

KARN010010572023



**IN THE COURT OF THE III ADDL. DISTRICT
& SESSIONS JUDGE, RAMANAGARA**

: PRESENT:

**Sri. M. DEVARAJA BHAT, B.Com. LL.B.
III Addl. District & Sessions Judge,
Ramanagara.**

DATED THIS THE 29th DAY OF MAY 2023

CrL. Misc. No.381

BETWEEN

**Sri. Shivakumar @
Shiva, S/o
Kuppuswamy, Aged
about 30 years,
Residing at Mullahalli
Village, Uyyamballi
Hobli, Kanakapura
Taluk, Ramanagara
District.**

: PETITIONER.

**(Represented by Sri.
Nagaraja.V, Advocate)**



AND

**State represented by
Ramanagara Rural Police
Station.**

: RESPONDENT.

**(Represented by the
Learned Public
Prosecutor)**

: ORDERS :

The Petitioner has filed this Petition under Section 438 of the Criminal Procedure Code, praying to grant an Order of Anticipatory Bail to him in the case bearing (Crime No.104/2019) C.C.No.114/2020 for the offences punishable under Section 397 of Indian Penal Code.

2. By re-iterating the contentions in the Prosecution story, he has contended that he has not committed any such offences, that he is an innocent person, that he is the permanent resident in the address mentioned in the Cause Title, that there is no chance of absconding or avoiding the trial by him, that he is ready and willing to abide any conditions to be imposed. Apprehending his arrest and Pleading false



implication the Petitioner has sought Anticipatory Bail. Hence, he prays to release him on Anticipatory Bail as prayed by him.

3. The Learned Public Prosecutor has filed his objections by re-iterating the allegations in the Prosecution story, has contented that there are sufficient materials to show the commission of alleged offences by the Petitioner, that the investigation is completed, that the Petitioner is not entitled for the release on Anticipatory Bail, that if the Petitioner is released on Anticipatory Bail, there is every chance of jumping bail and tampering the prosecution witnesses and it may severely affect the progress of the trial. Hence, he prays to reject the Anticipatory Bail Petition.

4. I have heard the arguments of the Learned Advocate for the Petitioner and the Learned Public Prosecutor and perused the records.

5. On the basis of the above contentions and arguments of both the parties, I formulate the following Points for my consideration:



1. Whether the Petitioner has made out a case for granting Anticipatory Bail by resorting to the special powers vested in this Court under Section 438 of the Criminal Procedure Code? If so, on what conditions?
 2. What Order?
6. My findings on the above Points are as under:
- Point No.1: **In Negative**
- Point No.2: As per my final Order for the following reasons.

REASONS

7. POINT NO.1 :- From the perusal of the Prosecution Papers and the objections of the Learned Public Prosecutor, it is clear that the present Petitioner was in a judicial custody pertaining to the Crime No.107/2020 and an order of Body Warrant was issued in the present case, that when the Body Warrant was in force he was released of bail on 16.07.2020 and accordingly Body Warrant was recalled. Thereafter the present Petitioner without moving for bail, appeared before the Committal Court on hearing dates. Thereafter the Prosecution has



moved an application under Section 323 of Criminal Procedure Code and the same was allowed and matter was ordered to be committed to this Court. While committing procedure was in progress, the Committal Court came to know that the Petitioner has not applied for bail so far and he has not offered surety also in first instance. The Petitioner pleads ignorance of the procedures. However he has engaged the services of an Advocate. The Advocate on record on behalf of the Petitioner should have advised the Petitioner to apply for bail and to offer surety at the first instance itself. Without following the said procedure, now the Petitioner cannot contend about his ignorance of procedure. At present, the Committal Court has issued Non-Bailable Warrant against the Petitioner and the same is in force.

8. When such being the case, there is no apprehension of arrest by the Police as mentioned in Section 438 of Criminal Procedure Code and the Petition under Section 438 of Criminal Procedure Code is not maintainable. The proper course is to apply for re-call of non-bailable warrant issued against the Petitioner by surrendering himself before the



Committal Court and he has to offer surety. The Learned Public Prosecutor has contended that the Petitioner may be directed to follow the procedure laid down by the Hon'ble Supreme Court in the decision reported in **S.L.P. No. 5191/2021 dated 07.10.2021 (Satender Kumar Antil vs. Central Bureau of Investigation and another).** Hence the present Petition is not maintainable.

9. If the present application is entertained, the same is against to the ratio/principles laid down in the Order passed by the Hon'ble Supreme Court in **S.L.P. No. 5191/2021 dated 07.10.2021 (Satender Kumar Antil vs. Central Bureau of Investigation and another).**

10. In view of my above discussions, observations and findings, the Petitioner is not entitled for released on Anticipatory Bail. Hence, I answer **Point No.1 in Negative.**

11. Point NO. 2: - Therefore, I proceed to pass the following Order: –



: O R D E R :

***The Petition filed by
the Petitioner under
Section 438 of Criminal
Procedure Code is
hereby dismissed.***

(Dictated to the Typist-Copyist directly on the computer,
typed by her, corrected by me and then pronounced in the
Open Court on **29th day of May 2023**).

(M.DEVARAJA BHAT)

III Addl. District & Sessions Judge,
Ramanagara.