

BEFORE THE II-ADDL. DIST. & SESSIONS JUDGE, AT; RAICHUR**Crl. Misc. No.75/2023**

PRESENT: Sri. Devanand.P.Nayak
B.A., LL.B, (Spl.) LL.M., (B.Law)
II-Addl. Dist. & Sessions Judge, Raichur.

Dated this the 9th day of February, 2023

PETITIONER:-

Mallayya S/o Mallappa Nayak, age: 48 Yrs.,
Occ. Postal Staff, R/o Badarli, Tq.
Sindhanoor, Dist. Raichur.

(By Sri A.P.Adv.,)

// VERSUS //

RESPONDENT:-

The State through SHO, Sindhanur Rural
P.S., Dist. Raichur.

(By through learned Public Prosecutor)

ORDER

1. This petition is filed by the petitioner/accused u/sec. 438 of Cr.P.C. for grant of anticipatory bail on the event of his arrest in Crime No.07/2023, FIR No.34/2023 of Sindhanoor Rural P.S., Dist. Raichur for the offences

punishable u/sec.498-A, 504 and 323 of IPC, in the ends of justice and equity.

2. In the petition, the petitioner/accused has contended that, entire allegation of the complaint is totally false, baseless and hence a false complaint is lodged against the present petitioner/accused just to cause harassment and mental torture to them. No incident has been took place as alleged in the FIR. On the instigation of some enemical persons towards the petitioner, the complaint has been falsely created. The grounds in the complaint averments are not at all any ingredients of the above IPC Sections. The petitioner is working as Post Man, having some level of respect, image, establishment, deeply rooted in the society and also having family members and permanent palce of residence and also having both movable and immoveable properties. The other offences are all bailable except u/sec. 498-A of IPC and these offences are exclusively triable by the Court of Magistrate and these offences are though non bailable and same are not punishable with

death or for life imprisonment. The petitioner/accused is ready to abide by any conditions imposed by the Court. If the application is not allowed, he will be put to great hardship. Hence, sought for allowing the application.

3. A notice has been issued to the State P.P. and in turn, the State PP filed a lengthy objection by repeating the entire complaint averments and also by contending, the offences alleged against the accused are all heinous in nature, non-bailable in nature and till today the petitioner is absconding for appearance before the I.O. and to proceed with the further investigation. If the accused has been granted bail, he may hamper the prosecution case and tamper the prosecution witnesses. The petitioner/accused No.3 is not entitled for any anticipatory bail at this stage. There is a threat to the life of the complainant. The prosecution repeated all the FIR averments in their objection. Hence, sought for dismissal of the bail petition.
4. I have heard arguments on both sides.
5. The only point arise for my determination is as under:

1. Whether the petitioner/accused No.3 is entitled for bail u/sec. 438 of Cr.P.C. as prayed for?

2. What Order?

6. My answer to the above points is as under:

Point No.1: Held in the Affirmative.

Point No.2: As per final order.

For the following:

:: REASONS ::

7.POINT NO.1:-

7. At the outset, I have carefully gone through the entire FIR averments. The brief facts of the prosecution case are that, petitioner/accused is the husband of complainant and their marriage took place on 30.04.2008 at Janekal Village, Tq. Manvi and after the marriage, they led happy marital life for some years and by marriage, complainant gave birth to two children. Thereafter, the accused had addicted to bad habit and started to pick up quarrel with complainant without any reasons and also started to assault her and also started to abuse her in filthy language and thereby

given both mental and physical torture to her. On 31.12.2022, at about 10-00 p.m., when the complainant was in her husband/accused's house, at that time, the mother of the complainant came to her house. At that time, the accused/petitioner came there and picked up quarrel with complainant and asked her why your mother came to his house and assaulted to complainant and also kicked her. Hence, the complainant has lodged the complaint against the accused. On the reference of said complaint, the Police have registered the case and submitted FIR to the jurisdictional Court.

