

**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 12th day of August 2021

**Crl.Misc.No.25877/2021 &
Crl.Misc.No.25885/2021**

**Petitioners in
Crl.Misc.
No.25877/2021:**

Accused No.1 & 2

1. Prashanth Kumar,
S/o Narayana Nayak,
Aged about 22 years,
Residing at No.41, 5th Street,
Sarayi Palya,
Thanisandra Main Road,
Bangalore-560 077.
2. Nawaz Pasha,
S/o Mohamed Hussain,
Aged about 26 years,
Residing at No.123,
Razak Sab Palya,
Bagaluru Post,
Bangalore.

**Petitioner in
Crl.Misc.
No.25885/2021:**

Accused No.4 to 5

1. Sathish Devadiga,
S/o Devarala Subrahmanyam,
Aged about 47 years,
Lotus Mobiles,
Hennur Lakshmaiah Complex,
Near ICICI Bank,
Sarayi Palya, Vidya Sagar,
Thanisandra Main Road,
Bangalore-560 077.
2. Suresh Devadiga,
S/o Devarala,
Lotus Mobiles,
Hennur Lakshmaiah Complex,

Near ICICI Bank,
Sarayi Palya, Vidya Sagar,
Thanisandra Main Road,
Bangalore-560 077.

3. Raghu,
S/o N. Ramakrishna,
Aged about 36 years,
Residing at No.3848,
3rd Cross, Sowmya Nilaya,
Shankara Nagara, Mandya,
Karnataka-571401.

(By pleader : Sri. K.V. Naveen Kumar)

V/s

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

(By Public Prosecutor)

COMMON ORDER

The Petitioners/Accused No.1 and 2 in Crl.Misc.No.25877/2021 have approached this Court under Section 439 Cr.P.C., and Petitioners/Accused No.3 to 5 in Crl.Misc.No.25885/2021 have approached this Court under Section 439 Cr.P.C., for grant of bail in in Crime No.199/2021 of D.J.Halli Police Station, for the offence punishable under Section 306 of of Indian Penal Code (I.P.C.).

2. The allegations are that, on 28.7.2021 the mother-in-law of the Complainant got a phone call from Lotus Mobile Shop stating that his son has stolen mobile phone from their shop and they have to pay Rs.15,000/- for the same. On 29.7.2021 at about 1.00 a.m., they went to the said shop and agreed to pay Rs.15,000/-. But, the Complainant failed to arrange money. After the said incident the Complainant's husband informed that due to the call of Lotus Mobile Shop, he has lost his reputation in the locality and it is better to die. Later on 29.7.2021 at about 5 pm he has committed suicide by hanging himself to the fan rod with the help of dupatta and thereby the accused have committed the aforesaid offence etc.

3. The Petitioners in the above said petitions have contended that, they are innocent of the charges leveled against them and they have not committed any offence much-less the alleged one. The Petitioner No.1 and 2 are the Directors of the Lotus Mobile Company and they are not present at the time of incident. The Petitioner No.3 is the Sales Manager. The theft has been recorded in the CCTV in the shop. After two days, the mobile which was stolen by the deceased was activated as the

matter was brought to the notice of the Jurisdictional Police Sampigehalli P.S. The Petitioner and the Jurisdictional Police went to the house of the deceased to arrest him. The Petitioners/Accused and their respective family members in the said petitions will be put to hardship in the event of their arrest and detention and further detention by the Respondent Police. The Petitioners/Accused are ready to abide by the conditions imposed by the Court. Hence, sought for bail.

4. The learned Public Prosecutor seriously opposed the bail applications on the ground that, the petitions are not maintainable either in law or on facts. Absolutely, no grounds were made out for granting bail. There are sufficient materials available on record to hold prima-facie case against the accused person in respect of the alleged offences. The investigation of this case is still under progress and if the accused person were enlarged on bail, there are every possibility of absconding of accused, repetition of similar offences, tampering the prosecution witnesses and they may not be available for the trial, that may be hamper the investigation and trial of this case. Hence, sought for dismissal of the bail application.

5. Heard the 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 in the above said petitions have made out sufficient grounds for granting bail, as prayed?

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 according to the Petitioners, the Petitioner No.1 and 2 are the Directors of the Lotus Mobile Company and they are not present at the time of incident. The Petitioner No.3 is the Sales Manager. The theft has been recorded in the CCTV in the shop. After two days, the mobile which was stolen by the deceased was activated. As the matter was brought to the notice of the Jurisdictional Police Sampigehalli

P.S., the Petitioners and the Jurisdictional Police went to the house of the deceased to arrest him. But due to the undertaking of the Complainant for payment of mobile they have not initiated any criminal proceedings against the deceased. The Petitioners have furnished the CCTV footage. The CCTV footage furnished by the Petitioners through Pen Drive clearly indicates that the deceased was caught in CCTV while stealing the Mobile Phone. Hence, as rightly argued by the learned Counsel for the Petitioners, mere questioning about the theft committed by the deceased that too with a concrete proof through visual evidence cannot be termed as abatement to commit suicide. Apart from that, even neither the complaint, nor the FIR discloses the fact regarding any act committed by these Petitioners, which drive the deceased to commit suicide. Rather, the FIR contents clearly reveals the fact that mere demanding money towards the stolen article cannot be termed as abatement. As rightly argued by learned counsel for the Petitioners, the deceased is a weak minded person, he has got every opportunity to handle this matter in a different way. If really he is innocent he could have convince the Shop owners and the Police and can settle the matter. As rightly claimed by the Counsel for the Petitioners'

absolutely no overt-act is committed by the Petitioners regarding abatement. Rather, they legitimately informed the fact of theft to the deceased and asked him for the money towards the stolen article. Therefore, the ingredients of Section 306 of I.P.C. does not attract. There is a delay of 07 hours in lodging the complaint and the same is not explained. Further, the probable hardship of Petitioner/Accused No.1 to 5 in both the cases and their family members in the event of their arrest by the Respondent Police also cannot be ruled out. The permanent residence of the Petitioners at the given address is not in dispute, moreover they hail from respectable family having deep roots in the society hence question of abscond does not arise. Above all the accused No.1 and 2 are in judicial custody since 1.8.2021. Under these circumstances, I am of the opinion that, Petitioners/Accused in the above said petitions 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 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 as well as anticipatory 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 as well as anticipatory 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 petition filed U/S 439 of Cr.P.C., by the Petitioners/Accused No.1 & 2 in Crl.Misc.No.25877/2021 and the petition filed U/S 438 of Cr.P.C., by the Petitioners/Accused No.3 to 5 in Crl.Misc.No.25885/2021 are allowed respectively.

The Petitioners/Accused No.3 to 5 in Crl.Misc.No.25885/2021 in the event of their arrest, the Petitioners/Accused No.1 and 2 shall be enlarged on bail in Crime No.199/2021 of Respondent Police Station, on execution of personal bonds for a sum of Rs.50,000/- (Rupees Fifty Thousand) each along with a surety for the likesum, subject to following conditions:

- 1) The Petitioners/Accused shall not tamper with the prosecution evidence or witnesses in any manner
- 2) The Petitioners/Accused shall co-operate with the investigation.
- 3) They shall not commit similar offences in future.

4) The Petitioners/Accused No.1 to 5 shall appear before the Court on all dates of hearing.

Keep copy of common Order in Crl.Misc.No.25885/2021 and original of the same in Crl.Misc.No.25877/2021.

(Dictated to the Stenographer directly on computer, typed and computerized by her, corrected and signed by me and then pronounced in the open Court on this the **12th** day of **August 2021**).

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

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

O R D E R

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