

KAMD010041682022



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

Dated this the 2nd day of November, 2022

PRESENT

Smt.Nirmala.K, B.A., M.L.,
IV Addl. District & Sessions Judge,
Mandya.

Crl.Misc.No.1017/2022

Petitioner : Naveenkumar.C.G S/o Gopalanaik,
Aged about 32 years, R/o
Chowkasandra Bevu Village,
Ramanagagara and District.
(accused)
(Rep. by Sri.Rajegowda-Adv.)

-Vs-

Respondent : State by Mandya West Police.
(Rep. by learned Public Prosecutor)

ORDERS ON PETITION FILED U/Sec.438 OF Cr.P.C.

This petition is filed under Section 438 of Cr.P.C. praying to grant anticipatory bail in Cr.No.118/2022 registered by respondent-police for the offences punishable under Sections 120B, 342, 363, 364A, 368, 384, 385, 420 r/w 149 of IPC against petitioner/**accused**.

2. BRIEF FACTS:

It is the case of complainant that, on 19.08.2022 at about 11.00 a.m., alleging that he reserved a Rajahamsa Bus ticket from Mandya via Mysuru to Mangaluru on 26.02.2022 at 10.45 p.m. As such, he was waiting near KSRTC bus-stand at 8.00 p.m. At that time, one car came there and asked the complainant you are the Srinidhi Gold owner, where are you going. For that, the complainant has told that he is going to Mysuru. For that the inmates of the car called the complainant, they will give drop at Mysuru, since the said persons are known person. As such, he board the car and in the said car one lady Salma Banu and one Jayanth were there and they introduced each other. When the car reached to Darshan Palace, Mysuru, the inmates of the car told that, in Darshan Palace, his friend brought golden biscuits, whether it is original or not tell me about the same. For that, the complainant has told that he will miss his Mangaluru bus. For that just 5 minutes and see it and return. When the complainant entered the entrance of the said Darshan Palace, the said persons were abscond. When he entered the room, one girl aged about 22 – 25 years old and on the next minute, the car inmates Salma Banu, Jayanth and others entered and started to state that you are with the said girl and it is recorded by them and another person told that she is his sister, the complainant brought the said girl to lodge and other 4 members assaulted with their hands and one person was recording the video and if he paid Rs.4,00,00,000/-, they will release, otherwise they will kill him. At about 2.00 a.m., in the midnight, the complainant agreed to pay Rs.50,00,000/-. On 27.02.2022 at 10.00 a.m., the complainant obtained Rs.25,00,000/- from his friend

Dr.S.Srinivasashetty and paid the same near the Zoo gate in the car. Rs.23,00,000/- taken by one of the person abducted him from Surya Jewellers, Ashoka road, Mysuru. Remaining Rs.2,00,000/- received from Kalpatharu Silver House, Ashoka road, Mysuru. After receipt of Rs.50,00,000/-, they released the complainant. Hence, the complaint.

3. GROUNDS FOR ANTICIPATORY BAIL:

The petitioner submit that, he is innocent and he not committed any alleged offence. He is unnecessarily implicated in the above case. Since police could not catch hold of the real culprits, they have included the petitioner in the above case. In order to complete the investigation and filed the complaint averments because of the pressure of higher authorities and political pressure, this petitioner is unnecessarily involved in the present case. Though he is nowhere concerned with the alleged offence. As per the complaint averments, there were three men and one lady who are already arrested other than them, no other persons are mentioned. Only to trouble the petitioner, he is unnecessarily included. The alleged offences are neither punishable with death nor imprisonment for life. The petitioner is bright student who has wonned several medals. He is having aged parents and his father has underwent heart surgery recently. He does not have any criminal background and he is ready to abide by any conditions that would be imposed by this court. Hence, the petition.

4. OBJECTIONS:

On the other hand, in pursuance of court notice, learned Public Prosecutor entered appearance and filed her objections

statement along with Investigating Officer report reiterating the complaint averments and further submit that, the offence alleged are punishable imprisonment extends to 10 years and fine. There are prima-facie materials to show that petitioner has committed the crime. This court has to take into various requirements as stated by Hon'ble Supreme Court decision reported in (2011) 3 S.C.C. (Cri.) page 765 and 2016 (3) SCC (Cri.) 685. The investigation is still under progress. At this stage, if the petitioner is released on bail, there is every possibility that he would tamper the prosecution witnesses and he would abscond from the court. Under these circumstances. she prays for rejecting the bail petition.

5. Heard **arguments** on both sides and perused the materials on record.

6. From the above facts following **points arise for my consideration:**

1. **Whether the petitioner/accused has made out sufficient grounds for grant of anticipatory bail under Section 438 of Cr.P.C. as prayed for in the petition?**
2. **What order?**

7. My **findings** on the above points are as follows:

Point No.1 : In the **Affirmative**.

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

REASONS

8. **Point No.1:** It is seen from the FIR, complaint and other

materials available on record that, accused persons came in a car and committed organized crime. They make friendship of rich businessman through face-book or instagram or some time they meet them personally and call them to some Lodge where they extort money from them by honey-trap. They put threat to them that, if they does not pay money, they would spoil their reputation in the society, thereby they have extorted huge money from several persons and cheated them. Accused along with other persons came in a car and asked complainant that they would drop him to the bus-stand and took him to Darshan Palace Lodge in room and disappeared and thereafter 2 minutes, a girl entered the room. One person was recording the mobile and accused along with others demanded Rs.4,00,00,000/- from the complainant if he fails to give, they will kill him and release the video. Ultimately, complainant paid a sum of Rs.25,00,000/- through LIC agency Dr.S.Srinivasashetty near Mysuru Zoo and they succeeded in extorting a sum of Rs.50,00,000/- from the complainant.

