to the Govt., as well as to the private persons. Further he submitted that said Naveen is the prime accused for all crimes registered against unknown persons in D.J. Halli and K.G. Halli Police Station in respect of incident happened on 11.08.2020 on account of message posted in facebook. The said Naveen has already been released on bail by the Hon'ble High Court in Crl.Petn. No.4819/2020, dated 14.10.2020 & in Crl.Petn.No.5199/2020, dated 10.11.2020.

Further learned counsel for the petitioner submitted that the prosecution has alleged that this petitioner has assaulted to the complainant and staffs and caused grievous injury and produced wound certificate. But, the injured persons have stated before the doctor that they sustained injuries by mob. Thus, if the petitioner has assaulted to the complainant and staffs they would have disclosed the name of the petitioner. Thus, the case of the prosecution against

the accused is false. There is no material even till today, there is no material before the court to connect the petitioner with crime and the petitioner is not responsible for injuries mentioned in the wound certificate of complainant.

25. The apprehension of the prosecution is that, if the accused person is released on bail, there is every chances of involvement of accused in commission of same type of crime, the accused/petitioner will tamper the prosecution witnesses, the accused/petitioner will abscond, which will cause delay in trial and further the apprehension of prosecution that, if the petitioner is released on bail, then they are not available for further investigation and further investigation will hamper.

26. I have perused the charge sheet produced by the prosecution. On perusal of the same, it is clear that all most all the eye witnesses as per prosecution, are police personnels. Thus, the tampering of prosecution witnesses by the accused persons is not possible in the case on hand as contended by the learned Special Public Prosecutor.

27. The second apprehension of the prosecution is that if the accused is released on bail, he will abscond and it will cause delay in trial and statement of eye witnesses produced by the learned Spl. Public Prosecutor that prosecution witnesses have already identified the accused/ petitioner through CCTV footage.

Now the question before the court is as to whether after identifying the petitioner/accused person by the eye witnesses through CCTV footages, the accused person is to be retained in the judicial custody till end of the trial.

28. The investigation of the crime has been completed and after collecting the CCTV footage and other material evidence the charge sheet has been filed by the I.O. When I.O. has collected the CCTV footage of the incident, then there is no tampering of CCTV footages, because the CCTV footages have already collected and sent them to FSL. Thus, the apprehension of the prosecution can be taken care by

imposng stringent conditions. Because, the entire prosecution case is depends upon CCTV footages and the prosecution witnesses have already identified the petitioner and all CCTV footages collected and sent them to FSL. Under such circumstances, the apprehension of the prosecution can be taken care by imposing stringent conditions on accused persons.

Further it is specific argument of the learned S.P.P., that the petitioner is required for further investigation of crime. I have perused the objection of the prosecution that, the I.O has filed detailed charge sheet in the crime. Under such circumstances chances of further investigation of the crime is very less and this apprehension of prosecution can be taken care by imposing condition.

29. The Hon'ble High Court of Karnataka was pleased to released one Naveen in Crl.Petn.No.4819/2020, dated 14.10.2020 & in Crl.Petn.No.5199/2020, dated 10.11.2020, who is prime accused and cause for entire D.J. Halli & K.G.

Halli Police Station incident, which was taken place on 11.08.2020.

According to prosecution itself, the whole incident, which was taken place on 11.08.2020 at D.J. Halli and K.G. Halli Police Station is on illegal act of said Naveen who has posted the message in facebook on prophate Mohammed Paigamber.

The argument of the learned counsel for the petitioner is that when prime accused is released on bail, the petitioner is entitled for bail, since, his name is not reflects in the FIR and complaint. Further he submitted that according to prosecution, this petitioner is identified by the eye witnesses through CCTV footage, then there cannot be any tampering of CCTV footage and prosecution can easily secured the presence of the accused/petitioner before the court during trial by using present technology wherever he may be after release on bail.

30. On considering the argument of the learned

counsel for the petitioner and respondent, I am of the opinion that when investigation has already been completed and charge sheet has been filed by the I.O., the further judicial custody of the accused person is not required, since, there is no chances of tampering of prosecution witnesses as almost all the eye witnesses to the incident as per charge sheet, are police personnels. Thus, the argument of the learned Spl. Public Prosecutor that, if the accused is released on bail they will tamper the prosecution witnesses, holds no good.

31. The other material evidence, such as, CCTV footage, as the I.O. has already collected and sent them to FSL. The whole prosecution case against the petitioner is that the petitioner is identified by the eye witnesses through CCTV footages, which have already been collected by the I.O. Thus, looking to the special facts and circumstances of the case, after charge sheet, considering the contents of complaint and FIR, I am of the opinion that the petitioner/accused person is entitled for bail, since, the prime accused to the whole

incident, which taken place on 11.08.2020 at D.J. Halli and K.G. Halli Police Station, in respect of which many crimes have been registered against the known and unknown persons, has already been released on bail as per the order of the Hon'ble High Court of Karnataka in Crl.Petn. No.4819/2020 dated 14.10.2020 & in Crl.Petn. No.5199/2020, dated 10.11.2020.

32. The learned counsel for the petitioner has produced xerox copy of Aadhakar card to show the address of the petitioners. Thus, the apprehension of the prosecution that, if the accused persons are released on bail they will tamper the prosecution witnesses and they will involved in the commission of same type of crime and abscond and it will cause delay in trial can be taken care by imposing stringent conditions. With the above observation and reasons assigned, I am of the opinion that the petitioner is entitled for bail. Hence, I answer this point *in the Affirmative*.

33. POINT No.2: In view of the finding on point No.1,

I proceed to pass the following:-

ORDER

The petition filed by the accused No.30/petitioner u/S 439 of Cr.P.C. is hereby allowed. Consequently, the petitioner/accused person is ordered to be released on bail in Cr.No.227/2020 of K.G. Halli Police Station (CC No. 55011/2020), registered and charge sheeted for the offence punishable u/S 143, 147, 148, 353, 332, 333, 307 r/w. Sec.149 of IPC, on the following conditions:-

- 1) The petitioner/accused person shall execute personal bond for sum of Rs.1,00,000/- (Rupees One Lakh only) with two sureties for the likesum to the satisfaction of the trial court.*
- 2) The petitioner/accused person shall not tamper the*

prosecution witnesses directly or indirectly.

3) The petitioner/accused person shall not involve in any similar type of criminal activities. If, the petitioner/accused person involved again in any similar type of criminal activities, then that will be a ground for cancellation of bail granted.

4) The petitioner/accused person shall not leave the jurisdiction of the court without prior permission of the court.

5) The petitioner/accused person shall mark his attendance before the jurisdictional police on 1st and 15th of every month in between 10 a.m. to 5 p.m. till the trial is completed.

6) The petitioner/accused person shall produce Aadhaar card in support of his address.

7) The petitioner/accused person shall produce his present photo, if photo produced by the petitioner/accused person is digital photo, then petitioner/accused person shall produce CD.

8) The petitioner/accused person shall co-operate with I.O. and present before the I.O. whenever called for do so in case of the petitioner/accused person is required for further investigation in the crime.

9) If, the petitioner/accused person violated any conditions mentioned above, then that will be ground for cancellation of bail granted to him.

(Dictated to the Stenographer on computer, after computerization, corrected and pronounced by me in the Open Court, this the 21st day of January 2021.)

(Yamanappa Bammanagi)
LXXIII Addl. CC & SJ, M.H. Unit,
Bangaluru.

