

Karnataka High Court
Ramesh And Ors vs The State on 9 May, 2023
Bench: Ramachandra D. Huddar

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CRL.P No. 200397 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. 200397 OF 2023

BETWEEN:

1. RAMESH S/O SURYAKANTH CHIKKA AGASI,
AGED ABOUT 23 YEARS,
OCCUPATION DIVER,
2. SURYAKANTH S/O JAGANNATH JAMADAR
AGED 18 YEARS, 5 MONTH,
OCCUPATION COOLIE WORK,
3. SRISHAIL S/O GUNDAPPA JADAMADAR,
AGED ABOUT 18 YEARS 11 MONTHS
OCCUPATION LABOUR,

ALL R/O RATKAL VILLAGE,
TQ KALAGI, DIST KALABURAGI

Digitally
signed by
SACHIN

Location:
High Court
of
Karnataka

...PETITIONERS

(BY SRI SYED MASTAN AND SRI PEERAPPA SULTANPUR,
ADVOCATES)

AND:

1. THE STATE
THROUGH FARAHATABAD POLICE STATION,
TQ AND DIST : KALABURAGI.
REPRESENTED BY ADDL SPP HIGH COURT OF
KARNATAKA AT KALABURAGI 585107.

...RESPONDENT

(BY SRI GURURAJ V.HASILKAR, HCGP)

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This CRL.P. FILED U/S. 439 OF CR.P.C BY PRAYING THAT THIS HONOURABLE COURT MAY BE PLEASED TO allow the petition and RELEASE THE PETITIONER ON BAIL IN CRIME No.24/2023 OF FARAHATABAD POLICE STATION, DIST. KALABURAGI, FOR THE OFFENCES PUNISHABLE U/SEC. 395 OF IPC PENDING BEFORE THE II ADDL. CJ (JD) AND JMFC AT KALABURAGI IN THE INTEREST OF JUSTICE.

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

ORDER

The petitioners/accused have filed the petition under Section 439 of Code of Criminal Procedure to enlarge them on regular bail in Crime No.24/2023 of Ferhatabad Police Station, Kalaburagi registered for the offence punishable under Section 395 of Indian Penal Code.

2. Brief facts of the prosecution case as per FIR are as under;

One K.Gadilingappa S/o K.Eranna Telguru lodged a complaint before the respondent-Police alleging that, on 12.03.2023 at about 5.00 p.m., in order to meet Yallamma of Sonna Village, he proceeded on a motorcycle bearing Reg.No.KA-32/EZ-0062. After meeting the said Yallamma, he was returning towards Kalaburagi. When he was proceeding on NH-50, at about 8.30 p.m. near the bridge of Siranoor village, CRL.P No. 200397 of 2023 five persons came on two motorcycles, intercepted him. They removed his helmet and with the said helmet, they assaulted on his head for two times. So also amongst them, one person snatched his bag containing `1,000/- and a mobile and another snatched his motorcycle and thereafter all of them went away towards Kalaburagi. Thereafter he went to the police station and filed a complaint registered in Crime No.24/2023 for the offence punishable under Section 395 of Indian Penal Code by the Ferhatabad Police Station. In this crime, now the petitioners are seeking bail.

3. The learned counsel for petitioners submits that the petitioners are innocent and they have not committed any crime. They have been falsely implicated in this case. Since, 14.03.2023, the petitioners are in judicial custody. The punishment prescribed for the said offence is not punishable either with death or imprisonment for life. They are ready to abide by any conditions to be imposed by this Court. They are the permanent resident of Ratkal Village, Kalagi Taluk, Kalaburagi District and having immovable properties within the jurisdiction of this Court. Hence, prayed to release them on bail.

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4. Learned High Court Government Pleader resisted the bail petition by filing a statement of objection on behalf of respondent/State contending inter alia reiterating the contents of the complaint in his objections. In addition to that, it is submitted that, there are prima facie material is

placed on record by the prosecution to connect the petitioners in the commission of the crime. It is submitted that, during the course of investigation i.e., 13.03.2023, it is alleged that five persons came on two motorcycles and committed the offence of dacoity on the person of the complainant. When interrogated, these petitioners have not given proper reply. Investigation is still pending. Test of identification parade of the accused/petitioners is to be conducted. The petitioners are also involved in similar crimes registered with the different police stations. It is contended that, if the petitioners are granted bail, they may tamper with the prosecution evidence and it will cause hindrance to the investigation. On these grounds, he prayed to reject the bail petition.

5. Heard the learned counsel for the petitioners and the learned High Court Government Pleader for the respondent/State.

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6. Having heard the arguments and on meticulous reading of the records placed by the prosecution, it reveals that, the complainant submitted a complaint before the respondent's police on 12.03.2023 at 11.00 p.m. alleging, that on the aforesaid date he had been to Sonna Village in Jewargi Taluk to meet one Yallamma who was known to him. He went to the said place on his motorcycle bearing Reg.No.KA-32/EZ- 0062. After meeting said Yallamma, he was returning back towards Kalaburagi and while proceeding on National Highway 50, at about 8.30 p.m., when he was near the bridge of Siranoor Village, at that time two motorcycles followed him and he was intercepted by the riders and pillion riders of the motorcycles and asked him to remove the helmet, as such he questioned them as to why he to remove the helmet, but they removed his helmet and with the said helmet itself they assaulted on his head for two times, so also amongst them, one person snatched his bag and another snatched his motorcycle and thereafter all of them went towards Kalaburagi.

