

**IN THE COURT OF THE XXVIII ADDL. CITY CIVIL &
SESSIONS JUDGE, Mayo Hall, Bangalore, [CCH.NO.29]**

Present :- Sri. K.M. Rajashekar, B.Sc., L.L.M.,

Dated this the 30th day of August 2021

**Crl.Misc.No.25945/2021 &
Crl.Misc.No.25950/2021**

Crl.Misc.No.25945/2021

Petitioner: Andrew Santhosh,
S/o Brittow,
Aged about 26 years,
R/o No.289, 10th Cross,
Ambedkar Nagar,
Vivek Nagar Post,
Bangalore-47.

Accused No.4

(By pleader : Sri. T. Shivappa)

Crl.Misc.No.25950/2021

Petitioner: Arjun.M,
S/o Mastan,
Aged about 29 years,
R/o 44, 2nd BP Lane,
Maya Bazar,
Viveknagar,
Bangalore-47.

Accused No.2

(By pleader : Sri. B. Sundar)

V/s

Respondent: The State of Karnataka,
Vivek Nagar Police Station,
Bengaluru.

(By Public Prosecutor)

ORDERS

The Petitioners/Accused No.2 & 4 in the above Petitions have approached this Court under Section 439 of Cr.P.C., seeking regular bail in Crime No.108/2021 of Viveknagar Police Station for the offenses punishable under Section 399 and 402 of Indian Penal Code (I.P.C.) r/w Section 25(1B)(b) of Arms Act.

2. The case of the Prosecution is that, on 28.6.2021 at about 4.00 a.m., the Complainant received credible information that near Reliance School, Nala Road, Ayyappa Block, Austin Town, Viveknagar, within the limits of Viveknagar Police Station, about 4-5 persons armed with deadly weapons, have formed unlawful assembly with an intention to commit dacoity and were planning to attack the passersby. Thereafter, at about 4.30 a.m., the Complainant along with his staff conducted raid at the said place and apprehended Accused No.1 to 4, however Accused

No.5 escaped from their clutches. The Investigating Officer able to seize deadly weapons like wooden log, knife, iron rod, chilly powder and cash of Rs.320/-, one Car and two Bikes from the possession of accused and thereby, Accused persons committed the aforesaid offences.

3. The Petitioners specifically contended that, they are innocents of the charges leveled against them, they have not committed any alleged offences and they have been falsely implicated in the case. The Petitioners have no acquaintance with the Complainant. Hence, the question of tampering them does not arise. There is no specific overt-act attributed against these Petitioners. The materials placed on record does not make out any prima-facie case against the Petitioners. The Petitioners are neither directly nor indirectly involved or abetted the offences. The Petitioners are not an influential person who could tamper with the prosecution witnesses. There are no chance of their absconding, if they are let on bail, as they are the permanent residents of given address. Further, they are law-abiding citizens. They hail from respectable families, having both movable and immovable properties in their native place. They are the only earning members of their respective families.

The Petitioners/Accused No.2 & 4 are in Judicial Custody since 28.6.2021 as such, they will be put to hardship in case of their further detention. Further, they are ready and willing to abide by any conditions that may be imposed by the Court. Hence, sought for bail.

4. The learned Public Prosecutor has seriously opposed the bail applications by filing objections on the ground that, the said petition is not maintainable either in law or on facts. The Petitioners have not made out any grounds to grant bail. There is a prima-facie case against the Accused persons regarding the alleged offences. The investigation of the case is still under progress and Charge Sheet is yet to submit in the case. During investigation, the I.O. has recovered iron long, wooden log, chilly powder, knife and cash of Rs.320/- from the possession of Accused No.1 to 4 at their instance. The alleged offenses are grave in nature. If the Petitioners/Accused are granted bail, there is likelihood of threatening the complainant, there is also likelihood of absconding and also it is difficult to trace out the whereabouts of remaining co-accused, who is still absconding. If the Accused are released on bail, there is also likelihood of tampering the prosecution witnesses and repetition of similar

offenses. The accused are habitual offenders, indulged in similar type of offenses. If they were released on bail, they may not be available for investigation and trial and that may hamper the investigation and as well as trial of the case and the case may turn into L.P.T. Therefore, prays for rejection of the bail applications.

5. Heard arguments of both sides and perused the records.

6. That on the above said facts, the following points arise for my determination are:-

1) Whether the Petitioners/Accused No.2 & 4 have made out sufficient grounds for granting bail U/Sec.439 of Cr.P.C.?

