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**IN THE COURT OF PRINCIPAL DISTRICT & SESSIONS JUDGE
AT HAVERI**

Present: Smt.Yadav Vanamala Anandrao,
B.Com., LL.B.(Spl.)
Prl., District & Sessions Judge,
Haveri.

DATED THIS THE 23rd DAY OF AUGUST 2023.

Crl.Misc. No.582/2023

Petitioner: Asalam S/o Khalandar Gannewale,
Age: 27 years, Occ: Coolie,
R/o Mangalavarpete Savanur, Tq: Savanur,
Dist. Haveri

(A-3)

(By Sri.D.T.Biliyannanavar, Advocate)

-Vs-

Respondent: The State by Savanur police.

(Represented by the learned Public Prosecutor)

ORDER

This is a petition filed under Section 438 of Cr.P.C. seeking anticipatory bail, by the petitioner, who is accused No.3 in Cr.No.125/2023 of respondent Police Station, for the offence punishable under section 379 of IPC.

2. In the bail petition, he has contended that he is innocent and has not committed any offence. That the complainant has falsely and wrongly implicated him with malafide intention. He is having permanent resident at Savanur. The alleged offence is not punishable with death or imprisonment for life and triable by Magistrate. He undertakes to abide by the conditions that may be imposed and offer surety, if pre-arrest bail is granted in his favour. Hence, he prayed to allow this petition.

3. After registering the case, the learned Public Prosecutor has taken notice of the petition and filed objections. In the objection statement, the prosecution has denied all the material allegations of the petition. The materials collected by the Investigating Officer are indicating that the petitioner is involved in committing of the alleged offence. The grounds urged in the petition are far away from the truth. The Investigating Officer has not yet completed the investigation. Hence, his custodial interrogation is necessary for the Investigating Officer. But, he is avoiding the cooperation. Accordingly, it is prayed to dismiss the petition.

4. Heard the arguments on both the sides. Perused the petition, objections thereto and the materials available on record.

5. The following point is formulated for consideration:-

“Whether the petitioner is entitled for grant of anticipatory bail under Section 438 of Cr.P.C.,? If so on what conditions?”

7. My findings on the above point is **in the affirmative**, as per final order for the following:-

REASONS

8. The gist of the complaint, which was filed on 28.7.2023 is that, the complainant residing in Davanagere working as Supervisor in A.V. Associates Transferer company. On 27.07.2023 at about 2.00 a.m., he received phone call from driver who told about loading of 56 bags of goods in vehicle bearing No.KA-52/B-3352, belonging to Business Logistics Solution Pvt. Ltd. Co, Hubli and 14 bags were delivered at Kundagol and Shiggaon and the driver was travelled towards Savanur and came near newly constructing bridge of Gundur on service road, at that time two wheels were stuck to the mud, due to rain at about 1.30 a.m. and he did not see any person at the spot and called the complainant and requested to send some people to move the lorry and the complainant told him to stay near carriage until morning and as per the instructions he stayed on the roadside shop and at about 6.00 am., went towards lorry to take mobile charger and power bank, he saw that some unknown persons were stolen the charger and power bank from the lorry worth Rs.28,757/- and bags worth Rs.1,56,766/-. The said incident was occurred between 3.00 a.m. to 6.00 a.m.. Accordingly the complaint was lodged before the Savanur Police and the case was registered in crime No.125/2023 for the offence under Section 379 of IPC.

9. The police have arrested accused No.1 and 2 and in the confession statement, the said accused implicated this accused. Therefore under apprehension of his arrest he moved this pre-arrest bail stating about his innocence false implication and that he has not committed any

offence. He is having movable and immovable properties with her permanent residence in the given address. He is earning member of the family having liability to take care of them and he is ready to abide by the conditions if imposed and furnish adequate surety etc.

10. The objections revealed and the arguments of learned P.P. discloses that the alleged offence is heinous in nature as it was taken place during 3.00 a.m. to 6.00 a.m., on 27.07.2023 and two accused persons being arrested and disclosed the involvement of this petitioner and investigation is not yet completed and custodial interrogation is necessary to this petitioner. Therefore if anticipatory bail is granted he may tamper the prosecution witnesses and misuse the liberty and flee from justice.

11. With due consideration of arguments put forth by the learned counsel for the petitioner and learned Public Prosecutor, perusal of the certified copy of FIR, complaint, objections and remand application etc., it reveals that accused No.1 and 2, who are arrested have named this petitioner. However whether he had committed any offence needs full-fledged trial. He pleaded innocence and false implication in the case by the complainant. However, he undertakes to abide by the conditions if imposed and offer surety. The alleged offences are not punishable with death or imprisonment for life. There is no any criminal antecedents against the petitioner.

12. It is settled principle that bail is a rule and jail is an exception. The object of bail is to secure the presence of the accused at the time of investigation and also at the time of trial. The petitioner has specifically stated that he is innocent and falsely implicated in the case. That he is ready to abide by the conditions, if imposed, and he will not tamper the prosecution witnesses. That he is not having any criminal antecedents. He is having permanent residence in the given address. Considering the facts and circumstances of the case, if stringent conditions are imposed for the grant of bail, the objections raised by the prosecution that, he may tamper the prosecution witnesses, misuse the liberty and flee from justice etc., can be met with and thereby interest of the prosecution can be safeguarded. Apart from this any violation of conditions, the prosecution is always at liberty to move to the Court seeking cancellation of bail. Therefore, the petitioner is entitled for pre-arrest bail. Accordingly, by answering this point **in the affirmative**, it is proceeded to pass the following:-

ORDER

The bail petition filed by the petitioner u/S.438 of Cr.P.C. is hereby allowed and anticipatory bail is granted.

In the event of arrest of petitioner by Savanur Police in Cr.No.125/2023 of their Station, concerned Investigating Officer is directed to release him forthwith on bail on his executing a personal bond for Rs.50,000/- with a surety for likesum to his satisfaction, subject to the following conditions;

1. He shall not tamper with the prosecution witnesses directly or indirectly,
2. He shall cooperate with the Investigating Officer as and when required by him for the purpose of investigation,
3. He shall not be involved in any criminal activities and
4. He shall mark his attendance before the respondent police once in fortnight commencing from 04.09.2023 between 10.00 A.M. and 5.00 P.M., till filing of the charge sheet.

(Dictated to the Judgment Writer on computer, typed by her, thereby, order corrected, signed and then pronounced by me in open court, on this the **23rd day of August, 2023**)

(YADAV VANAMALA ANANDRAO)
Prl., District and Sessions Judge,
Haveri.

* vsp