7. It is submitted that, the bag which was snatched from him contained cash of ` 1,000/- along with Samsung company mobile having mobile No.538354419. The said CRL.P No. 200397 of 2023 persons were speaking in Kannada language. They were aged about 20 to 25 years. With these allegations, a complaint came to be filed to take action against them.

8. During the course of the investigation, the respondent's police have arrested the petitioners and now they are in judicial custody.

9. It is submitted by the counsel for the petitioners that the petitioners are innocent and have not committed any offence; they have been falsely implicated in the present case. He submits that the investigation is almost completed. He further submits that the marriage of the petitioners sister by name Kum.Mangala is scheduled to be held on 15.05.2023. In support of his submission, he has produced the copy of the marriage invitation card of Kum.Mangala. He further submits that, if the petitioners are enlarged on bail, they undertake to abide by any conditions imposed by this Court. The presence of petitioners in judicial custody is not required.

10. As against this submission, the High Court Government Pleader submits that investigation is yet to be completed and the petitioners have to be identified by CRL.P No. 200397 of 2023 conducting

test of identification parade. He further submits that during the course of investigation statement of the various witnesses have been recorded. Even these petitioners during the course of investigation have given their voluntary statements admitting the commission of offence. Therefore, they are not entitled for grant of regular bail.

11. The offence alleged to have been committed by the accused/petitioners is under Section 395 of IPC. Evidently, it is not punishable with death sentence. The punishment prescribed for the said offence may be either imprisonment for life or rigorous imprisonment up to ten years and also liable to fine. No capital punishment is prescribed to the said offence.

12. The law is that bail is a rule, rejection is an exception. Granting of bail does not amount acquittal and rejection does not amount to conviction.

13. Law with regard to grant of bail is very much settled in the judgment of the Hon'ble Apex Court in the case of Dattaram Singh v. State of Uttar Pradesh reported in (2018) 3 SCC 22.

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"A fundamental postulate of criminal jurisprudence is the presumption of innocence,

meaning thereby that a person is believed to be innocent until found guilty. However, there are instances in our criminal law where a reverse onus has been placed on an accused with regard to some specific offences but that is another matter and does not detract from the fundamental postulate in respect of other offences. Yet another important facet of our criminal jurisprudence is that the grant of bail is the general rule and putting a person in jail or in a prison or in a correction home (whichever expression one may wish to use) is an exception. Unfortunately, some of these basic principles appear to have been lost sight of with the result that more and more persons are being incarcerated and for longer periods. This does not do any good to our criminal jurisprudence or to our society." Yet in another judgment of the Hon'ble Supreme Court in Arnesh Kumar v. State of Bihar reported in (2014) 8 SCC 273, which makes it mandatory that in any case where the offence is punishable with imprisonment for a term which may extend to 7 years, the accused may not be automatically arrested and the Magistrate may not authorize the detention casually and mechanically.

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14. On perusal of the statement of objection filed by the prosecution, they are the objections being filed by the prosecution to every bail petition. It is submitted that most of the investigation has been completed. Petitioners have undertaken to abide by the conditions to be imposed by the Court. Objections raised by the prosecution could be satisfied by imposing strict conditions on them while granting bail. Hence, if the petitioners are granted bail, by imposing conditions it would meet the

ends of justice. Therefore, it is held that they are entitled for bail.

15. It is also urged that, the marriage of the sister of the petitioner No.1 is scheduled on 15.05.2023. It is also submitted that, tomorrow i.e., 10.05.2023 the petitioners have to exercise their franchise in the Vidhana Sabha election. Such rights of exercise cannot be denied. Therefore, the petitioners are held entitled for regular bail with conditions. Resultantly, I pass the following :

ORDER The bail petition filed by the petitioners under Section 439 of Cr.P.C is allowed.

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CRL.P No. 200397 of 2023 Petitioners are directed to be enlarged on bail in Crime No.24/2023 of Ferhatabad Police Station, Kalaburagi pending on the II Addl. Civil Judge and JMFC, Kalaburagi registered for the offence punishable under Section 395 of IPC, subject to following;

CONDITIONS

1. The petitioners each shall execute a personal bond for a sum of ` 1,00,000/- with two sureties for like sum to the satisfaction of the jurisdictional Court;
2. The petitioners shall not threaten or tamper the prosecution witnesses;
3. The petitioners shall mark their attendance before the respondent's police once in a week preferably on Sunday between 8.00 a.m. and 4.00 p.m. and sign a register to be maintained by the Station House officer to that effect;
4. The petitioners shall not involve in similar offence;
5. The petitioners shall appear before the Investigating Officer as and when called upon for the purpose of further investigation and co- operate for investigation;

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CRL.P No. 200397 of 2023 Violation of any of these conditions would entail cancellation of bail.

Sd/-

JUDGE SN