

IN THE COURT OF IST ADDL. DISTRICT AND SESSIONS JUDGE

AT HAVERI

**PRESENT : SRI. KIRAN KINI,
IST ADDL. DISTRICT AND SESSIONS JUDGE
HAVERI.**

DATED THIS THE 26th DAY OF DECEMBER 2019.

CRL. MISC. CASE NO : 820/2019

BETWEEN :

1. Mallanagouda S/o Gurushantappa Jogihalli,
Age: 43 Years, Occ: Agriculture,
2. Gurushantappa S/o Channabasappa Jogihalli,
Age: 75 years, Occ: Agriculture,

Both are R/o Balambeed village, Tq: Hirekerur,
Dt: Haveri.

.....Petitioners.

(By Sri.P.P.Balaganur, Advocate)

AND :

The State of Karnataka,
represented by Public Prosecutor, Haveri.

.....Respondent.

ORDER

1. It is a petition filed under Section 438 of Cr.P.C., for grant of anticipatory bail in crime No.169/2019 of Hirekerur Police for the

offences punishable under Sections 324, 504, 506 r/w section 34 of IPC and section 3(1)(r) of SC/ST (P.A.) Act, 1989.

2. It is the contention of the petitioners that the complainant has filed a false complaint against them and that they are entirely innocent of the accusation levelled against them and that they have been falsely implicated and that the Hirekerur police officials are searching for them for their arrest and that they apprehend that at any moment they may be arrested by the Hirekerur Police in which eventuality they will be subjected to harassment, humiliation and mental torture and that the entire material placed on record by the prosecution are not sufficient to hold that they have committed any offence as alleged by the prosecution and that the offences are though non-bailable are not punishable with death or imprisonment for life and that the complaint has been filed after lapse of 2 days of the alleged incident and that they are law abiding citizen and permanent residents of Jogihalli village where they are having both movable and immovable properties and that they are ready and willing to abide by any conditions that may be imposed on them and hence have prayed for grant of anticipatory bail.
3. The prosecution has filed objections inter alia contending that the investigation so far conducted by the I.O. has prima facie proved the

commission of alleged offences by the accused and that the I.O. has seized the stick and shirt of the injured and that the investigation is still pending and that the grounds urged by the petitioners are not sufficient enough to grant the anticipatory bail and that the petitioners have filed petition by suppressing the material facts and that the petitioners are not entitled for anticipatory bail under Section 18(A) of the SC/ST (P.A.) Act and hence has prayed for dismissal of the petition.

4. I have heard the arguments.
5. The following points arise for my consideration.
 1. Whether the petitioners are entitled for anticipatory bail as sought for?
 2. What Order?
6. My findings on the above points are as follows for the following reasons.

Point No. 1 : In the Affirmative.

Point No. 2 : As per final order.

REASONS

7. Point No. 1 :

- a. It is not in dispute that the I.O. has registered a crime in No.169/2019 for the

offences punishable under Sections 324, 504, 506 r/w Sec.34 of IPC and Section 3(1)(r) of SC/ST (P.A.) Act, 1989.

b. It is also not in dispute that the alleged offences are non bailable.

c. The prosecution has not denied the contention of the petitioners that the Hirekerur police are searching for their arrest.

d. It is the specific contention of the prosecution that the petitioners are not entitled for anticipatory bail under section 18(A) of SC/ST (P.A.) Act.

e. On perusal of the first information statement submitted by the injured, it gets clear that he has alleged as follows.

“..... ದಿನಾಂಕ 06.12.2019 ರಂದು ನಾನು ನಮ್ಮ ಎಮ್ಮೆಗಳನ್ನು ಮೇಯಿಸಲು ನಮ್ಮ ಊರಿನಿಂದ ಹಾದ್ರಿಹಳ್ಳಿ ಕಡೆಗೆ ಹೋಗುವ ರಸ್ತೆಯಲ್ಲಿ ನಮ್ಮ ಎಮ್ಮೆಗಳನ್ನು ಮೇಯಿಸುತ್ತಿದ್ದಾಗ ಸುಮಾರು ಮಧ್ಯಾಹ್ನ 3.30 ರಿಂದ 4.00 ಗಂಟೆಗೆ ನಮ್ಮ ಊರ ಮಲ್ಲನಗೌಡ ಗುರುಶಾಂತ್ಪ್ಪ ಜೋಗಿಹಳ್ಳಿ

