

**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 1st day of October 2021

Crl.Misc.No.26042/2021

&

Crl.Misc.No.26063/2021

Petitioner

**in
Crl.Misc.26042/2021**

Sathyaraj,
Aged about 21 years,
Son of Ramesh,
Residing at No.14/16, 2nd Cross,
Near Plagueamma Temple,
Shakthi Nagar, Udayanagar,
Doorvani Nagar Post,
Bangalore-560 016.

(By pleader : Sri. G.R. Anil Ghosh)

Petitioner

**in
Crl.Misc.26063/2021:**

Nadeem,
S/o Saleem Pasha,
Aged about 18 years,
R/at No.203,
Nethravathi Street,
1st Cross, Udayanagar,
Doorvaninagar,
Bengaluru North,
Bengaluru-560 016.

(By pleader : Sri. Kumar R.S)

V/s

**Common
Respondent:** State by;
Mahadevapura Police Station
Bengaluru.

(By Public Prosecutor)

COMMON ORDERS

The Petitioner/Accused No.3 has approached this Court under Section 439 of Cr.P.C., seeking regular bail in Crime No.230/2021 of Mahadevapura Police Station for the offences punishable under Section 323, 324, 325, 427, 448, 307 r/w Section 34 of Indian Penal Code (I.P.C.) & the Petitioner/Accused No.2 has approached this Court under Section 438 of Cr.P.C., for granting anticipatory bail in Cr.No.230/2021.

2. The case of the Prosecution is that, on 11.9.2021 at about 10.00 p.m., the people in the locality were taking their Ganesha for immersion near Nayanasa Bakery. By that time the Accused persons were standing near the house of the Complainant and were shaking the gate of the Complainant's house. When the Complainant questioned about the same, the Accused persons went inside the house and have assaulted the Complainant on his head with knife and have caused bleeding injuries. The Accused No.1 and 2 have fisted on the face of the

Complainant and he lost two lower teeth from the said blow. Thereafter, the Complainant was shifted to K.R.Puram Government Hospital for treatment. Hence, the complaint.

3. The Petitioners in their petition have specifically contended that, they are innocent of the charges leveled against them, they have not committed any alleged offences and they have been falsely implicated in the case. There is no prima-facie case made out against the Petitioners. The Petitioners hail from respectable families. They are the only earning member of their respective families. They are 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 seriously opposed the bail application by filing objections in Crl.Misc.No.26042/2021 and the same objection taken into account in Crl.Misc.No.26063/2021 on the ground that, the said petitions are not maintainable either in law or on facts. The Petitioners have not made out any grounds to grant bail. There is a prima-facie case against the accused regarding the alleged offences. If the Accused are released on bail, there is also likelihood of tampering the prosecution witnesses and

repetition of similar offences. The offences alleged against the Petitioners are grievous in nature. If they were released on bail, they may not be available for investigation and trial and that may hamper the investigation and as well as trial of the case and the case may turn into L.P.T. 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/Accused No.2 & 3 have made out sufficient grounds for granting bail under Sections 438 & 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/Accused No.3

is in judicial custody since from 14.9.2021. It is claimed by the Petitioners that, no serious injuries found on any of the vital part, but, there is only one injury caused to the injured person which is not at all sufficient to take away the life of a human, to attracts provision of Section 307 of I.P.C. Therefore, the ingredients of Section 307 of I.P.C., does not attract. The learned PP and Counsel for the Petitioners submitted that the victim/injured has already discharged from the hospital. Considering the fact that the Petitioner/Accused No.3 is in judicial custody since from the date of his arrest and the apprehension of the Petitioner/Accused No.2 regarding his arrest by the Respondent Police and as it is reported that no criminal antecedents were traced against these Petitioners, I am of the opinion that since no proven incidents were established against these Petitioners, the Petitions 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 Petitioners in the said petitions have made out grounds for granting bail as well as anticipatory 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 as well as anticipatory 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 in Crl.Misc.No.26042/2021 and the petition filed U/S 438 of Cr.P.C., by the Petitioner/Accused No.2 in Crl.Misc.No.26063/2021 are allowed respectively.

The Petitioner/Accused No.2 in Crl.Misc.No.26063/2021 in the event of his arrest, and the Petitioner/Accused No.3 in Crl.Misc.No.26042/2021 shall be enlarged on bail in Crime No.230/2021 of Respondent Police Station, on execution of personal bonds for a sum of Rs.50,000/- (Rupees Fifty Thousand) each along with a surety for the likesum, subject to following conditions:

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

- 3) They shall not commit similar offences in future.
- 4) The Petitioners/Accused No.2 & 3 shall appear before the Court on all dates of hearing.
- 5) The Petitioners/Accused No.2 shall surrender before I.O within 10 days from today and mark appearance on every Friday between 10 to 11 AM till further orders.

Keep copy of common Order in Crl.Misc.No.26063/2021 and original of the same in Crl.Misc.No.26042/2021.

(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 **1st** day of **October 2021**).

[K.M. Rajashekhar],
XXVIII. Addl. City Civil Judge,
Mayo hall, Bangalore.

**Order pronounced in the open Court
(vide separate order)**

ORDER

The petition filed U/S 439 of Cr.P.C., by the Petitioner/Accused No.3 in Crl.Misc.No.26042/2021 and the petition filed U/S 438 of Cr.P.C., by the Petitioner/Accused No.2 in Crl.Misc.No.26063/2021 are allowed respectively.

The Petitioner/Accused No.2 in Crl.Misc.No.26063/2021 in the event of his arrest, and the Petitioner/Accused No.3 in Crl.Misc.No.26042/2021 shall be enlarged on bail in Crime No.230/2021 of Respondent Police Station, on execution of personal bonds for a sum of Rs.50,000/- (Rupees Fifty Thousand) each along with a surety for the likesum, subject to following conditions:

- 1) The Petitioners/Accused shall not tamper with the prosecution evidence or witnesses in any manner
- 2) The Petitioners/Accused shall co-operate with the investigation.
- 3) They shall not commit similar offences in future.

- 4) The Petitioners/Accused No.2 & 3 shall appear before the Court on all dates of hearing.
- 5) The Petitioners/Accused No.2 shall surrender before I.O within 10 days from today and mark appearance on every Friday between 10 to 11 AM till further orders.

Keep copy of common Order in Crl.Misc.No.26063/2021 and original of the same in Crl.Misc.No.26042/2021.

[K.M. Rajashekhar],
XXVIII. Addl. City Civil Judge,
Mayo hall, Bangalore.