

**IN THE COURT OF THE LXXII ADDL. CITY CIVIL
&SESSIONS JUDGE AT MAYO HALL
BENGALURU, (CCH-73)**

Present:

**PRESENT: Sri.Abdul-Rahiman. A. Nandgadi,
B.Com, LL.B., (Spl.,)
LXXII Addl. City Civil & Sessions Judge,
Bengaluru.**

Dated this the 28th day of October, 2020.

CRIMINAL MISC.PETITION NO. 25743/2020

Petitioner:- SYED YASEEN
S/O. Syed Aslam,
Aged about 24 years,
R/at. No.114,
Rashid Nagara,
Ibrahim Sab Street,
A.C.Post,
Bengaluru-560045.
(Cited as Accused No.10,
in K.G.HALLI P.S. Crime No.
232/2020)
(Now in JC)

**[By Sri. B. V. Manjunatha
Gowda and Associates]
V/s.**

**Respondent :- State by K.G.HALLI Police Station, Bengaluru.
[By Learned Spl. Public Prosecutor]**

ORDERS ON BAIL PETITION

The present petition is filed by the Petitioner U/Sec.439 of Cr.P.C, praying to enlarge him on regular bail in K.G.Halli P.S. Crime No.232/2020, registered for the offences punishable U/Secs. 143, 147, 148, 353, 307, 435 r/w. Sec.149 of IPC.,

1). The brief averments pleaded by the Petitioner in the Petition are:

1. As per the first information, reported by Mr. Chandsab Pinjar, P.C.12614 of K.G.Halli P.S, that, on 11.08.2020, after finishing his duties and went to his residence. At 9.30 pm, he received a whatsapp message from Inspector of his Police Station Sri. Ajay Sarthi that, some miscreants have raised galata in the limits of his police station and requested to report the duties. Accordingly, he took his two wheeler vehicle and proceeded towards his police station.

About 10.30 pm, in the way to his police station, near K.G.Halli Traffic Police Station, about 100 to 150 miscreants armed with stones, clubs, lethal arms, came near him, looking to his police dress four of them who were unknown to him started assaulting and with the help of stones and clubs damaged his vehicle and by pouring petrol, set it on fire. Any how, he got himself rescued. About 11.00 pm, when he went near the place where his vehicle was set on fire, his vehicle was completely damaged.

2. On the basis of the said report, a crime was registered, initially against the unknown persons at K.G.Halli P.S. Crime No.232/2020.

3. Initially, 9 persons were arrested as Accused Nos. 1 to 9 and the Petitioner was arrested as Accused No.10 on 19.09.2020. And later he was produced before the jurisdictional Magistrate and he was remanded to Judicial Custody.

4. Hence, he is constrained to file bail petition on the following grounds:

a). *The petitioner is innocent of the offences levelled against him; he has been falsely implicated in the crime with some ulterior motive and mala fide intentions;*

b). *His name do not find place either in the FIR or the Complaint but subsequently, his name was shown as Accused No.10, only in the remand application. Initially, the Petitioner was arrested in K.G.Halli P.S. Crime No.235/2020, on enlarging him on bail, again he was arrested in the present crime, without any basis;*

c). *The alleged date of incident is on the night of 11.08.2020, but the Complainant Police Officer, lodges the Complaint in his own police station on 13.08.2020, at 11.15 hrs, after an inordinate delay of more than two days;*

d). *His name is unnecessary shown as Accused No.10, in the present crime, without any materials against him. This fact leads to show the high-handedness of the police officials, that they can do and undo things, as and when, it pleases them;*

e). The name of the present petitioner is not forthcoming either in the Complaint lodged on 13.08.2020 or in the FIR, abruptly his name is appearing in the remand application on 19.09.2020, as Accused No.10;

f). As per the police records, more specifically, the remand application, the petitioner was illegally detained in another crime;

g). The entire investigation is tainted, as the Complainant and the investigation is done by the same police, which aspect has not been approved in law;

h). The petitioner was not at all the member of the mob/public, gathered on 11.08.2020;

i). No ingredients of Sec.307 of IPC are made out, either in the Complaint or against the present Petitioner;

j). Petitioner hails from a respectable family, and has no any previous bad antecedents, he has got deep roots in the society, remote chances of his abscondance. He is a sole earning member in

the family, except him, there is nobody to take care of his family, in his absence;

k). *The alleged offences are neither punishable with death nor punishable with imprisonment for life;*

l). *The Petitioner undertakes to abide by all the terms and conditions, imposed for his release on bail; offer surety; will not abscond or flee from justice.*

Hence, prayed to grant the bail.

