



**IN THE COURT OF THE 2nd ADDL. DISTRICT & SESSIONS
JUDGE, UTTARA KANNADA, KARWAR.**

DATED THIS THE 25th DAY OF NOVEMBER-2022

CRIMINAL MISC.CASE NO: 457/2022

PRESENT: Sri. Ganesha B.,
B.Sc., L.L.M.,
II ADDL., District & Sessions Judge,
Uttara Kannada, KARWAR.

PETITIONERS:

1. Kirankumar H. D.
S/o. Daddabore Gouda,
Age: 38 years, Occ: Agriculturist,
R/o. Gram Vakkal, Hanekere,
Mandya, District: Mandya,
State- Karnataka
2. Chandramohan H.S.
S/o. Chikkabbe,
Age: 45 years, Occ: Agriculturist,
R/o. Gram Vakkal, Hanekere,
Mandya District,
State- Karnataka

(By Sri.M.L.N., Advocate.)

Vs.

RESPONDENTS:

1. The State of Karnataka
Represented by Public Prosecutor
Karwar
2. P S I
Gokarna P S
Kumta Taluk, (U.K.)

ORDER

The counsel for the petitioners/accused has filed the present bail petition under Section 438 of Cr.P.C., seeking anticipatory bail in the event of their arrest in Gokarna PS Crime No. 103/2022 for the offences punishable under Sections 32, 34 and 38(A) of Karnataka Excise Act, 1965 seeking for anticipatory bail.

2. The petitioners/accused have contended in their application that they are innocent and they have not committed any offences as alleged by the police. They are the permanent residents of Gram Vakkal, Hanekere, Mandya District. Further, no liquors were recovered from the possession of the petitioner. The petitioner apprehended that the concerned police may arrest at any time and therefore, the offences alleged against petitioners/accused is though non-bailable, but it is not punishable either with death or imprisonment for life. Further, the petitioners are sole bread earners in their family and the petitioners/accused are also ready and willing to co-operate with the investigating officer and further, undertake that they will not tamper with the prosecution witnesses and they are also undertake to abide by the conditions that will be imposed against them, by the court and prayed to grant conditional bail.

3. The learned Public Prosecutor has filed objections and in the said objections it has been contended that the bail petition filed by the petitioners/accused is contrary to law and liable to be dismissed and further stated that on 20.10.2022 at about 11.30 pm., when the complainant has raided the Car No. KA-11/N-2536 at Hiregutti Check post of Kumta Taluk on National High way, the accused were found transporting illegally about 17 ltrs of liquor which are found in 250 ML bottles of various company without having any permit or licence and thereby, the IO has seized those liquor as well as the Car through mahazar and registered the case against the petitioners/accused. Therefore, the investigation is under progress and thereby, if the accused are released on bail then they may tamper with the prosecution witnesses and chances of abscondence and delaying the investigation is very high. On these grounds, among other grounds it is prayed for dismissal of the bail petition.

4. Thereafter, I have heard the arguments canvassed by the learned counsel for the petitioners/accused and the Public Prosecutor.

5. The points that arise for the consideration of the Court are as under:

- 1) Whether the petitioners/accused have made out sufficient grounds for

enlarging them on anticipatory bail in the event of their arrest in Gokarna police Crime 103/2022?

2) What Order?

6. The findings of the Court on the above points are as under:

Point No.1: In the **Affirmative**

Point No.2: As per final order,
for the following:

REASONS

7. **Point No.1:** I have perused the records. Admittedly, Gokarna police have registered the case against the present petitioners/accused in Crime No. 103/2022 for the offences punishable under Sections 32, 34 and 38(A) of Karnataka Excise Act, 1965. The contents of the complaint discloses that on 20.10.2022 at about 11.30 pm., when the complainant has raided the Car No. KA-11/N-2536 at Hiregutti Check post of Kumta Taluk on National High way, the accused were found transporting illegally about 17 ltrs of liquor which are found in 250 ML bottles of various company without having any permit or licence the complainant/IO has seized those liquor as well as Car through mahazar and the concerned police have registered the case against the petitioners/accused and registered case against petitioners/accused for the offences

punishable U/sec. 32, 34 and 38(A) of Karnataka Excise Act, 1965.

8. The counsel for the petitioner/accused has argued that the petitioners/accused have been falsely implicated in this case and they have not committed any offences as alleged against them and further they are the permanent residents of Mandya District and therefore, the chances of abscondence from the investigation is very remote. Therefore, the offences alleged against them though non-bailable but not punishable with death or imprisonment for life and therefore, the accused under take to abide by the conditions that may be imposed against them. Hence, he has prayed to allow the petition by imposing necessary conditions.

