

**In the Court of I Additional Sessions Judge,
Vijayapura**

Present :

Sri Raghavendra Gowda B.G.,

B.A.L., LL.B.

I Additional Sessions Judge, Vijayapura

Dated this the 17th day of November, 2018

Criminal Misc.No.1216/2018

Petitioners:

1. Shakir S/o. Ajij Halli,
Age: 32 years, Occ: Driver,
R/o. Sakaf Roza, Vijayapura.
2. Chandbibi W/o. Ajij Halli,
Age: 60 years, Occ: Household work,
R/o. Sakaf Roza, Vijayapura.
3. Samir S/o. Ajij Halli,
Age: 30 years, Occ: Private Service,
R/o. Sakaf Roza, Vijayapura.
4. Samarin W/o. Samir Halli,
Age: 26 years, Occ: Driver,
R/o. Sakaf Roza, Vijayapura.
5. Sabir S/o. Ajij Halli,
Age: 24 years, Occ: Private Service,
R/o. Sakaf Roza, Vijayapura.
6. Shabhana W/o. Abdulkhadar Maniyar,
Age: 37 years, Occ: Household work,
R/o. Near Ibrahimroza, Vijayapura.

(By Sri U.M.Algur, Advocate)

V/s.

Respondent:

State of Karnataka

(Learned I Addl. Public Prosecutor for State)

ORDER

1. This is the petition filed U/S.438 of Cr.P.C., seeking grant of anticipatory bail to petitioners in Crime No.21/2018 of Women PS, Vijayapura, which is registered for the offences punishable U/Ss.498-A, 323, 504 R/w 149 of IPC.

2. On the complaint lodged by one Aliya @ Bibijan W/o. Shakir Halli, the respondent police have registered a case in Crime No.21/2018 against the petitioners for the aforesaid offences and have taken up the investigation.

3. The brief facts of the complaint are that the petitioner No.1 being the husband of complainant, petitioners No.2 to 6 being the mother, brothers, sister and sister-in-law of petitioner No.1 subjected to cruelty by giving physical and mental torture to the complainant by demanding money from her parental house and also abused in filthy language and assaulted her. Further, when she asked petitioner No.1 about illicit relationship with another lady and also asked about another marriage with said lady, at that time petitioners being enraged on the complainant

and told that she has not begotten a child even after the marriage of two years and in this regard they gave her both mental and physical torture and also driven out her from their house.

4. The learned counsel for the petitioners seeking bail on the grounds that the petitioners are the innocent and they have not committed any offences. The complaint itself is false and vague. They have been falsely involved in the present case. The petitioners No.1, 3 & 5 are the only earning members in their family. The petitioners 2, 4 & 6 are women and petitioner No.2 is old aged woman. They are the permanent residents of Vijayapura and having movable and immovable properties. They are ready and willing to furnish surety to the satisfaction of this Court. The alleged offences are not punishable with death or life imprisonment. The petitioner No.1 is ready to take back complainant to lead marital life. There is delay in lodging the complaint. Hence, prayed for grant of anticipatory bail.

5. The learned Public Prosecutor has filed objections to the petition, wherein he reiterated the contents of the complaint and contended that the petition is not maintainable. The panchanama is already drawn. The statements of the witnesses have been recorded by the IO. This is atrocity case against woman. He further contended that the offences alleged against petitioners are non-bailable in nature. There is prima-facie evidence to show that the petitioners have committed the offences alleged against them. If petitioners are released on bail, there is every chance of their absconding, threatening prosecution witnesses and to make them hostile. The learned Public Prosecutor further contended that, there is strong prima-facie case against petitioners. Hence, prayed for rejection of bail petition.

6. Heard the arguments of both sides and perused the entire records.

7. The only point that arises for my consideration is that:

“Whether the petitioners have made out a case for granting bail by resorting to

*the special powers vested in this Court
U/Sec. 438 of Cr.P.C.?”*

8. The finding of this Court on the above point for consideration is in the *affirmative*, for the following:

R E A S O N S

9. Perused the records.

10. The complaint averments would disclose that respondent police have registered a case in Crime No.21/2018 against the petitioners for the offences U/Ss.498-A, 323, 504 R/w 149 of IPC and have taken up investigation.

11. It is well settled law that Court would grant or refuse anticipatory bail after taking into consideration the following factors namely:

- 1) The nature and gravity of the accusation.
- 2) The antecedents of the applicant including the fact as to whether the accused has previously undergone and imprisonment on conviction by a Court in respect of any cognizable offence.
- 3) The possibility of the applicant to flee from justice and
- 4) Where the accusation has been made with the object of injury or humiliating the applicant by having him so arrested.