II). *Notice of the petition was taken by the Spl. P.P and the Spl.P.P has filed his objections, contending that,*

1. *That on 11.08.2020 one Mr.Naveen said to be the relative of the sitting MLA of Pulakeshi Nagar Constituent Assembly had allegedly posted a derogatory facebook post against Prophet Mohammed Pygamber. The persons belonging to Muslim Community, having seen the said derogatory message, started circulating the said screen shots among themselves. And few persons*

amongst the said groups started requesting the members of their community, association and political party to protest against the said act of Mr. Naveen. This led to one Mr. Firdoz Pasha, to lodge a Complaint with D.J.Halli Police Station against the said Naveen, which was registered as D.J.Halli P.S. Crime No.194/2020 for the offence punishable U/Sec.153A, 295A of the I.P.C and Sec.67 of the Information Technology Act.

2. *By that time, more than 300 people gathered at the D.J.Halli Police Station, with an intention to destroy the police station and the police vehicles and also to cause damage to the vehicles belonging to the police personnel, several Government and Private vehicles. Looking to the situation the Commissioner of Police, issued prohibitory orders U/Sec.144 of the Code.*

3. *The Petitioner/Accused herein, in conspiracy with the other Accused persons started spreading rumours that Mr. Naveen was taken into custody by the K.G.Halli P.S and a crowd was gathered infront of K.G.Halli Police Station,*

demanding to confront the said Naveen. The Accused persons formed themselves an unlawful assembly, armed with knives, stones, bricks, iron rods and other lethal weapons, arms and prohibited weapons, initially gathered in front of D.J.Halli Police Station, thereafter they blocked the road on either side of the Police Station, restraining the egress and outgress to the vicinity; pelted stones at D.J.Halli Police Station, resulting in complete damage to the exteriors of D.J.Halli Police Station; set on fire several vehicles belonging to the police personnel and the vehicles belonging to the Government and Public, which were parked in the basement floor of D.J.Halli Police Station and within the compound wall of D.J.Halli Police Station. Several Government and other private vehicles were also set on fire.

4. *The Accused persons were also shouting with the slogans to kill police personnel, they have also assaulted several police personnels in uniform, thereby causing grievous and bleeding injuries to them. The Accused persons who were responsible for the destruction of D.J.Halli Police Station*

instigated several other Accused persons, including the Petitioner herein, to attack K.G.Halli Police Station, in the same manner as attacked on D.J.Halli Police Station. In furtherance of the said conspiracy the Petitioner along with other Accused persons came to the K.G.Halli Police Station, at about 11.00 pm, armed with knives, stones, bricks, iron rods and other lethal and prohibited weapons, shouting slogans against police personnels. When the informant was on his way to the Police Station to report to his duties, while in his police dress some persons assaulted him and some others have caused damage to his vehicle and set it on fire by pouring petrol. The Petitioner and others were the part of the unalwfull assembly who have caused assault and damaged the vehicle of the informant. The assault made on the informant, was with an intention to take away his life. The Petitioner and the other Accused persons have also caused damages to the premises of K.G.Halli Police Station and set on fire to the vehicles belonging to the police

personnel, Government and other Private vehicles in and around K.G.Halli P.S.

5. *Police Stations were attacked, police personnels were on attack with the petrol bombs. Inspite of repeated warnings, the Accused persons did not stop the violence activities, which made the police personnels, initially to use tear gas, to resort laati charge. On several warnings, firing in the air was done, inorder to see that the Accused persons should disburse from the place.*

6. *On the basis of the first information of the police constable Mr. Chandsab Pinjara, a crime was registered with K.G.Halli P.S. as Crime No.232/2020 against unknown Accused persons, for the offences punishable U/Sec.143, 147, 148, 353, 332, 307 r/w Sec.149 of I.P.C and Section 2(a)(b) of Karnataka Prevention of Destruction and loss of Property Act, 1981. On investigation, role of each of the Accused persons started cropping up, which insisted the police to arrest the Accused persons and accordingly, the present Petitioner, who is Accused No.10 in*

K.G.Halli P.S. crime No.232/2020, was arrested on 19.09.2020.

