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**IN THE COURT OF THE LXIII ADDL. CITY CIVIL AND SESSIONS
JUDGE, BENGALURU CITY [CCH.64]**

Dated this the 18th day of May 2024

**PRESENT: SRI A. EARANNA, M.Com., LL.M.,
LXII ADDL. CITY CIVIL & SESSIONS JUDGE,
BENGALURU.
I/C LXIII ADDL CITY CIVIL & SESSIONS JUDGE,
BENGALURU.**

CRL. MISC NO. 4294/2024

Petitioners

1. Amba Prasad @ Prasad Amba
S/o Raghavendra
Aged about 37 years
R/at #943, 1st floor,
Narasimha Kripa
13th Main, 10th Cross,
Srinagar Kallapa Block
Bengaluru South-560 050
Managing / Authorised Partner of Sri
Gururaghavendra Traders.

2. Smt. Anupama S
W/o Santhosh S
Aged about 43 years
#1104, 17th Cross, 30th Main,
Near Ramachandra Mission

Banashankari 2nd Stage,
Bengaluru South-560070

(By Sudhanva D S - Adv.).

Vs.

Respondent: State by Banashankari
Police station,
Bengaluru

Rep. by Public Prosecutor.

ORDER

The petition is filed by the petitioners under Section 438 of Cr.P.C for an order of anticipatory bail.

2. On the strength of complaint the Banashankari police have registered the case in Crime No. 128/2023 for the offences punishable under Sections 406 and 420 of I.P.C.

3. In the bail petition it is contended that the petitioners are innocents of the alleged offences and they have not committed the any offences. The respondent police have falsely implicated the petitioners in the case on hand, on the basis of false complaint filed by the complainant. The petitioners have deep roots in the society. The offences are not punishable with death or imprisonment for life. Co-

accused has been granted with bail in Crl. Misc No. 9033/2023. hence on the ground of parity petitioners seeking grant of anticipatory bail. Petitioners are ready to furnish the surety to enlarge them on anticipatory bail. On these grounds, the petitioners prays to allow of the bail petition.

4. Whereas, the learned Public Prosecutor filed the objection contending that present bail petition is not maintainable, same is liable to be dismissed. The investigation is under progress. If the petitioners are granted with anticipatory bail, the petitioners may threaten the prosecution witnesses and they may destroy the prosecution evidence or they may commit the similar kind of offences and the possibility of petitioners fleeing away from justice cannot be ruled out. Inter alia, on these grounds, pray to dismiss of the bail petition.

5. Heard both sides. Perused the record.

6. Following points arise for consideration of this Court:

1. Whether the petitioners have made out grounds to enlarge them on anticipatory bail under Section 438 of Cr.P.C.?

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:** The counsel for the petitioners argued that petitioners have not at all committed any offences, falsely implicated the petitioners. The alleged offences are not punishable with death or life imprisonment. The petitioners are ready to abide by any conditions that may be imposed by the court and they are ready to execute the bond as directed by the Court. Therefore, he prays to allow the bail petition.

9. The learned Public Prosecutor argued the petitioners have committed alleged offences. The investigation is under progress. If the petitioners are enlarged on bail, then there is chances that they may tamper and hamper the prosecution witnesses, they may threat the complainant and other witnesses and they also abscond from the case. They may commit similar offences, along with other grounds she prays to dismiss the bail petition.

10. On perusal of the records, one Raghavendra lodged the complaint against ANS Sheshagiri on 28.04.2023 alleging that about 2 years ANS Sheshagiri came to his contact and got introduced himself as he is doing the Stock Market Brokering. In the month of February and March-2022. ANS Sheshagiri informed the complainant that he is intending to purchase the property and advised to join him to purchase the property. The complainant agreed for the same and believing the version of the accused transferred the amount of Rs.97,76,000/- between 04.03.2022 to 21.12.2022 from the account of the complainant and his wife. According to the complainant, said Sheshagiri had collected the amount of Rs.1,07,76,000/-, out of which he has returned sum of Rs.34,96,171,- and yet to pay an amount of Rs.72,79,829/-. On 19.01.2023 said Sheshagiri also got executed agreement of sale in respect of the property of the complainant. ANS Sheshagiri has cheated the complainant by inducing him to pay the money and fails to give property or returned the amount received from the complainant. Thereafter said Sheshagiri is absconded. Hence according to the complainant said ANS Sheshagiri has committed the offence of criminal breach of trust and cheating. Based on the complaint, the respondent police have registered the

case in Cr.No. 128/2023 for the offence punishable under Sections 406 and 420 of I.P.C.

11. The name of the petitioners not found either in the complaint or in the FIR. The present petition filed by the petitioners as the respondent police have issued police notice. As the notice is issued to the petitioners for enquiry in respect of non-bailable offence, they have filed the petition.

