

Karnataka High Court

Kallappa @ Muduku S/O Ashok ... vs The State Of Karnataka on 9 May, 2023

Bench: Ramachandra D. Huddar

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CRL.P No. 200476 of 2023

IN THE HIGH COURT OF KARNATAKA,  
KALABURAGI BENCH

DATED THIS THE 9TH DAY OF MAY, 2023

BEFORE  
THE HON'BLE MR JUSTICE RAMACHANDRA D. HUDDAR

CRIMINAL PETITION NO. 200476 OF 2023(438)

BETWEEN:

SRI KALLAPPA @ MUDUKU S/O ASHOK BHAJANTRI  
AGED ABOUT 25 YEARS, OCC : DRIVER,  
R/O INDI ROAD, BAMBALA AGASI,  
TQ. AND DIST. VIJAYAPUR 586 101.

...PETITIONER

(BY SRI ARUNKUMAR AMARGUNDAPPA AND  
SRI RAMESH R. PADAGANUR, ADVOCATES)

Digitally  
signed by  
SACHIN

AND:

Location:  
High Court  
of  
Karnataka

THE STATE OF KARNATAKA,  
THROUGH SHO, GANDHI CHOWK PS,  
VIJAYAPUR REP BY ITS ADDL SPP,  
HIGH COURT BENCH, KALABURAGI 585102.

...RESPONDENT

(BY SRI GURURAJ V.HASILKAR, HCGP)

THIS CRL.P IS FILED U/S. 438 OF CR.P.C PRAYING THAT  
GRANT ANTICIPATORY BAIL IN THE EVENT OF HIS ARREST IN  
IN CRIME NO.228/2020 OF GANDHI CHOWK POLICE STATION,  
DIST. VIJAYAPURA, FOR THE OFFENCES PUNISHABLE

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CRL.P No. 200476 of 2023

U/SEC.379 OF IPC PENDING BEFORE I ADDL. CIVIL JUDGE AND  
JMFC-I AT VIJAYAPURA.

THIS PETITION, COMING ON FOR ORDERS, THIS DAY,  
THE COURT MADE THE FOLLOWING:

ORDER

1. The petitioner/accused has filed this petition under Section 438 of Code of Criminal Procedure to grant him anticipatory bail in Crime No.228/2020 registered with the Gandhi Chowk Police Station, Vijayapura for the offence punishable under Section 379 of Indian Penal Code, which is now pending in C.C. No.6946/2021 on the file of I Additional Civil Judge and Judicial Magistrate First Class-I, Vijayapura.

2. It is stated by the accused / petitioner that, he is innocent and has not committed any offences as alleged in the complaint. There is inordinate delay of 11 months in filing the complaint by the informant. The motorcycle of the complainant went missing on 16.01.2020 and the complaint was lodged on 16.12.2020. The petitioner was in judicial custody in Crime CRL.P No. 200476 of 2023 No.301/2020. The respondent-police have secured his presence under body warrant and after completion of the investigation he was sent back to judicial custody; thereafter he got enlarged on bail in original case. After completion of investigating the respondent police have filed charge-sheet. Thereafter learned Magistrate took cognizance of the offence and issued notice as the offence is compoundable offence. He is not a habitual offender. With bald allegations, the complaint has been filed. The alleged offence is triable by Magistrate and is not exclusively punishable with death or imprisonment for life. Now there is hectic attempt by the respondent-police to arrest the petitioner. The petitioner is ready to abide by any conditions to be imposed by this Court. Therefore, amongst the other grounds, it is prayed to grant the anticipatory bail.

3. Learned HCGP orally objects to this petition and submits that, since accused-petitioner is issued with non-bailable warrant, as a matter of right he is not entitled for CRL.P No. 200476 of 2023 bail. It is submitted that, once NBW is issued, the petitioner cannot seek anticipatory bail. Hence, he prays to dismiss the petition.

4. Heard arguments by the learned counsel for the parties and perused the records.

5. It is in fact admitted by both the sides that now the accused-petitioner has been charge-sheeted by the respondent-police for the offence under Section 379 of IPC. Learned counsel for the petitioner has produced certified copy of the order-sheet being maintained in CC No.6946/2021. It is noticed that, in the said order-sheet accused No.1 was produced under body warrant in the said case. He was produced before the said jurisdiction from time to time. The order-sheet dated 08.06.2022 shows that, the accused was not produced before the Court under body warrant. The body warrant stood cancelled and NBW was issued against the accused person. Thereafter, as the offence against

accused is CRL.P No. 200476 of 2023 compoundable in nature, listed the matter before the Lok Adalat for pre-conciliation. Since the accused did not appear before the Court on several occasions non-bailable warrant came to be issued against the accused. Now the petitioner is seeking anticipatory bail on the aforesaid grounds.

6. The law with regard to grant of anticipatory bail is very much settled. The order-sheet maintained in the aforesaid criminal case shows that, the accused is absconding and the Court has taken steps to secure his presence by issuing NBW. The learned counsel for the petitioner submits that, it is mistake of the Court as learned jurisdictional Magistrate knew that accused was produced under body warrant, but the said body warrant came to be cancelled.

7. When non-bailable warrant came to be issued against the accused person, whether he is entitled for bail or not is a question.

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8. The counsel for the petitioner has produced certified copy of the order in Crl.Misc. No.421/2023 dated 28.03.2023 passed by the II Additional District and Sessions Judge, Vijayapura, wherein the present petitioner had sought anticipatory bail and the said petition came to be dismissed by the said Court. During the course of the orders, the learned Sessions Judge relied upon the judgment of Hon'ble Supreme Court in Crl.P. No.2194/2018 in the case of Lavesh Vs. State (NCT of Delhi), reported in (2012) 8 SCC 730. The principle laid down in the said decision is as under:

"Normally, when the accused is "absconding" and declared as a "proclaimed offender", there is no question of granting anticipatory bail. We reiterate that when a person against whom a warrant had been issued and is absconding or concealing himself in order to avoid execution of warrant ....., he is not entitled the relief of anticipatory bail."

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9. Even this Court in Crl.P. No.2142/2018 in the case of Balaji S.N. Vs. State of Karnataka has held that, when warrant is pending against the accused person he is not entitled for anticipatory bail. In view of the law laid down by the Hon'ble Supreme Court with regard non- entitlement of the anticipatory bail to the accused who is absconding and also when the warrant is pending against the accused, anticipatory bail cannot be granted. The said principle is very much applicable to the facts on hand However, the offence alleged against the petitioner is under Section 379 of IPC. It is triable by the Magistrate. If the petitioner is given liberty to appear before the I Additional Civil Judge, JMFC-I, Vijayapura by surrendering himself before the Court and file bail application and as well as application to recall the NBW issued against him and if the said Court considers the same on the day itself keeping in mind the judgment of the Hon'ble Supreme Court in Arnesh Kumar vs. State of Bihar [(2014) 8 SCC 273], it would meet the ends of justice. With this view, the following:

CRL.P No. 200476 of 2023 ORDER The petition filed by the accused under Section 438 of Cr.P.C., is disposed of with liberty to the petitioner to surrender before I

Additional Civil Judge JMFC-I, Vijayapura and file bail application along with applicable to recall the NBW. The said Court is requested to dispose of the bail application and application to recall NBW on the same day itself.

Prosecution also is directed to cooperate Sd/-

JUDGE SN/SBS