7. Since, police personnels were assaulted by the Accused persons with the lethal weapons, with an intention to take away their lives, the Respondent police was constrained to add Sec.307 of IPC, during the course of investigation. The very fact that, police personnels were assaulted with an intention to take away their lives would indicate the terror act, attracting the offence punishable U/Sec.307 of IPC, which is punishable with imprisonment for life. As such the Petitioner herein is not entitle for grant of bail. The Petitioner was part of larger conspiracy, who was armed with knives, stones, bricks, iron rods, other lethal and prohibited weapons. The role of the Petitioner has been identified by Mr.Narayan. L H.C. The investigation is still under process. The Petitioner along with other Accused persons is responsible to have destroyed, damaged and set on fire, in all 12 police and private vehicles, 9 police personnels were injured, severally. The case on hand is one of the

most ghastly incident, pointing towards heinous offence and offence against the society. The investigating agency is swiftly progressing with each stage of investigation and the major part of investigation is pending. If at this stage the Petitioner is enlarged on bail, the valuable rights of investigation, available to the Investigating Agency will be frustrated.

Hence, prays to reject the Bail Petition of the Petitioner.

IV). *Heard the Learned Counsel for the Petitioner and the Spl.P.P. Learned Spl.P.P has provided the case diary, for reference.*

The Learned Counsel for the Petitioner has placed his reliance on the below mentioned decisions, reported in a). (2012) 1 SCC 40; b). (1977) 4 SCC 308; c). of the Hon'ble Apex Court in the case of Jeetendra Vs. State of Madhya Pradesh and Another (Crl. Apl. No. 408/2020, date of decision 18.03.2020); d). of the Hon'ble Apex Court in the case of Susheela Agarwal and Others V/s. State

(NCT of Delhi) and Another (SLP(Cr.)) Nos. 7281-7282/2017, date of decision 29.01.2020; e). Order passed by the XXVI Addl. City Civil & Sessions Judge, Bengaluru, in Crl. Misc. Nos. 25565/2020 and 25614/2020, date of decision 19.09.2020.

Percontra, the Learned Counsel for the Petitioner has produced the certified copies of the order sheet, remand application, F.I.R, Complaint in K.G.Halli P.S. Crime No.235/2020.

The Learned Spl.P.P has placed his reliance on the decisions, reported in a). 1998 SCC Online All 1173; b). (2017) 14 SCC 803; c) (2015) 15 SCC 327; d) (2005) 1 SCC 237; e) (2017) 15 SCC 560; f) (2020) 3 SCC 321; g) (2016) 9 SCC 443; h) (2017) 5 SCC 406; i) (2014) 16 SCC 508; j) Crl. Petition No. 2180/2020 – Hon'ble High Court of Karnataka, date of decision 28.04.2020; k) SLP (Crl) Nos. 1992-1995/2020; l) Daily Order of the Hon'ble High Court of Karnataka in W.P.No.9287/2020, along with connected matters; m) Order passed by the LX Addl. City Civil & Sessions Judge, Bengaluru (CCH-61), in Crl. Misc. No. 4867/2020; n) Order passed by the

LXX Addl. City Civil & Sessions Judge, Bengaluru (CCH-71), in Crl. Misc. No. 4556/2020; o) Order passed by the LXX Addl. City Civil & Sessions Judge, Bengaluru (CCH-71), in Crl. Misc. No. 4731/2020; p) Order passed by the LXX Addl. City Civil & Sessions Judge, Bengaluru (CCH-71), in Crl. Misc. No. 4824/2020; q) Order passed by the LXX Addl. City Civil & Sessions Judge, Bengaluru (CCH-71), in Crl. Misc. No. 5027/2020.

V). *Following points arise for my consideration:*

1) Whether the Petitioner/ Accused No.10 in K.G.Halli P.S. Crime NO.232/2020 is entitle for grant of regular bail U/Sec.439 of Cr.P.C, as prayed for?

2) What order?

VI. *My findings on the above points are as under:*

Point No.1: In the Negative;

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

REASONS

VII. POINT NO.1:-

1. *The first contention taken up by the Learned Counsel for the Petitioner is that, though the incident said to have been taken place in the night of 11.08.2020, but the Complaint came to be filed by the Complainant on 13.08.2020 at 11.15 hrs. There is an inordinate delay in filing the Complaint.*

1.1. *Taking the note of the situation, I am rather not convinced, at present, with the submission of the Learned Counsel for the Petitioner, contending that, there is an inordinate delay in filing the Complaint, as the prosecution has come up with a case that, the very police station in which the Complaint came to be lodged, was attacked by the miscreants.*

2. *The second contention taken up by the Learned Counsel for the Petitioner that, the Petitioner has been falsely implicated in the crime with some ulterior motive and mala fide intention. Further, he would contend that, initially the Petitioner was*

falsely implicated in K.G.Halli P.S crime No.235/2020. On obtaining bail in the said crime, subsequently, on 19.09.2020 again the present Petitioner was implicated in the present crime. The Learned Counsel for the Petitioner would place his reliance on the documents produced by him with regard to K.G.Halli P.S. Crime No.235/2020.

