

**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 13th day of October 2021

Crl.Misc.No.26080/2021

Petitioners: 1. Smt. Nobira Banu,
W/o Abdul Rasheed,
Aged about 45 years,

2. Ghouse Ahmed,
S/o Late Basha,
Aged about 50 years,

3. Saifulla Shaik,
S/o S. Abdul Rasheed,
Aged about 28 years,

All are residing at No.19,
Roshan Nagar,
Devasandra,
K.R.Pura, Bengaluru.

Permanent Residents of

No.4/29/A-22,
Indiranagar Street,
Madanapalli Town,
Chittor District,
Andhra Pradesh.

(By pleader : V.V. Associates)

V/s

Respondent: The State of Karnataka,
Mahadevapura Police Station,
Bengaluru.

(By Public Prosecutor)

ORDERS

The Petitioners/Accused No.2 to 4 have approached this Court under Section 438 of Cr.P.C., for grant of anticipatory bail in the event of their arrest in Crime No.238/2021 of Mahadevapura Police Station, for the offences punishable under Section 420, 504, 506 r/w Section 34 of Indian Penal Code (I.P.C.).

2. The allegations are that, the Complainant was working at Bagmane Tech Park, Doddanekkundi, Mahadevapura, one year back she came in contact with the Accused No.1 and fell in love with him. The Accused No.1 promised to marry with her. Later from August, the Accused No.1 refused to marry her and informed that her family members have selected another girl and he cannot go against his family. When the Complainant asked the same with the Accused No.1's mother, she abused and threatened the Complainant that she will going to commit suicide.

Thereafter, the Accused No.1 went to his native place and resided there only. When the Complainant went to the native place of Accused and tried to lodge complaint there, the Petitioners have picked up quarrel with her and tried to assault her. Hence, the complaint.

3. The Petitioners have contended that, they are innocent of the charges leveled against them and they have not committed any offences much less the alleged one. The Petitioners apprehending the serious threat of arrest and illegal detention by the Respondent Police. They neither directly nor indirectly involved in the instant case. The Petitioners have been falsely implicated in the present case. There is a delay of one year in lodging complaint. The Petitioners hail from a respectable family. The Petitioners/Accused No.2 to 4 and their family members will be put to hardship in case of their arrest and detention by them. The Petitioners/Accused are ready to abide by the conditions imposed by the Court. Hence, sought for bail.

4. The learned Public Prosecutor has filed objection and seriously opposed the bail application on the ground

that, the petition is not maintainable either in law or on facts. Absolutely no grounds were made out for granting bail. There are sufficient materials available on record to hold prima-facie case against the accused person in respect of the alleged offences. The investigation of this case is still under progress and if the accused person was enlarged on bail, there are every possibility of absconding of accused, repetition of similar offences, tampering the prosecution witnesses and they may not be available for the trial, that may be hamper the investigation and trial of this case. Hence, sought for dismissal of the bail applications.

5. Heard the 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 Petitioners have made out sufficient grounds for granting anticipatory bail U/S 438 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, according to Complainant there is an affair between the Complainant and the Accused No.1 and the Accused No.1 has promised the Complainant to marry with her. Later he refused to marry stating that his family selected some other girl and he cannot go against their wish. The Accused No.1 of this case is enlarged on bail by the Learned Magistrate in Cr.No.238/2021 as per order dtd: 24.9.2021. The Learned Prosecutor has stated that the investigation of the case is still at primary stage and the Petitioners are required for the purpose of investigation. The alleged offences are triable by the Magistrate Court. The complaint filed by the Complainant is after lapse of one years, the reason for delay in filing the complaint is not properly explained. The Petitioners/Accused apprehends their arrest by the

Respondent Police, Petitioners/Accused persons and their family members will be put to hardship in case of their arrest and detention by them. Added to that, the Petitioner No.1 is a lady aged 45 years. Under the circumstances, I am of the opinion that, Petitioners/Accused No.2 to 4 may be enlarged on bail on imposing certain appropriate 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 considering the fact that, there is an affair

between the Complainant and the Petitioner 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 have made out grounds for granting 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 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 438 of Cr.P.C., by the Petitioners/Accused No.2 to 4 is allowed.

In the event of their arrest, the Petitioners/Accused No.2 to 4 shall be enlarged on bail in Crime No.238/2021 of Respondent Police Station, on

execution of personal bond for a sum of Rs.50,000/- (Fifty Thousand) each along with a surety for the likesum, subject to following conditions:

- 1) The Petitioners/Accused No.2 to 4 shall not tamper with the prosecution evidence or witnesses in any manner and shall co-operate with the investigation.
- 2) They shall not commit similar offences in future.
- 3) The Petitioners/Accused shall surrender before IO within 10 days and mark attendance before I.o on every Friday between 10 to 11 AM till filing charge sheet.

(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 **13th** day of **October 2021**).

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

Order pronounced in the open Court
(vide separate order)

O R D E R

The petition filed U/S 438 of Cr.P.C., by the Petitioners/Accused No.2 to 4 is allowed.

In the event of their arrest, the Petitioners/Accused No.2 to 4 shall be enlarged on bail in Crime No.238/2021 of Respondent Police Station, on execution of personal bond for a sum of Rs.50,000/- (Fifty Thousand) each along with a surety for the likesum, subject to following conditions:

- 1) The Petitioners/Accused No.2 to 4 shall not tamper with the prosecution evidence or witnesses in any manner and shall co-operate with the investigation.
- 2) They shall not commit similar offences in future.

3) The Petitioners/Accused shall surrender before IO within 10 days and mark attendance before I.o on every Friday between 10 to 11 AM till filing charge sheet.

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