8. Here in this case, except the offence u/sec.498-A IPC, other all the offences are bailable one and exclusively triable by Court of Magistrate. The offence u/section 498-A of IPS is though non-bailable one, but not punishable with death or life imprisonment and they are exclusively triable before the Court of Magistrate. Here, the accused and complainant are husband wife in relation. The witness to the alleged occurrence is only complainant and her

mother. In the grounds of the bail it is contended, complainant is the wife of petitioner, the accused/petitioner after birth of two children addicted to bad habits and started to picking up quarrel with complainant, except that nothing has been committed any offence alleged by the complainant. These grounds are believable one. Because, on careful perusal of complaint averments it goes to show that, there is no any serious allegations against the accused to prove the ingredients of Section 498-A of IPC at this preliminary stage. Moreover, the accused and complainant are husband and wife in relation and witnesses to the alleged incident are only complainant and her mother and hence, the question of hampering the prosecution case and tampering the prosecution witnesses does not arise. It is pertinent to note, prosecution has not denied that, all the offences are triable by Trial Court. Hence, on this ground also, the present petitioner/accused is also entitled to get the bail. It is pertinent to note, the prosecution has not placed any

antecedent incidents against the petitioner or previous conviction if any. The only apprehension of the prosecution is, if the petitioner is released on bail, he may not co-operate with the prosecution case and he may threaten the prosecution witnesses and there is a chances of absconding etc., These are all not at all a grounds to reject the anticipatory bail. Mere imposing some stringent conditions, that is enough for the prosecution to proceed further investigation and I am satisfied with the bail petition averments. It is a fit case to grant anticipatory bail. The accused is not necessary for custodian interrogation by the concerned Police. Therefore, I do not find out any strongest ground to reject the bail petition and to accept the objection raised by the prosecution. Over all, I am satisfied with the bail petition and answer Point No.1 held in the Affirmative.

9.POINT NO.2:-

9. In view of my answer to the above point, I proceed to pass the following:

:: ORDER ::

The bail petition filed by the petitioner/accused u/sec. 438 of Cr.P.C. is hereby allowed on the following grounds

The I.O. is directed to release the petitioner/accused on bail in the event of his arrest by taking bond for a sum of Rs.50,000/- with two sureties for likesum with the following conditions.

The petitioner shall not repeat the similar offences in future.

The petitioner shall not hamper the prosecution case and tamper with the prosecution witnesses under any circumstances.

The petitioner shall not give any threat to the life and limb of the complainant or victim under any circumstances.

The petitioner/accused shall mark his

attendance before the S.H.O. of Sindhanoor Rural police station, on every 1st and 15th of calender of every month in between 10:00 a.m. and 2:00 p.m. for three months or till the filing of charge sheet whichever is earlier.

This order is in force for a period of 60 days.

If the petitioner violates any one of the condition, the prosecution is at liberty to seek modification or cancelled of bail.

Intimate this order to the concerned I.O. forthwith.

(Dictated to the Judgment Writer directly into the computer, typed by him in the computer, corrected and then pronounced in the open court on this the 9th day of February, 2023)

(Devanand.P.Nayak)
II- Addl.Dist., & Sessions Judge,
Raichur.

(The order pronounced in the open Court)

:: ORDER ::

The bail petition filed by the petitioner/accused u/sec. 438 of Cr.P.C. is hereby allowed on the following grounds

The I.O. is directed to release the petitioner/accused on bail in the event of his arrest by taking bond for a sum of Rs.50,000/- with two sureties for likesum with the following conditions.

The petitioner shall not repeat the similar offences in future.

The petitioner shall not hamper the prosecution case and tamper with the prosecution witnesses under any circumstances.

The petitioner shall not give any threat to the life and limb of the complainant or victim under any circumstances.

The petitioner/accused shall mark his attendance before the S.H.O. of Sindhanoor Rural police station, on every 1st and 15th of calender of every month in between 10:00 a.m. and 2:00 p.m. for three months or till the filing of charge sheet whichever is earlier.

This order is in force for a period of 60 days.

If the petitioner violates any one of the condition, the prosecution is at liberty to seek modification or cancelled of bail.

Intimate this order to the concerned I.O. forthwith.

**II- Addl.Dist., & Sessions Judge,
Raichur.**