12. It is also well settled law that mere allegation of a non-bailable offence against a person of his apprehension that he would be arrested is not sufficient to grant anticipatory bail. The grant of anticipatory bail is an exceptional power and should be exercised only in exceptional cases and not in general cases.

13. Keeping in mind the above principles of law, let me examine the case on hand. The learned counsel appearing for the petitioners contended that the petitioners are innocent and they have been falsely implicated in the present case. Per contra the learned Public Prosecutor opposed the grant of anticipatory bail to the petitioners.

14. I have bestowed my anxious consideration to the arguments put-forth by the learned counsel for the petitioners and the learned Public Prosecutor. I have carefully perused the records. The records reveals that the respondent police have registered the crime against the petitioners for the offences punishable U/Ss.498-A, 323, 504 R/w 149 of IPC.

15. By now it is settled position that the Court, while considering the bail petition, need not dwell upon the merits of the case or examine the veracity of the complaint allegations, as such an attempt by the Court, would prejudice the case of either side in one way or the other during trial. In other words, only on the prima-facie materials on record the Court has to decide whether to grant or reject the bail application.

16. Holding a mini trial by the Court while considering the bail petition is deprecated by the Hon'ble Apex Court and various other Hon'ble High Courts in catena of judicial pronouncements, as such exercise, in the opinion of the Hon'ble Apex Court, would affect the case of either party in one way or the other.

17. Thus, desisting from holding a mini trial, on the basis of the prima-facie materials on record, considering the relationship of the parties and also in the event, if the bail is not granted to the petitioners, then there is no chances of their reunion. The 2nd petitioner is a senior citizen and the complainant and petitioners are relatives in view of the fact that

complainant is the wife of the 1st petitioner. The alleged offences are not punishable with death or life imprisonment. Hence, this Court is of the considered view that at this stage there are no strong grounds so as to deny anticipatory bail to the petitioners.

18. One of the considerations that has to be kept in mind by the Court while granting bail is to ensure presence of the petitioners before the Court or the Investigation Officer as and when necessary.

19. In this case the offences alleged against the petitioners are not exclusively punishable with death or life imprisonment. Therefore, the gravity of the offence is considerably reduced. Whether the petitioners have committed the alleged offences are not has to be established during the course of trial. Hence, having regard to the nature of the offences and punishment prescribed for the same, I am inclined to hold that the petitioners are entitled for bail conditionally.

20. At this stage, there is nothing on record to infer that the presence of the petitioners cannot be

secured before the Court in the event of grant of anticipatory bail. The petitioners have undertaken to abide by the conditions of the Court and to offer surety for satisfaction of the Court.

21. The apprehension of the prosecution as is made out in the objections statement that in the event of the grant of bail the petitioners are likely to tamper with the prosecution witnesses, etc., can be quelled by putting the petitioners on stringent conditions while granting anticipatory bail.

22. Considering the gravity of the offence and the punishment provided thereof and circumstance under which the alleged offence has taken place, this Court is of the opinion that the petitioners have made out grounds for grant of anticipatory bail. Accordingly, point under consideration is answered in the affirmative and in the result, the following order is passed.

O r d e r

The bail petition filed U/S.438 of Cr.P.C., is hereby allowed.

Anticipatory bail is granted to the petitioners. The respondent-police are hereby directed to release the petitioner on bail in the event of their arrest for the offences punishable U/Ss.498-A, 323, 504 R/w 149 of IPC registered in Cr.No.21/2018 of respondent-police station subject to following conditions:

1. The petitioners shall execute personal bond for a sum of Rs.25,000/- each with a surety for like-sum to the satisfaction of concerned JMFC Court.
2. They shall not threaten or tamper with prosecution witnesses directly or indirectly.
3. They shall not commit similar offences.
4. They shall mark their attendance before the respondent police on every alternative Sunday in between 10.00 a.m., and 5.00 p.m., till filing of the charge sheet.
5. They are hereby directed to appear before the concerned JMFC within a period of 20 days from the date of this order to execute the personal bond and surety bond and also to appear before the Investigating Officer.
6. They shall co-operate with IO for investigation and appear before IO as and when called for investigation during reasonable hours of the day.
7. In the event charge sheet is filed against the petitioners, the petitioners

shall appear before the Court regularly without fail till completion of trial.

If any of the above conditions are violated by the petitioners, the prosecution is at liberty to seek for cancellation of bail.

(Dictated to the Judgment Writer, directly over computer, then corrected and pronounced by me in the open Court on this the 17th day of November, 2018)

(Raghavendra Gowda B.G.)
I Additional Sessions Judge,
Vijayapura