2.1. *The learned Spl. P. P has filed the case diary relating to K. G. Halli P. S. Crime No.232/2020. On close reading of the same, prima facie, some materials are placed against the Petitioner, to show his alleged involvement in the crime.*

2.2. *Though initially the name of the Petitioner is not named in the Complaint and FIR, but subsequently, the name of the present petitioner is shown, during the investigation. Non appearance of the name of the Petitioner, prima facie will not lead to an inference that, there is a remote chances of involvement of the Petitioner in the crime, as contended by the Learned Counsel for the Petitioner. But, as per the investigation, initially taken up, the*

prosecution has put up prima facie materials against the Petitioner, which points out towards the trial of the offence.

3. *The third contention taken up by the Learned Counsel for the Petitioner that, though the Petitioner was arrested in K.G.Halli P.S. Crime No. 235/2020, subsequent to his release, again he was arrested in the present crime on 19.09.2020. If, at all, the Petitioner was involved in the present crime, the name of the Petitioner would have been shown in the present crime, even when he was arrested in K.G.Halli P.S. Crime No. 235/2020, but that was not done. Name of the Petitioner came to be introduced in the present crime only after his release on bail in K.G.Halli P.S. Crime No.235/2020. This itself, shows that, the present Petitioner is falsely implicated in the present crime.*

3.1. *The learned Spl. P.P would contend that, on the basis of investigation, the Petitioner was arrested in K.G.Halli P.S. Crime No.235/2020. And subsequently, during the course of investigation*

during the present crime, when his involvement was cropped up, he was then named in the present crime and was arrested as Accused No.10 on 19.09.2020. There is no any lapses, as contended by the Learned Counsel for the Petitioner.

3.2. At the stage, while considering the bail application, this Court cannot probe into the lapses or otherwise on the part of the prosecution, as contended on behalf of the Petitioner.

4. The fourth contention taken up by the Learned Counsel for the Petitioner that, prima facie ingredients of Sec.307 of IPC are not made over by the prosecution, to deny grant of bail to the Petitioner. Further, he would contend that, even the informant has not stated in the Complaint as to where on which part of his body he received the injuries as well as, as to nature of injuries alleged to have been received by him. Even the Learned Counsel for the Petitioner would contend that, as per the remand application, there is no any evidence of the informant taking medical assistance for the

alleged injuries. Under such circumstances, the prosecution has failed to attract Sec. 307 of IPC.

4.1. The learned Spl. P. P would submit that, looking to the way of attack made by the miscreants on the public places, like K.G.Halli and D.J.Halli Police Stations and the nature of attack made on the police personnels, prima facie points out the firm intention of such miscreants, even to take away the lives of the persons, who are meant for and are duty bound to impart security and safety to the society and public at large.

Further, the Learned Spl. P. P would contend that, there are prima facie materials with the investigating agency, against the Petitioner, for having conspired and for having taken part, in the commission of the offence. Further he would contend that, intention to attack, plays a very important role coupled with the manner in which attack is made, which creates a deterrent in the minds of the persons, on whom attack is made, which will suffice to attract Section 307 of IPC.

4.2. As per the decision **of the Hon'ble Apex Court in the case of State through CBI Vs. Dr. Anup Kumar Srivastava, reported in (2017) 15 SCC 560** wherein it is observed that,

“It is not necessary to prove that each conspirator had knowledge of what the other conspirator would do. Direct evidence of conspiracy is rarely available.”

As per the decision **of the Hon'ble Apex Court, in the case of Anjali Kumar Chaudhary Vs. State of Bihar, reported in (2014) 12 SCC 286**, wherein it is held that

“When several persons attacked unarmed persons, with deadly weapons, it is reasonable to presume that, they had knowledge or intention that such attack would result in death, which attracts the provision of Sec.307 of IPC.”

