

KABC010206512023



Presented on : 03-08-2023
Registered on : 03-08-2023
Decided on : 10-08-2023
Duration : 0 years, 0 months,
7 days

**IN THE COURT OF THE LXIV ADDL.CITY CIVIL &
SESSIONS JUDGE (CCH-65) AT BENGALURU)**

Dated this 10th day of August 2023

-: P R E S E N T :-

Smt. Kalpana M.S.,
B.Sc., LL.M.,PGD-CLCF.,
LXIV ADDL.CITY CIVIL & SESSIONS JUDGE,
CCH-65, BENGALURU CITY.

CrI.Misc.No.7429/2023

PETITIONERS 1. Ganesh Babu,
S/o. Santhanam,
Aged about 38 years,
R/o. No.11, Ground Floor,
10th Main, 8th Cross,
Near Chaitanya School,
Maruthi Nagar,
Malleshpalya,
New Tippasandra,
Bengaluru-560 075.

(Accused No.1)

2. Amrutha Gowda,
W/o. Ganesh Babu,
Aged about 32 years,
R/o. No.11, Ground Floor,
10th Main, 8th Cross,
Near Chaitanya School,
Maruthi Nagar,
Malleshpalya,
New Tippasandra,
Bengaluru-560 075.

(Accused No.2)

(By Sri. M.C.V.Siju, Advocate)

/Vs/

RESPONDENT : State of Karnataka by
Indira Nagar Police Station,
Bengaluru.

(Rep. By Learned Public Prosecutor)

ORDERS ON ANTICIPATORY BAIL APPLICATION

U/S.438 OF CR.P.C.

Petitioners/accused No.1 and 2 have filed this petition U/s.438 of Code Criminal Procedure (hereinafter referred as Cr.P.C.,) seeking anticipatory bail in Cr.No.61/2023 of Indira Nagar police station, Bengaluru for the offences

punishable U/s.423, 120B, 418, 403, 406, 409, 420, 465, 467, 405, 425, 464, 468 R/w.Sec.34 of Indian Penal Code (hereinafter referred as I.P.C.), pending on the file of IV - Addl. Chief Metropolitan Magistrate Court, Bengaluru.

2. Learned Public Prosecutor appearing for the State has filed objections statement along with report of the Investigating Officer, opposing the bail petition.

3. For the purpose of brevity, the facts stated in the petition and objections will be stated at appropriate stage of the orders.

4. Heard arguments. Perused the materials on record.

5. The points that arise for my consideration are;

1. Whether petitioners/accused No.1 and 2 are entitled for grant of anticipatory bail U/s.438 of Code of Criminal Procedure?

2. What Order?

6. For the reasons stated hereinafter, my findings on the above points are as follows;

Point No.1: In the Affirmative

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

REASONS

7. **POINT No.1:-** Along with petition, petitioners have produced certified copies of private complaint in PCR No.19079/2021, F.I.R. in Cr.No.61/2023, xerox copy of Aadhar cards and memo with copy of annual report. Perused the same.

8. The allegations set out in the F.I.R. based on the P.C.R.No.19079/2021 is that, accused persons being the directors of IDE Consulting Services Pvt.Ltd., committed criminal conspiracy to utilize the assets of the Company for their personal gain. Petitioner No.1 has illegally paid Company amount to petitioner No.2. During 2016, there

was financial crisis to the Company and complainant has paid ₹.38,00,000/- to accused No.1 to 4 out of his personal account. They have repaid ₹.29,00,000/- and due to pay ₹.9,00,000/-. In the meanwhile, petitioner No.2/Amrutha Gowda has started Ngage Hospitality LLC Company along with petitioner No.1-Ganesh Babu to cause illegal loss to the complainant. Petitioner No.1 has misappropriated ₹.15,00,000/- and committed criminal breach of trust. All the accused persons have cheated the Company and caused loss to the extent of ₹.8 lakhs to ₹.1 crore. On the basis of the complaint, respondent police have registered F.I.R. and proceeded with the investigation.

9. Learned counsel vehemently argued that, petitioners/accused No.1 ad 2 are innocent of the alleged offences. They have not committed the said offences. They have been falsely implicated in this case. Accused No.2 is a lady and six months pregnant. The only allegations against

accused No.2 is reflected in para No.7 of the PCR, which does not attracts the offences alleged. The complainant is one of the directors of IDE Consulting Services Pvt.Ltd., and is not authorise to file criminal case against co-directors. The matter is civil in nature. The petitioners are ready and willing to abide by the terms and conditions that may be imposed by this court. There is serious apprehension of arrest. The respondent police are making hectic efforts to arrest the petitioners. The learned counsel submits that, the petitioners have made out prima facie case for grant of pre-arrest bail.