9. The learned Public Prosecutor has also submitted that there is a prima facie case is made out against the accused and the IO has collected the sufficient evidence by seizing the liquors which were illegally possessed without valid licence or permit, through seizure panchanama and therefore, if the anticipatory bail is granted, the possibility of abscondence by the accused and tampering with the prosecution witnesses and delaying in the investigation cannot be ruled out. Therefore, the PP has prayed to reject the bail application.

10. After hearing the arguments advanced by the counsel for the petitioners/accused and also the learned Public prosecutor and on careful reading of the case papers it will disclose that on 20.10.2022 at about 11.30 pm., when the complainant has raided the Car No. KA-11/N-2536 at Hiregutti Check post of Kumta Taluk on National High way, the accused were found transporting illegally about 17 ltrs of liquor which are found in 250 ML bottles of various company without having any permit or licence and the complainant/IO has seized those liquor through mahazar and registered the case against the petitioners/accused and got registered case against the accused the petitioner/accused for the offences punishable under Sections 32, 34 and 38(A) of Karnataka Excise Act, 1965.

11. However, the accused have filed this application and prayed to enlarge them on anticipatory bail apprehending arrest and they are ready to offer sufficient surety for their appearance and availability for the investigation. However, the Public Prosecutor has opposed the same, saying that their release will hamper the investigation. Under these circumstances, now the question before the court is that whether, the presence of the accused can be secured at the time of investigation or not and the question of whether the accused have committed the alleged offences against them by the prosecution or not is not

under consideration at this stage and this can be decided after full fledged trial. Therefore, keeping these points in mind, the petitioners have pleaded that they are innocent and not committed any offences as alleged by the concerned police and they have also alleged that they are having apprehension of arrest by the police who are threatening at their residence. Therefore, the petitioners/accused are a permanent residents of Mandya District and thereby, the possibility of abscondence from the investigation is very remote and in order to bind the petitioners/accused the suitable conditions can be imposed and therefore, when the offences alleged against the accused is non-bailable but it is not punishable with death or imprisonment for life, the petitioners/accused are entitled for conditional bail. Therefore, the objection raised by public prosecutor that the petitioners/accused should not be released on bail is not sustainable. Under these circumstances, I am of the considered opinion that when the petitioners/accused is ready and willing to abide by the conditions that may be imposed against them and also ready to offer sufficient surety for their appearance before I.O. for investigation and also for appearance before the court, there is no reasons to deny the bail to the petitioners/accused. Under these circumstances, the petitioners/accused are entitled for the bail and hence, with these observations, I proceed to hold the above point No.1 in the **Affirmative**.

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

:ORDER :

The petition filed by the petitioners/accused U/sec. 438 of Cr.P.C. is hereby allowed and the anticipatory bail granted on following conditions:

1. In the event of arrest of the petitioners/accused, the concerned police are hereby directed to release the accused on bail on execution of bail bond for Rs. 50,000/- each with two sureties for like sum.
2. The petitioners/accused shall mark their attendance before the investigating officer on every alternate Sunday commencing from 04.12.2022 between 10.00 am., to 5.00 pm., till charge sheet is filed.
3. The petitioners/ accused shall appear before Investigating Officer whenever they are called for investigation and shall co-operate in the investigation.
4. The petitioners/accused shall not tamper with the prosecution evidence as well as witnesses.

In case of any of these conditions are violated the prosecution is at liberty to seek for cancellation of bail.

(Dictated to the stenographer directly on computer, revised and corrected by me, signed and then pronounced in the Open Court on this the **25th Day of November -2022**)

(Ganesha B.,)
2nd Addl. District & Sessions Judge,
Uttara Kannada, Karwar

Order pronounced in the open court vide detailed order.

:ORDER :

The petition filed by the petitioners/accused U/sec. 438 of Cr.P.C. is hereby allowed and the anticipatory bail granted on following conditions:

1. In the event of arrest of the petitioners/accused, the concerned police are hereby directed to release the accused on bail on execution of bail bond for Rs. 50,000/- each with two sureties for like sum.
2. The petitioners/accused shall mark their attendance before the investigating officer on every alternate Sunday commencing from 04.12.2022 between 10.00 am., to 5.00 pm., till charge sheet is filed.
3. The petitioners/ accused shall appear before Investigating Officer whenever they are called for investigation and shall co-operate in the investigation.
4. The petitioners/accused shall not tamper with the prosecution evidence as well as witnesses.

In case of any of these conditions are violated the prosecution is at liberty to seek for cancellation of bail.

2nd Addl. District & Sessions Judge,
Uttara Kannada, Karwar.