

**IN THE COURT OF THE LVII ADDL. CITY CIVIL AND
SESSIONS JUDGE, AT MAYO HALL, BENGALURU
(CCH-58)**

Present:

**Smt.K.G.Shanthi B.com. LLM.
LVII Addl.City Civil & Sessions Judge,
Bengaluru**

Dated this the 31st day of March, 2021

Crl.Misc.No.25398/2021

Petitioner:

1. Inema Jaebets

S/o. Male Cifara

Aged about 29 years,

R/at: No.507, Arcade Apartment,

Chelikere – Bengaluru – 043.

(Congo National)

[By Sri. Johnson Moras, Advocate]

-Vs-

Respondent:

State by Hennuru

Police Station, Bengaluru City.

[By Public Prosecutor]

ORDER on Petition u/s 439 Cr.P.C.

The Petitioner filed a petition and pray for grant a bail.

2. It is stated by the petitioner that the Hennuru Police filed a case against him for the offence punishable u/s 14 of Foreigners Act of 1946 in Crime No.33/2021.

3. Brief facts of the case are that the petitioner was over stayed in India without valid VISA. In the complaint it is alleged

that on 18-02-2021 the petitioner was arrested by the police for the reason that he over stayed without valid passport and VISA and thereby committed offence punishable u/s 14 of Foreigners Act 1946.

4. The petitioner stated that police have arrested him without following the procedure. He also stated that he has no intention or motive to commit the alleged offence. The Petitioner stated that before arresting any foreigner in India notice has to be given asking foreigner to give explanation in writing why he has overstayed. Without following proper procedure foreigner cannot be deported or arrested under the Foreigners Act. He also stated that he has no bad antecedents and he is ready and willing to furnish surety for satisfaction of the Hon'ble court for his release on bail and ready to abide any of the conditions imposed by the court. Accordingly he prays for release him on bail.

5. The learned PP filed his objection stating that if the accused is released on bail he will give threat to the witnesses. He will hamper the trial as there is a chance of absconding. He has no permanent residence. Accordingly prays for dismissal of petition filed by the accused.

6. Arguments heard. Perused the records available before the court.

7. The points arose for my consideration are:

1. Whether the petitioner is entitled for bail u/s 439 of Cr.P.C.?

2. What order?

8. My findings to the above points are under:

Point No.1: In the affirmative

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

REASONS

9. **Point No.1:-** As per the complaint, that on 18-02-2021 the petitioner was moving and over stayed in India without valid VISA and passport. The petitioner admits that he has no VISA on the alleged date.

10. The record reflects that the petitioner is citizen of Congo. There is no prima facie material to show that he stayed at Bengaluru even after the expiry of VISA with an intention to commit crime. Nothing material placed before the court to show that the petitioner having bad antecedents.

11. The Petitioner has produced the Order passed by the Hon'ble High Court of Karnataka in Criminal Petition No.6167/2018 clubbed with other three Criminal petitions dtd.16.8.2018, while deciding the overstay issue under Section of 14 Foreigners Act, has observed that *"The Petitioners are not involved in the case of moral turpitude or a crime against Society. Therefore, necessary action can be taken against them if at all they have intentionally overstayed in India"*. By observing so,

the Hon'ble High Court of Karnataka has released the Petitioners on bail with some conditions. Thus, this Criminal Miscellaneous petition falls on the same line, this Petitioner is also entitled for bail, at this stage.

12. However, the apprehension of prosecution that he may abscond or he may tamper the witnesses can be met out by imposing stringent condition on the petitioner and there is no need to keep the petitioner behind the bar only for that reason. Police are at liberty to initiate necessary action in this regard. Above discussion I am of the opinion that it is reasonable to grant a bail to the petitioner by imposing conditions. Accordingly point No.1 answered in affirmative.

13. **Point No.2:** On the above findings, I proceed to pass the following:

ORDER

The petition filed by the petitioner Inema Jabets u/s 439 of the Cr.P.C. is hereby allowed in crime No.33/2021 u/s 14 of Foreigners Act 1946 with following conditions.

1. The petitioner shall execute personal bond for Rs.1,00,000 with two solvent sureties for like sum to the satisfaction of the MMTC-1.
2. The petitioner shall furnish the

documents for his residential proof.

3. He shall not tamper witnesses of the prosecution.
4. He shall not leave the jurisdiction of the court until further orders.
5. He shall put his attendance before the police station on every Saturday between 9-00AM to 5-00PM for 3 months.
6. He shall regularly appear before the court during trial.
7. He shall surrender his passport before the concerned police/court.

(Dictated to the Judgment writer directly, on computer, typed by him, corrected and pronounced by me in the open court on this the 31st day of March, 2021)

(Smt.K.G.Shanthi)
LVII Addl. CC& Sessions Judge,
M.H.Unit, Bengaluru.

Order pronounced in open court
(vide separate order)

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LVII Addl. CC& Sessions Judge,
M.H.Unit, Bengaluru.