

**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 4th day of September 2021

Crl.Misc.No.25980/2021

Petitioner: Syed Arbaz,
Son of Syed Ansar,
Aged about 18 years,
R/at No.413, 3rd Cross,
Modi Garden,
Bangaragiri Nagar,
D.J. Halli,
Bengaluru-560 045.

(By pleader : Sri. T.G. Suresh)

V/s

Respondent: State by;
D.J. Halli Police Station
Bengaluru.

(By Public Prosecutor)

ORDERS

The Petitioner/Accused has approached this Court under Section 439 of Cr.P.C., seeking regular bail in Crime No.238/2021 of D.J.Halli Police Station for the offences punishable under Section 399 and 402 of Indian Penal Code (I.P.C.) & Section 25(1B)(b) of Arms Act 1959 & Section 27(b) of NDPS Act 1985.

2. The case of the Prosecution is that, on 23.8.2021 at about 4.30 p.m., the Complainant received credible information that near Crematory Ground near N.P. Factory, 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, the Complainant along with his staff conducted raid at the said place and apprehended four accused persons, however one Accused person escaped from their clutches. The Investigating Officer able to seize deadly weapons like iron rod and knife from the possession of accused and thereby, Accused persons committed the aforesaid offences.

3. The Petitioner specifically contended that, he is innocent of the charges leveled against him, he has not committed any alleged offences and he has been falsely implicated in the case. There is no prima-facie case made out against the Petitioner. He was not at all involved in the alleged crime and there is no any overt act of the alleged offence. The Respondent Police had erroneously notice in filing the false case, though there are no sufficient grounds against the Petitioner. The Petitioner are neither directly nor indirectly involved or abetted the offences. The Petitioner is not an influential person who could tamper with the prosecution witnesses. There are no chance of his

absconding, if he is let on bail, as he is the permanent resident of given address. The Petitioner hails from respectable family. He is the only earning member of his family. Further, he is 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 Petitioner has not made out any grounds to grant bail. There is a prima-facie case against the accused regarding the alleged offences. If the Petitioner/Accused is 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 is released on bail, there is also likelihood of tampering the prosecution witnesses and repetition of similar offences. If he was released on bail, he 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 Petitioner has made out sufficient grounds for granting bail under Sections 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 indicates that the Petitioner is Accused No.4 in the present case, is a young boy in judicial custody since 23.8.2021. Added to that, it is claimed by the counsel for the petitioner that the mother of the Petitioner is suffering from Covid-19 and there is no one to look after her. It is to be noted that no criminal antecedents is reported against the Petitioner. It is the claim of the Petitioner's Counsel that in order to satisfy the higher brass of Police Department the Police Authorities are registering false cases against innocent boys just for statistical purpose to satisfy their superiors. Here in the case, the complaint itself indicates that mere on suspicion of offence being

committed i.e., robbery, these Petitioner along with other Accused were apprehended. However, on perusal of the petition, it indicates that the Petitioner is aged about 20 years and there are no criminal antecedents. As rightly claimed by the Counsel for the Petitioner, if this Petitioner is allowed to be in judicial custody for long time along with the seasoned criminals, there are every possibility of him influenced by the other hardcore criminals and may become menace to the society. However, the apprehension of the Prosecution regarding repeating the offence could be easily met with by imposing appropriate stringent conditions. The permanent residence of the Petitioner at the given address is not in dispute, moreover it is claimed by the Petitioner that he hails from respectable family having deep roots in the society hence question of abscond does not arise. Under these circumstances, I am of the opinion that, Petitioner/Accused in the above said petition may be enlarged on bail on imposing certain appropriate 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 Petitioner/Accused and his family members in his absence, I am of the opinion that the Petitioner in the said petition has 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 Petitioner is entitle for bail and it is deemed fit to grant the benefit of bail to him. 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 petition filed U/S 439 of Cr.P.C., by the Petitioner/Accused No.4 is allowed.

The Petitioner is ordered to be released on bail in Crime No.238/2021 by the Respondent Police, on executing personal bond for a sum of Rs.1,00,000/- (Rupees One Lakh only) along with two solvent surety for the like sum, subject to following conditions:

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

2) He shall not commit similar offences in future.

3) The Petitioner/Accused No.4 shall mark his 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 Petitioner/Accused No.4 shall appear before the Court on all dates of hearing.

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

(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 4th day of **September 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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