9. On the other hand, the petitioner submit that he is innocent and has not at all involved in the alleged offences. The complaint averments shows that some 3 – 4 men were involved who are already arrested. No grounds is forthcoming to show any prima-facie case against against the petitioner.

10. Learned counsel for petitioner filed remand application from 19.08.2022 till 21.09.2022. On perusal of the Investigating Officer report, it is noticed that the name of petitioner is not disclosed by any of the accused persons during their voluntary statement. After recording the voluntary statement of some of the

accused, police have seized the material objects and submitted P.F. The bail applications filed by the accused No.1 to 3, 5 and 6 is rejected by this court since there was sufficient prima-facie materials against them. But with regard to the present petitioner is concerned, the Investigating Officer has only stated that some of the accused like Kajal, Naveen and Shankar are yet to be arrested. But there is no mention in his report as to how, this petitioner is involved in the present case. There is no single clew to connect the petitioner with the alleged offences. He has stated in his objection-statement that he is having only suspicion on the petitioner. How he is involved in the crime is not stated anywhere, his overt-act is not disclosed. Similarly this petitioner is involved along with other accused persons in commission of offence then nothing prevented the other accused from disclosing the name of petitioner during their voluntary statement given to Investigating Officer at that time of interrogation. The other objections of Investigating Officer is that, he is resident of different district and if he is released, he will abscond and may not co-operate with the investigation and trial. As far as this objection is concerned, it can be met by imposing suitable restrictions. Therefore, I am of the opinion that no prima-facie case is made out against the petitioner. Moreover, mere suspicion will not take the place of proof.

11. Further on perusal of the remand applications dated 19.08.2022, 20.08.2022, 23.08.2022, 25.08.2022 and 09.09.2022, there is no mention about this petitioner. But it is only in the remand application dated 19.09.2022, the name of petitioner is seen. In the said remand application, Investigating Officer has not stated as to how this petitioner is involved.

Though his name is shown in the remand application dated 19.09.2022 and 21.09.2022, nowhere he has stated about the involvement of this petitioner. Therefore, on considering the entire materials available on record, I am of the opinion that, no prima-facie materials exist to connect the petitioner with the alleged offences.

12. Learned counsel for petitioner has relied upon the 'championship certificates' to show that petitioner is bright student. Discharge summary of the petitioner's father shows that, he is aged and having heart disease. Adhar card of the petitioner indicates that, he is the resident of Ramanagara. Therefore, I am of the opinion that bail can be granted to the petitioner by imposing suitable conditions.

13. Further it is noticed that the alleged offences are neither punishable with death nor imprisonment for life. The learned Public Prosecutor submit that prima-facie, there are sufficient materials available against the petitioner. At this stage, itself it is pre-mature to hold that petitioner has committed the alleged offences. There are no previous criminal antecedents against the petitioner. Learned Public Prosecutor has not produced any materials to show that he is habitual offender. It is seen that he is permanent resident of given address, so, the chances of fleeing away from the jurisdiction of the court is very remote. Moreover, he has undertaken to abide by any conditions that would be imposed by this court. Therefore, in the facts and circumstances of the case made out, considering the gravity of the offences and punishment prescribed, I am of the opinion that the petitioner is entitled for pre-arrest bail.

14. Learned counsel for petitioner relied upon the decision reported in **AIR 2015 SC page 312**, wherein it is held that **“Anticipatory bail – S.438 need not be invoked only in exceptional or rare cases – discretion must be exercised on basis of available material and facts of particular case – Accused has joined investigation and he is fully co-operating with investigating agency and is not likely to abscond, in that event, custodial interrogation should, be avoided.”**

15. Further the **order granting or refusing bail must reflect perfect balance between the conflicting interests, namely, sanctity of individual liberty and the interest of the society as held in the decision rendered by Hon'ble Supreme Court of India in Crl.A.No.2271/2010 between Siddharam Satlingappa Mhetre V/s State of Maharashtra and others, dated 02.12.2010.** Moreover, the facts disclose no prima-facie case against the petitioner. Under these circumstances in the interest of equity and justice especially taking into account, the principle that, **bail is a rule and jail is an exception.** I am of the considered view that at this stage petitioner is entitled for anticipatory bail. Accordingly, I answer point No.1 in the **Affirmative.**

16. **Point No.2:-** For the foregoing reasons, I proceed to pass the following :-

ORDER

**Petition filed by petitioner under
Section 438 of Cr.P.C. is hereby allowed.**

Consequently, in the event of arrest of

petitioner/accused is ordered to be released on bail in Cr.No.118/2022 of Mandya West Police Station, on his executing personal bond for a sum of Rs.1,00,000/- and with two sureties for likesum to the satisfaction of the Investigating Officer/Police Officer on the following conditions:

1. The petitioner shall appear before the Investigating Officer within 15 days from the date of this order and in that event Investigation Officer to take bond and to release him.

2. He shall appear before Investigating Officer as and when called upon and to extend fullest co-operation in the investigation.

3. He shall not give threat to the prosecution witnesses in any manner.

4. He shall not indulge in similar offences in any manner.

(Dictated to the Stenographer, transcribed and computerized by her and transcript corrected by me and then pronounced in open Court on this the 2nd day of November, 2022.)

(Nirmala.K.)

IV Addl. District & Sessions Judge,
Mandya.

Orders pronounced in Open Court
(Vide my separate order)

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IV ASJ,
Mandya.