ಮತ್ತು ಈತನ ತಂದೆ ಗುರುತಾಂತ್ವ ತಂದೆ ಚನ್ನಬಸಪ್ಪ ಜೋಗಿಹಳ್ಳಿ ಇವರು ಇಬ್ಬರು ಏಕಾಏಕಿ ಬಂದು ಲೇ ಮಿಂತ್ರಿ ಮಗನಾ ಇಲ್ಲಿ ಯಾಕ ಎಮ್ಮೆ ಮೇಯಿಸುತಿದಿಯಾ ತಳವಾರ ಸೊಳೆಮಗನಾ ನಿನ್ನನ್ನು ಕೊಲೆ ಮಾಡುತ್ತೇವೆ ಎಂದು ನನ್ನ ಕೈಯಲ್ಲಿದ್ದ ಕೋಲನ್ನು ಮಲ್ಲಗೌಡನು ಕಸಿದುಕೊಂಡು ನನ್ನ ಎಡಗಡೆ ತಲೆಗೆ ಮತ್ತು ಮೈಕೈಗೆ ಹೊಡೆದನು ಆಗ ನನ್ನ ತಲೆಗೆ ರಕ್ತ ಗಾಯವಾಯ್ತು ಮತ್ತು ಬಾಯಿಗೆ ಬಂದಂತೆ ಬೈದು ತಳವಾರ ಸೊಳೆಮಗನಾ ನಿನ್ನ ಹೆಂಡ್ತಿ ಮಕ್ಕಳನ್ನು ಕೊಲೆ ಮಾಡುತ್ತೇವೆ ಎಂದು ಹೋದರು ಅಲ್ಲಿ ಇದ್ದಂತ ಜನರು ನನಗೆ ಶಾಲ ಕಟ್ಟಿ ಮನೆಗೆ ಕಳಿಸಿದರು. ನಮ್ಮ ಮನೆಯವರು ನನಗೆ ಹಿರೇಕೆರೂರ ಸರಕಾರಿ ಆಸ್ಪತ್ರೆಗೆ ಕರೆದುಕೊಂಡು ಹೋಗಿ ಉಪಚಾರ ಮಾಡಿಸಿದರು. ಈ ಬಗ್ಗೆ ಹಿರಿಯರು ಅವರಿಗೆ ಕರೆಯಿಸಿ ಬುದ್ಧಿ ಹೇಳಿ ಸರಿ ಮಾಡುತ್ತೇವೆ ಎಂದು ಹೇಳಿದರು. ಅವರು ಹಿರಿಯರ ಮಾತನ್ನು ಕೇಳದೆ ಇದ್ದುದರಿಂದ ಈಗ ತಡವಾಗಿ ಬಂದು ದೂರು ಕೊಟ್ಟಿರುತ್ತೇನೆ ಅವರು ಹೋಗುವಾಗ ನನ್ನ ಜೇಬಿನಲ್ಲಿ 120 ರೂಪಾಯಿ ಇಟ್ಟು ನಾನೇ ಬಿದ್ದುದೇನೆ ಎಂದು ಹೇಳು ಅಂತಾ ಹೇಳಿ ಹೋದರು. ”

f. On perusal of the entire materials on record it gets clear that the offences were alleged to have committed on 06.12.2019, but the first

information statement was registered on 18.12.2019, that means there is a delay of about 2 days in submitting first information statement from the time of commission of alleged offences. This delayed submission of first information statement gives rise to a doubt as to the genuineness of the contents of first information statement.

g. On perusal of the first information it gets clear that the first informant has not at all stated that on account of such abuse he was humiliated and the abuse dishonored him in the public. When there is no allegation as to the humiliation or dishonor on account of alleged abuse, provisions of Section 18(A) are not applicable.

h. It is not in dispute that the alleged offences are though non-bailable are not punishable with death or imprisonment for life.

i. When the bar under section 18(A) of SC/ST (P.A.) Act are not applicable and that when the offences are not punishable with death

or imprisonment for life or death, it cannot be said that the petitioners are not entitled for anticipatory bail as sought for.

j. In this regard I may place reliance on the following rulings of the Hon'ble High Court of Karnataka in

1. **Criminal Petition No.4306/2018 – Nagesh @ Nagesh Reddy vs. The State of Karnataka.** In this case it has been held by the Hon'ble High Court of Karnataka that to attract the bar under section 18 of the SC/ST (P.A.) Act the complaint must disclose the caste based attack which means existence of clear intention to insult or humiliate a member of Scheduled Caste or Scheduled Tribe or to commit a crime in the nature of atrocity to target a person or persons belonging to such caste just because they belong to that caste or tribe.

k. The learned counsel for the petitioners has relied upon the following rulings.

(i) Criminal Petition No.6390/2019 – T. Sudhakar Pai vs. State of Karnataka and another.

(ii) Criminal Petition No.20096/19 - Chandrashekhar Parivan and others vs State of Karnataka.

(iii) Criminal Petition No.6827/2018 – Sharath @ Sharath Kumar vs. State of Karnataka.

l. In view of my above discussion and above rulings, I am of the opinion that the petitioners may be granted anticipatory bail.

m. Hence, I answer above point accordingly.

8. **Point No. 2 :**

In view of my above discussion, I proceed to pass the following order.

ORDER

1. The petition filed under Section 438 of Cr.P.C. for grant of anticipatory bail in crime No.169/2019 registered by the

Hirekerur Police Station for the offences punishable under Sections 324, 504, 506 r/w Sec.34 of IPC and Sec.3(1)(r) of SC/ST (P.A.) Act is hereby allowed and the petitioners are granted anticipatory bail subject to following conditions.

a. The petitioners shall execute bond for ₹2,00,000/- each with two sureties for the likesum to the satisfaction of the Investigating Officer.

b. They shall surrender before the Investigating Officer within 15 days from today failing which this order shall stand automatically cancelled.

c. They shall not tamper with the prosecution evidence directly or indirectly.

d. They shall co-operate with the investigation.

e. They shall not indulge in similar type of criminal activities. If they again involve, then the bail is going to be cancelled.

f. They shall not leave the jurisdiction of the Court without prior permission of the Court.

g. They shall be regular in attending the Court on all dates of hearing.

2. The petition is accordingly disposed.

(Dictated to Judgment Writer, transcribed and typed by her and corrections made by me and then printout taken and pronounced on 26th day of December 2019 in open court)

(KIRAN KINI)
IST ADDL. DISTRICT AND SESSIONS JUDGE,
HAVERI.

*vsp.

