

IN THE COURT OF THE IV ADDL. CITY CIVIL AND SESSIONS
JUDGE MAYOHALL UNIT, BENGALURU
(CCH-21)

Dated: This the 22nd day of March 2021

PRESENT:

SRI. Shanthanna Alva M.,
IV Addl. City Civil and Sessions Judge, Bengaluru

CRL.MISC. NO.25374/2021

PETITIONERS:	1	Mr. Yoonjin Chung, S/o Jaewon, The President, IBC Trust(St.Paul High School), R/at No.54/1, KK. Halli, St.Thomas Town, Bangalore-560 084.
	2	Tony Leong, S/o Lookgent Leong, The Secretary, IBC Trust(St.Paul High School), R/at No.54/1, KK. Halli, St.Thomas Town, Bangalore-560 084.
	3	Helen Xavier, S/o S.John Xavier, The Head Mistress, IBC Trust(St.Paul High School), R/at No.54/1, KK. Halli, St.Thomas Town, Bangalore-560 084.

(PLEADER BY: Sri. C.G.Jagadeesh, Advocate)

.. Vs ..

RESPONDENT:	STATE BY, BANASWADI POLICE STATION (BY PUBLIC PROSECUTOR)
--------------------	--

ORDER ON BAIL APPLICATION

Petitioners who have been arrayed as accused in Cr.No.217/2020 registered at the respondent for the offences punishable under section 420 r/w sec. 34 of IPC filed the application u/s. 438 of Cr.P.C seeking bail in anticipating their arrest.

2. *In the application, it is stated that case was registered in Cr.No.217/2020 on the basis of the order dated:3.8.2019 passed in PCR.No.53810/2019 filed by the complainants on the file of XI ACMM for the offence punishable u/s. 420 of IPC. The complaint is filed before the Ld. Magistrate only as a counter blast to the petitioners and to harass them. There are no sufficient materials to justify the complaint. The dispute is of civil nature and if it is true, remedy is to file the suit. If the petitioners are arrested and incarcerated, their reputation will be spoiled. The petitioners will not abscond and made available for*

interrogation. The petitioners are ready to obey the conditions that may be imposed and offer surety to carry-out their appearance. The offence alleged is non-bailable and the petitioners apprehend their arrest and if it happens, that will lead to humiliation and disgrace in the public.

3. On notifying the filing of application, Ld Public Prosecutor filed objection by reiterating the contents of the complaint based on which the case was registered. It is contended that case is in preliminary stage and further investigation is required. If the bail is granted, there is possibility of destroying of prosecution evidence. The petitioners are fraudsters and absconded since the date of registration of case. If the petitioners are released on bail, there is chance of their absconding. There is also chance of petitioners committing similar fraud. There is also chance of petitioners not appearing before the court and cause delay for disposal of the case.

4. The arguments of Ld Counsel for the petitioner and of the Ld Public Prosecutor was heard. Perused the complaint,

objection and the documents filed along with the petition. The point that arises for determination is:

Whether the petitioners have made out ground to grant anticipatory bail?

5. The finding on the above point is in the affirmative for the following:

REASONS

6. The registration of case on the basis of the complaint lodged by the complainant for the offence punishable under section 420 of IPC is admitted fact. The respondent not denied the assertions of petitioners that there is chance of their arrest. At the same time, respondent not stated that custodial interrogation is needed. With this background, it has to be looked into whether the petitioners have made out grounds to grant anticipatory bail.

7. Ld counsel of the petitioners argued by reiterating the grounds urged in the petition. Ld Public Prosecutor argued that investigation is at preliminary stage and if released on bail, there is a chance of causing hindrance to the investigation. Ld

Public Prosecutor argued that let the respondent produce the case diary.

8. The arrest and seeking custody either by police or judicial custody is to be resorted only if it is absolute necessity. The liberty of a person cannot be curtailed unless it is absolute necessity. The petitioners' assertions that they are innocent and not committed the alleged offences cannot be accepted at this stage. Only fair and proper investigation will bring forth that aspect. However, the material on record at this stage substantiates the arguments that the dispute is of civil nature. If the dispute is purely civil in nature, then the police not gets the jurisdiction and the remedy is to approach civil court. The prosecuting agency gets jurisdiction to investigate only if there is fraud and cheating as alleged.

9. The case is based on documents. There is no need of subjecting the petitioners to custodial interrogation. The petitioners stated that they are ready to co-operate with the investigation. But, the apprehension is that on the pressure of complainant, respondent may arrest them. The possibility of

arrest and seeking for custody cannot be ruled out. There is no necessary of seeking the custody of the petitioners. The apprehensions raised in the objection are general and they can be care of by imposing necessary conditions.

10. Thus, for the reasons stated supra, the court holds that petitioners are entitle for the anticipatory bail with conditions. Accordingly the point under consideration is answered in affirmative and following:

ORDER

*The Petition filed by the petitioners
U/Sec.438 Cr.P.C., is allowed.*

*Petitioners are ordered to be released on bail
in connection with the Cr.No.217/2021 registered
for the offence punishable under section 420 of
I.P.C by Banaswadi Police Station by taking a
bond for a sum of Rs.1,00,000/- each with the
surety each for the like sum on the condition that;*

1. *The petitioners shall appear before the I.O. and shall co-operate with the investigation.*

2. *The petitioners shall not tamper or meddle with the prosecution witnesses in the event of registration of case and investigation.*

[Dictated to the Judgment-Writer, after computerization, corrected, signed and then pronounced by me in the open Court on this the 22nd day of March 2021].

[SHANTHANNA ALVA M]
1V Addl. City Civil & Sessions Judge,
Mayo hall, Bengaluru.

*Order pronounced in the open Court
(Vide separate Order)*

ORDER

*The Petition filed by the petitioners
U/Sec.438 Cr.P.C., is allowed.*

*Petitioners are ordered to be
released on bail in connection with the
Cr.No.217/2021 registered for the offence
punishable under section 420 of I.P.C by
Banaswadi Police Station by taking a
bond for a sum of Rs.1,00,000/- each with
the surety each for the like sum on the
condition that;*

- 1. The petitioners shall
appear before the I.O. and*

shall co-operate with the investigation.

2. The petitioners shall not tamper or meddle with the prosecution witnesses in the event of registration of case and investigation.

*1V Addl. City Civil & Sessions Judge,
Mayo hall, Bengaluru.*