

KAMD010040902022



**IN THE COURT OF I ADDL. DISTRICT & SESSIONS JUDGE,
MANDYA**

Dated this the **19th** day of **October, 2022**

PRESENT

Smt. N. Sheela. B.Sc., LL.B
I Addl. District & Sessions Judge, Mandya.

Crl.Misc.No.992/2022

- Petitioners :
- 1.Huchchappa S/o late Eranna, **(A1)**
Aged about 43 years,
 - 2.Bhadraiah K S/o late.Karigowda, **(A2)**
Aged about 54 years,
 - 3.Mangesh @ Mangegowda S/o
Veerannegowda, **(A3)**
Aged about 42 years,
 - 4.Mangaiah S/o Karigowda, **(A4)**
Aged about 60 years,

All are R/at Yadavanahalli Village,
Koppa Hobli, Maddur Taluk,
Mandya District.

(By Sri.P.Mahalingaiah, Advocate)

-Vs-

Respondent : State by Koppa Police Station

(By learned Public Prosecutor, Mandya)

ORDER

The petitioners/accused Nos.1 to 4 have filed this bail

application U/Sec.438 of Cr.P.C. for grant of anticipatory bail in crime No.09/2022, registered by respondent police for the offences punishable U/s.353, 341 & 186 R/W/Sec.34 of IPC.

2. The gist of the complaint is that, on 23.02.2022 at about 12.45 p.m., alleging that, he is working as PSI., Girinagara Police Station, he was appointed to trace out the property and accused in Girinagara Police Station Cr.No.36/2022 registered U/Sec.397 of IPC and Hanumanthanagar Cr.No.141/2021 registered U/Sec/397 of IPC. Accordingly on 23.02.2022 himself, his staff H.C.9227 Ningappa, Prakash Rathod H.C. 10937 and Nandeeshwar P.C. 11515. They received credible information that on Varadaraju S/o Hemagirigowda of Yadavanahalli in connection with the Hanumanthanagar Cr.No.36/2022 left 6.30., and reached Koppa Police Station at 10.20 a.m., and requested to co-operate with them. Accordingly, Koppa Police Constable Anilgowda.P.C.42 sent with them and they reached Yadavanahalli Varadaraju house. When they entered the house with warrant, they found Varadaraju along with Rajesh D.S. @ Raju and when try to serve the notice on Varadaraju to take him to their custody. At that time, the relatives of Varadaraju by name Huchchappa came there at 11.00 a.m., along with 3-4 members and shouting on the Police and obstructed to their official duty. The said 3-4 persons try to assault Nandeeshar P.C. 11515 and also try to assault other Police officials. By that time, Varadaraju escape from there. They also obstructed to move their official vehicles and thereby obstructed to their government duty. Hence, the complainant lodged the complaint to the respondent police and the respondent police registered

the case against the petitioners/accused Nos.1 to 4.

3. Now, the petitioners who are accused persons of commission of offences alleged, seeking them release on bail, on the following amongst other grounds:

The petitioners are the permanent residents of Yadavanahalli village, Koppa Hobli, Maddur Taluk and they are innocent of the alleged offences. They are agriculturists and they are having permanent abode in the said village. The petitioners have not committed the alleged offences. The allegations of the prosecution that the petitioners have not allowed a person by name Varadaraju of Yadavanahalli village. These petitioners not obstructed the Police officials to arrest the persons who are involved in a crime. These petitioners does not know what was happened in the crime. The Police personnel came near the house of petitioners and falsely enquired with the petitioners replied they does not know about the persons for whom they are searching and it adversely affects the image of the petitioners who are living with great respect. The Police personnel thinking that these petitioners are hiding the said persons and false complaint has been lodged with Koppa Police. The petitioners never obstructed to do the Police official duty and the alleged accused Varadaraju escape from the village, the Police thinking that these petitioners help him to escape and false complaint is filed. Petitioners are the main bread earning members of their respective family and false case has been foisted by the respondent Police on the instigation of Girinagar Police Station. The alleged offences are triable by the Magistrate Court and they are not punishable with death or

imprisonment for life. The respondent Police have already completed the investigation and without enquiringt the matter, false charge sheet has been submitted before the jurisidictional Court. The custodial enquiry of the petitioners is not necessary and nothing is to be recovered from or at the instance of the petitioners, since investigation is completed. The petitioners undertakes to appear before the trial Court or Police as and when called for and they will not flee away from justice. The petitioners undertakes that they will not tamper with the prosecution evidence. The petitioners are ready to abide the terms and conditions that would be imposed by this Court. The petitioners are ready to furnish surety to the satisfaction of this Court. The petitioners are coming from respectable family and there are no bad antecedents against the petitioners. There is no obstructions made by the petitioners. The petitioners are ready to abide the terms and conditions that would be imposed by this Court and ready to offer surety to the satisfaction of the Court.

