

**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 25th day of August 2021

Crl.Misc.No.25897/2021

Petitioner: Lesley Asimwe Matembe,
D/o Matembe,
Aged about 29 years,
R/at C/o No.60, 1st Cross,
Sadashiva Temple Road,
R.S.Palya,
Bengaluru City.

(By pleader : Smt. Saraswathi)

V/s

Respondent: State by;
Banasawadi Police Station,
Bengaluru.

(By Public Prosecutor)

ORDERS

The present Petition is filed by the Petitioner under Section 439 of Cr.P.C., for granting regular bail on the ground that the Respondent Police have registered case against the accused in Cr.No.308/2021 for the offence punishable under Section 14 of Foreigners Act.

2. The case of the Prosecution is that, on 15.7.2021 at about 10.30 a.m., the Complainant was on patrolling duty, received information that a lady was wondering near Empire Hotel, Kammanahalli in suspicious manner and on enquiry, the said lady stated that she is from Uganda. On verification of her documents, it was revealed that she has overstayed in India without extension of VISA and also she has not produced her passport for verification and thereby committed the above said offence.

3. The Petitioner has contended that she is innocent of the alleged offence and has got valid and tenable defence and she has been falsely implicated in the above case. The Petitioner is the resident of Uganda who came to India on job. Due to Lockdown on account of Pandemic, the Petitioner was unable to renew her Passport as well as VISA. The offence alleged is not exclusively punishable with either death or imprisonment for life. The Petitioner hails from respectable family. The Petitioner is ready to furnish surety to the satisfaction of this Court. The Petitioner undertakes to abide by all the conditions imposed by this Court. Hence, prayed to allow the petition.

4. For the said application the PP has filed objections contending that the contents of the petition are false and baseless and denied in toto. The Respondent Police have registered the case against the Petitioner for the offence under Section 14 of Foreigners Act. The Complaint, FIR and other documents attached to the Complaint are part and parcel of the objection. The offence alleged against the Petitioner is non-bailable in nature. The investigation is in progress and the Petitioner is resident of foreign national and she is required for the investigation. The Petitioner might tamper the prosecution evidence and win over the witnesses if he is enlarged on bail. There is chance of his abscondance and committing similar offence. Hence, prayed to dismiss the Petitioner. Hence, sought for dismissal of the bail applications.

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 Petitioner has made out sufficient grounds for granting anticipatory bail U/S 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 seen that, the Petitioner has not applied for extension of VISA and has overstayed in India and has committed the offence. The Petitioner is in judicial custody since from 15.7.2021. The Learned Counsel for Petitioner has furnished Medical Certificate of the Petitioner and submitted that since from the past 2 years, the Petitioner was unable to renew her passport as well as VISA due to Covid-19 Pandemic. The Petitioner is the resident of the address mentioned in the cause title. The alleged offences are neither punishable with death nor imprisonment for life, rather maximum imprisonment is 5 years. Added to that the petitioner is having visa and passport, however visa is expired as of now. No criminal antecedents is reported against this petitioner. 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 her family members in her 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 on the ground of parity 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 is allowed and she is ordered to be released on bail in Crime No.308/2021 by the Respondent Police, on executing personal bond for a sum of Rs.1,00,000/- (Rupees One Lakh only) along with two sureties for the like sum, subject to following conditions:

1) The Petitioner/Accused shall not tamper with the prosecution evidence or witnesses in any manner and she shall co-operate with the investigation.

2) The Petitioner shall surrender her passport before I.O. and not indulge in any offences in future.

3) The Petitioner/Accused shall mark her 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 shall appear before the Court on

all dates of hearing.

If any of the conditions are violated, the bail granted to her automatically stands canceled. The Police Authorities are at liberty to take her to custody in case of violation.

(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 **25th** 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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XXVIII. Addl. City Civil Judge,
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