2) What order?

7. My findings on the above points are as under:

Point No.1: In the Affirmative;

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

REASONS

8. **Point No.1** :- Upon going through the materials available on record, it is to be noted that this Court while considering the bail applications of these Petitioners has rejected

the bail application on earlier occasion in Crl.Misc.No.25754/2021. However, it is reported by the Learned Counsel for the Petitioners that, Petitioners are in judicial custody since 28.6.2021. But, till this day, no criminal case is registered for committed any non-bailable and cognizable offence. Apart from that the Investigating Officer has not yet submitted charge sheet against these Petitioners confirming commission of heinous offences. The Petitioners are apprehended and taken to custody only on apprehension of committing an heinous offence. The Learned Counsels for the Petitioners submitted that in order to satisfy the higher brass of Police Department the Police Authorities are registering false cases against innocent people, just for statistical purpose to satisfy their superiors. Considering the fact that the Petitioners/Accused are in judicial custody from the past two months and as it is reported that no criminal antecedents were traced against these Petitioners. Added to that, considering the fact that the charge sheet is not yet filed, inspite of crossing 60 days, I am of the opinion that since no proven incidents were established against these Petitioners, the Petitioners requires to be allowed on imposing stringent conditions.

9. Further, it is pertinent to note that their Lordships of Hon'ble Supreme Court in the decision reported in **2014(3) KCCR 1977 (SC) between Arnesh Kumar Vs., State of Bihar and another** was pleased to hold as under:

“Arrest brings humiliation, curtails freedom and cast scars forever. Law-makers know it so also the police. There is a battle between the lawmakers and the police and it seems that police has not learnt its lesson; the lesson implicit and embodied in the Cr.P.C. It has not come out of its colonial image despite six decades of independence, it is largely considered as a tool of harassment, oppression and surely not considered a friend of public. The need for caution in exercising the drastic power of arrest has been emphasized time and again by Courts but has not yielded desired result. Power to arrest greatly contributes to its arrogance so also the failure of the Magistracy to check it. Not only this, the power of arrest is one of the lucrative sources of police corruption. The attitude to arrest first and then proceed with the rest is despicable. It has become a handy tool to the police officers who lack sensitivity or act with oblique motive.”

The said proposition of law is squarely applicable to the case on hand. Under the facts and circumstances of this case, and also considering the probable hardship that may be caused to the Petitioners/Accused and their respective family members in their absence, I am of the opinion that the Petitioners in the said petitions have made out grounds for granting bail. However, the apprehension of the prosecution regarding the non-availability for trial, tampering witnesses etc., could be easily met with by imposing appropriate stringent conditions. Under the

facts and circumstance of this case, I am of the opinion that Petitioners are entitle for bail and it is deemed fit to grant the benefit of bail to them. Accordingly, Point No.1 is answered in Affirmative.

10. **Point No.2**: In the light of above discussions, I proceed to pass the following:

ORDER

The petitions filed U/S 439 of Cr.P.C., by the Petitioners/Accused No.2 & 4 in Crl.Misc.No.25945/2021 & Crl.Misc.No.25950/2021 are allowed.

The Petitioners are ordered to be released on bail in Crime No.108/2021 by the Respondent Police, on executing personal bond for a sum of Rs.1,00,000/- (Rupees One Lakh only) each along with two sureties for the like sum, subject to following conditions:

1) The Petitioners/Accused No.2 & 4 shall not tamper with the prosecution evidence or witnesses in any manner and he shall co-operate with the investigation.

2) They shall not commit similar offences in future.

3) The Petitioners/Accused No.2 & 4 shall mark their appearance before the I.O. weekly twice preferably on every

Monday and Saturday between 10:00 a.m., to 11:00 a.m., till further orders.

4) The Petitioners/Accused No.2 & 4 shall appear before the Court on all dates of hearing.

5) The Petitioners shall furnish the address proof of the themselves and the sureties. The sureties shall be verified by the Jurisdictional Police.

Keep copy of common Order in Crl.Misc.No.25950/2021 and original of the same in Crl.Misc.No.25945/2021.

(Dictated to the Stenographer directly on computer, typed & computerized by her, corrected and signed by me and then pronounced in the open Court on this the **30th** day of **August 2021**).

[K.M. Rajashekhar],
XXVIII. Addl. City Civil Judge,
Mayo hall, Bangalore.

**Order pronounced in the open Court
(vide separate order)**

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