4. The petitioners/accused Nos.1 to 4 have filed separate memo stating that, they have not filed any other bail application before any other Courts in the said crime number except the above petition.

5. Learned Public Prosecutor filed objection resisting the petition. The charge against these accused persons for the offence punishable U/Sec.353 of IPC, which is a serious non-bailable offence of assaulting a Public servant by obstructing his duty, the anticipatory bail application filed by the

petitioners cannot be unheld in light of the facts of the case. Charge sheet was filed against the petitioners on the basis of strong evidences found during the investigation. Further, Public Prosecutor has stated the following citations in the objections.(1) **ILR 2016, KAR 1516, Arakalagudu Police V/s B.C.Sandeep., (2) 2016 (3) SCC (Cri) 685 Chandrashekar Rao v/s State of Bihar.** The accused persons are not eligible for bail merely because the charge sheet has been filed, the accused is not eligible for bail in a heinous crime as the charges against the accused persons have been strengthened by the fact that the offense has been confirmed during the investigation, the Court has not considered only the personal liberty of the accused. Since it is mentioned in the above judgments that the life, property and interest of the aggrieved person and all the people of the society should be protected this petitioners are not eligible for bail in such a serious crime.

2017 (2) Crimes 56 (SC) SUPREME COURT OF INDIA Virupakshappa Gouda & Another. V/s State of karnataka & Another.

Filing of charge is not change of circumstances – Does not lessen allegations made by the Prosecution.

If the anticipatory bail is granted to the petitioners there are chances that they may tamper the prosecution evidence it may cause delay of Court proceedings and there are chances that they may abscond. Hence prays to reject the petition for the above contentions and for other contentions stated in the objections.

6. Heard both sides. Perused the records.

7. Now the points that arise for my consideration are;

1. Whether the petitioners/accused Nos.1 to 4 have made out grounds to grant anticipatory bail to them?

2. What order?

8. My finding to above points are as under:

Point No. 1: **Affirmative.**

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

REASONS

9. POINT No.1: Perused the records. I.O. has completed the investigation and filed charge sheet before the concerned jurisdictional Court against the accused Nos.1 to 4, who are the petitioners in the above petition. The petitioners have further contended that, they are innocent and law abiding citizens, they are permanent residents of the address given in the petition and they are ready to abide by conditions imposed by this court.

10. On perusal of the prosecution papers, it reveals that the alleged offences are non bailable and neither punishable with death nor life imprisonment and moreover it is triable by the Court of Magistrate.

11. Further, it is also pertinent to note that, though as per the Judgment of the Hon'ble Supreme Court reported in **Arnesh Kumar v/s State of Bihar in Crl.Appeal No.1277 of 2014** Hon'ble Supreme Court of India has observed that **no arrest can be made in a routine manner- on a mere**

allegations of commission of an offence made against a persons.”

12. Hence, by taking note of the accusation made in the complaint and gravity of the offences and the alleged offences is not punishable with death nor life imprisonment, this Court is of the opinion that petitioners/accused Nos.1 to 4 are entitled for anticipatory bail, subject to imposing certain conditions. Hence, I answer the above point in the **affirmative** and proceed to pass the following:

13. Point No.2:- For the aforesaid reasons, I proceed to pass the following;

ORDER

The petition filed by the petitioners/accused Nos.1 to 4 U/Sec.438 of Cr.P.C. is allowed on conditions.

The petitioners/accused Nos.1 to 4 are ordered to be released on bail, in the event of their arrest in C.C.No.1945/2022.

CONDITIONS

- 1) The petitioners/accused Nos.1 to 4 shall execute personal bond and bail bond for sum of Rs.50,000/- each with one surety for the like sum before the jurisdiction Court within the 15 days from the date of this order.
- 2) They shall not threaten the prosecution witnesses in any manner and shall not tamper the prosecution evidence.
- 3) They shall not commit the similar offence nor any other criminal offences.

4) They shall appear before the Court on all the hearing dates until disposal of the case without fail.

5) If the petitioners/accused Nos.1 to 4, violates any one of the above conditions, the prosecution is at liberty to seek cancellation of bail.

(Dictated to the Stenographer directly on the computer, print out taken out by him, and corrected and then pronounced by me in the open Court on this the **19th day of October, 2022**)

(Sheela N.)

I Addl. District and Sessions Judge,
Mandya.