

**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 27th day of August 2021

Crl.Misc.No.25901/2021

Petitioner: Micheal Raj,
S/o Anthony Raj,
Aged about 22 years,
R/at 430, 11th Cross,
Vishweswaraiah Road,
Udayanagara,
Bangalore.

(By pleader : Sri. S. Murali)

V/s

Respondent: State by;
Mahadevapura 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.252/2018 (C.C.No.51536/2019) of Mahadevapura Police Station for the offences punishable under Section 399 and 402 of Indian Penal Code (I.P.C.).

2. The case of the Prosecution is that, on 24.5.2018 at about 9.00 p.m., while the Police Officer was in the Police Station received the credible information that near the drainage of MLR Convention Hall, Beside Railway Track, Garudacharapalya, Bangalore, some 5-6 persons armed with deadly weapons were planning to commit dacoity. He along with his staff and panchas went to the said spot and raided the place and apprehended the Petitioner along with other Accused and seized the articles from their custody and two more accused have escaped from the spot.

3. The Petitioner has specifically contended that, he is innocents 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. The Petitioner 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 residents of given address. The Petitioner hails from respectable family. The Petitioner/Accused is in Judicial Custody since from the date of his arrest as such, he

will be put to hardship in case of his further detention. 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 filed the objection and has seriously opposed the bail applications on the ground that, the said petition is not maintainable either in law or on facts. The Petitioner has got bail in Crl.Misc.No.25458/2018. The Petitioner instead of abiding the conditions imposed in the said petition has absconded for long period without attending the Court on every hearing date, considering his absence the Court has issued NBW against the Petitioner which was executed by the Police and send him to judicial custody. The Petitioner has violated the conditions of bail which he taken earlier, cannot get bail in second time. If he was released on bail, he may again abscond. 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 is to be noted that this Court while considering the bail applications of this Petitioner has allowed the bail application on earlier occasion in Crl.Misc.No.25458/2018 with a condition to attend the Court on all the hearing dates. But, the Petitioner has violated the said conditions. Therefore, this Court has issued NBW and Respondent Police have arrested the Petitioner under NBW and have remanded to judicial custody. The Learned Counsel for the Petitioner has argued that at the time of filing charge sheet few dates of hearing the Petitioner/Accused was unable to appear before the Court as he had been to his Village on account of death of his family member and he was compelled to held up there due to ill-health, thereafter due to lock down he was unable to return back to Bangalore, thereby he was remained absent on the hearing dates. In the present case, already the investigation of the present case is over and IO has filed charge sheet. The Petitioner

is no more required for any investigation. The Petitioner undertakes to abide by the conditions imposed by this Court. Considering the fact that the Petitioner/Accused are in judicial custody from 3.7.2021 for the second time in the same crime, added to that no criminal antecedents have been reported against this Petitioner, I am of the opinion that since no proven criminal incidents were established against this Petitioner, and in the background of pandemic and implementation of SOP the Petition requires to be allowed on imposing 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 Petitioner in the said petition have 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 Petitioners are entitle for bail and it is deemed fit to grant the benefit of 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 Petitioner/Accused No.3 is allowed.

The Petitioners are ordered to be released on bail in Crime No.252/2021 (C.C.No.51536/2019) 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 Petitioners/Accused No.3 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 Petitioners/Accused No.3 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 Petitioners/Accused No.3 shall appear before the Court on all dates of hearing.

(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 **27th** 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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[K.M. Rajashekhar],
XXVIII. Addl. City Civil Judge,
Mayo hall, Bangalore.