12. At the outset it is necessary to note that the offences punishable u/s 420 and 406 of IPC though are non bailable in nature, are not punishable with death or life imprisonment. The involvement of petitioners is yet to be proved. The truth is to be ascertained during the course of trial. Moreover, the offences alleged against the petitioners are triable by Court of Magistrate. The petitioners are ready to furnish surety and ready to abide by the conditions that may be imposed by this Court while passing the order. As per the averments of bail application, the petitioners are the permanent resident of the address shown in the petition. The offences alleged against the petitioners are cognizable offences and as per the provisions of Cr.P.C. the I.O. may arrest the petitioners without warrant. The apprehension of the prosecution can be taken care of by

putting suitable conditions. Co-accused has been granted with bail. Having regards to the facts and circumstances of the case, gravity of the offences alleged, punishment prescribed for them, apprehension of the arrest of the petitioner by the I.O. in the considered opinion of this Court that the petitioners are entitled to grant anticipatory bail by imposing appropriate conditions.

13. The Hon'ble Supreme Court of India in ***Central Bureau of investigation Vs. V.Vijay Sai Reddy 2013 (7) SCALE 15*** was pleased to express that; "28. While granting bail, the court has to keep in mind the nature of accusation, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/ state and other similar consideration. It has also to be kept in mind that for the purpose of granting bail, the legislature has used the words 'reasonable grounds for believing' instead of "the evidence" which means the court dealing with the grant of bail can only satisfy it as to whether there is a genuine case against the accused and that the prosecution will be able to

produce prima facie evidence in support of the charge. It is not expected, at this stage, to have the evidence establishing the guilt of the accused beyond reasonable doubt.

14. Further it is settled law by the catena of decisions that *“the accused is to be presumed as innocent until guilt is proved by the prosecution in full-fledged trial by discharging its burden of proof. Until then, it is not just and proper to put the accused in jail as a measurement of punishment in the pre-trial stage.”* It is settled position of law by the Catena of decisions of Hon’ble Supreme Court and various High Courts that *“securing the presence of the accused for trial and protection of witnesses from tampering are the main considerations at the stage of granting bail.”*

15. The petitioners claims to be the permanent resident of address shown in the cause title of the bail petition. It is urged that the petitioners are ready and willing to furnish surety to the satisfaction of this Court to ensure their attendance before the I.O and the Court and they are also ready to abide by any conditions imposed by Court. As such, possibility of the abscondance of petitioners is too remote. However, the alleged offences are not punishable

with death or life imprisonment and triable by the Court of Magistrate.

16. The apprehension and interest of the prosecution that the petitioners may tamper with the prosecution witnesses, flee away from justice can be taken and safeguarded by imposing some suitable conditions. Hence by considering all these aspects, I am of the opinion that the petitioners are entitled for bail and accordingly, I answer the above Point No.1 in the Affirmative.

17. **Point No.2:** In view of my findings on Point No.1, I proceed to pass the following:

ORDER

The anticipatory bail petition filed by the petitioners under Section 438 of Cr.P.C is hereby allowed.

The respondent police are hereby directed to enlarge the petitioners on anticipatory bail in the event of their arrest in Crime No. 128/2023 of respondent Police Station for the offences punishable under Sections 406 and 420 of I.P.C. on execution of personal bond for

Rs.1,00,000/- with one surety for the like sum on the following conditions:

1.The petitioners shall join investigation and co-operate with I.O for investigation.

2. The petitioners shall not tamper with the prosecution evidence or influence the prosecution witnesses directly or indirectly in any manner.

3. The petitioners shall not indulge with offence of like nature.

4. The petitioners shall appear before the respondent police station within 30 days from the date of this order.

5. In case, if the petitioners violate any of the above mentioned conditions, the prosecution is at liberty to move an application in such cases for cancellation of bail.

(Dictated to the Stenographer directly on computer typed by her, corrected, signed and then pronounced by me in Open Court on this the **18th day of May, 2024**).

(A. EARANNA)
LXII ACC & SJ, B'LURU AND
I/C LXIII ACC & SJ, B'LURU

27.01.2024

Orders pronounced in Open Court
(vide separate Order).

ORDER

**The anticipatory bail petition
filed by the petitioner under**

Section 438 of Cr.P.C is hereby allowed.

The respondent police are hereby directed to enlarge the petitioner on anticipatory bail in the event of his arrest in Crime No. 128/2023 of respondent Police Station for the offences punishable under Sections 406 and 420 of I.P.C. on execution of personal bond for Rs.1,00,000/- with one surety for the like sum on the following conditions:

1. The petitioner shall join investigation and co-operate with I.O for investigation.
2. The petitioner shall not tamper with the prosecution evidence or influence the prosecution witnesses directly or indirectly in any manner.
3. The petitioner shall not indulge with offence of like nature.
4. The petitioner shall appear before the respondent police station every 2nd Saturday at 10.00 am to 6.00 PM

before the station to mark his attendance.

5. In case, if the petitioner violate any of the above mentioned conditions, the prosecution is at liberty to move an application in such cases for cancellation of bail.

LXII A.C.C. & S.J, Bengaluru City.