4.3. So, at this stage, when the prosecution contends that, yet major portion of investigation has remained and the same is to be taken up, in the light of the available materials, like CC.T.V footage, electronic evidence including video recording by

media, CDRs, tower dump, etc., Under such circumstances, it will not be safe to conclude that, prima facie ingredients of Sec.307 of IPC are not attracted. Under such situations, only on completion of investigation, one can say whether the ingredients of Sec.307 of IPC is attracted or otherwise.

5. *Fifthly, the Learned Counsel for the Petitioner would contend that, as per the records, the Investigation is completed and the Petitioner is not at all required further for the investigation. Hence he may be released on bail, by imposing any conditions and on security of the surety, for his presence during trial of the case.*

5.1. *On careful perusal of the materials on record and on taking into consideration the stage of investigation, the matter is under investigation. Certain issues have cropped, which needs investigation and probe into the matter, for which the prosecution may need the presence of the petitioner.*

6. It is well settled principle of law that, at the time of deciding the bail petition, the Court should look into the *prima facie* materials available on record and should not go into the merits or demerits of the case, by appreciation of evidence. So also Court should avoid elaborate documentation of merits, while dealing such applications. It will not be at this stage of considering the application for grant of bail, to probe into the evidence and to conclude the sufficiency or insufficiency of the materials available on record in the form of evidence, to establish the guilt of the Accused.

Necessary guidance can be found in the decision **of the Hon'ble Apex Court, in the case of State of Uttar Pradesh through CBI Vs. Amarmani Tripathi, reported in (2005) 8 SCC 21**, wherein, settled principles of law for considering the applications for bail are narrated, which reads as under:

i). Whether there is any *prima facie* or reasonable ground to believe that the Accused has committed the offence;

- ii). *Nature and gravity of the charge/offence ;*
- iii). *Severity of punishment, in the event of conviction;*
- iv). *Danger, of Accused absconding; or fleeing, if released on bail;*
- v). *Character, behaviour, means, position and standing of the Accused;*
- vi). *Likelihood of the offence being repeated by the Accused;*
- vii). *Reasonable apprehension of the witness being tampered with; and*
- viii). *Danger, Ofcourse, of justice being thwarted, by grant of bail.*

7. *On the basis of the materials placed, it can be revealed that, the entire incident said to have occurred on 11.08.2020, appears to be deterrent, horrifying, as the public offices and the public places have been attacked, public vehicles as well as private vehicles have been burnt. Prima facie this shows the gravity of the offence and its impact on the society.*

8. *Considering the well settled principles of law, narrated in Amarmani Tripathi Case, referred to supra and having conscious about the gravity of the offence and its impact on the society, as well as considering the materials in the form of Case Diary, shows that, there exist prima facie materials against the Petitioner, which points out that, at present it will not be safe for grant of bail to the Petitioner.*

9. *Character, behaviour, means, position, standing of the Petitioner, his likelihood of committing repeated offence, reasonable apprehension of he tampering the witness, he absconding or fleeing from justice, follows the first two important ingredients viz., prima facie materials on record; and reasonable ground to link the Petitioner to the crime and the gravity and nature of the offence, with which the Petitioner is to be tried.*

10. *As per the decision **of the Hon'ble Apex Court, in the case of Chandrakeshwar Prasad Vs. State of Bihar and Another, reported in (2016) 9 SCC 443**, wherein it is held that,*

“A balance is to be struck between the right to individual liberty and the interest of the society. Interest of the society is to be considered, while deciding bail petitions.”

11. *Considering the offences alleged against the Petitioner, taking the stock of the situation, the impact of the incident, on the society. In the present case, balance tilt towards the interest of the society as against the rights of the Petitioner, dealing with his liberty.*

12. *For the above reasons and on considering the stage of investigation, I am of the firm opinion that, the Petitioner cannot be enlarged on bail, at this stage.*

*Hence, I am constrained to answer **POINT NO.1 IN THE NEGATIVE.***

13. POINT NO.2:

On having answered Point No.1 in the Negative, I proceed to pass the following:

ORDER

**Bail Petition filed by the
Petitioner/Accused No.10 in
K.G.HALLI P.S. Crime NO. 232/2020
is hereby rejected.**

*(Dictated to the Judgment-writer directly on the computer,
corrected and pronounced in open court this the **28th day of
October, 2020.**)*

[Abdul-Rahiman. A.Nandgadi]
LXXII Addl.City Civil & Sessions
Judge, (CCH-73), Bengaluru.