10. At the out set, the alleged offences are triable by Magistrate. The said offences are neither punishable with death penalty nor imprisonment for life. The commission of offences by the petitioners is required to be established during trial. The Hon'ble Supreme Court of India in the decision of **State of Rajasthan, Jaipur V/s.**

Balachandh @ Baliay (AIR 1977 SC 2447) and in catena of decisions pleased to laid down the legal doctrine that "Bail is a rule and jail is an exception". This legal doctrine is laid down for safeguarding fundamental right under Article 21 of Constitution of India, granting the right to life and liberty.

11. The offence alleged against the petitioners is punishable under 420 of I.P.C. and other allied offences. It is settled law that, in a case of this nature, custodial interrogation is not warranted. In the decision reported in **AIR 2023 Supreme Court 1570: AIR Online 2023 SC 198** in a case of **Mahdoom Bava V/s. Central Bureadu of Investigation**, the Hon'ble Court pleased to observe that;

Criminal P.C. (2 of 1974) S.438 - Anticipatory bail - Entitlement - Offences U/Ss. 420, 467, 468, 471 R/w. Sec.120B of I.P.C. and S.13(3) R/w. Sec. 13(1)(d) of the Prevention of Corruption Act - CBI did not require the custodial interrogation of accused persons during investigation- CBI

only wanted the presence of accused persons before trial court to face trial- Therefore to oppose the anticipatory bail request may not be proper – When case was primarily based on documentary evidence, arrest of accused persons was not warranted- Eleven cases were registered against prime accused but those cases were not relevant for adjudicating the present matter. Accused persons apprehended that they may be remanded to custody by trial court- Anticipatory bail granted.

The ratio laid down in the cited decision is squarely applicable to the facts and circumstances of this case.

12 It is pertinent to note that, the petitioner No.2 is a woman and proviso to 437 of Code is applicable to her. In this context, it is profitable to refer the decision of the Co-ordinate Bench of Hon'ble High Court of Karnataka in ***Kavitha V. State of Karnataka – Crl.P.No.2509/2019 decided on 05.08.2019***, the Hon'ble Court pleased to observe as under;

“In the above facts and circumstances of the case, proviso to Section 432 of Cr.P.C. would

come to the help of the petitioner herein. Even at this stage, if the court comes to the conclusion that, a strong prima facie case is made out against a woman, still the court can exercise its discretion and it may enlarge a lady on bail with conditions. Though the petition is filed under Section 439 of Cr.P.C., the proviso to section 437 can be equally made use of. The said proviso says that, even if there appears reasonable grounds for believing that the accused is guilty of the offences punishable with death or imprisonment for life, provided the court may direct that the person referred to in Clause (i) or Clause (ii), be released on bail, if such person is under the age of sixteen years or is a woman or is sick or infirm. Therefore, in the above circumstances, in my opinion, as the petitioner/ accused has been in jail since 05.01.2019 and the charge sheet has already been filed, she is entitled to be enlarged on bail during the trial, with certain conditions.....”

13. In the decision reported in **Rathnawwa and another V/s.State of Karnataka Crl.P. No.100503/2017 decided on 13.3.2014**, the Hon'ble court pleased to observe that;

“ The proviso in section 437 of Code of Criminal Procedure 1973 (hereinafter referred to as “Cr.P.C.” for brevity) empowers the court that even if the offences which are punishable with death or imprisonment for life or imprisonment for life or imprisonment for seven years or more, the court may direct that such a person referred to in clause - (I) or (ii) of Section 437 of Cr.P.C. be released on bail, it is satisfied that if such person is under the age of 16 years or is a woman or is sick or infirm. Therefore, it is a special proviso appended to Section 437 of Cr.P.C. particularly, considering the woman folk, sick and infirm persons and the persons, who are less than 16 years.”

In view of the principles laid down in the above decision, woman and sick, aged persons are entitled to be released on bail, even in cases of offences punishable under death or imprisonment for life, as those categories of offenders falls within the purview of proviso to Section 437 of Cr.P.C.

14. It is forthcoming from the records that, matter is civil in nature. Petitioner No.2 is woman and proviso to Section 437 of Cr.P.C. is applicable to her. There is no

report of criminal antecedents. The petitioners have permanent place of abode at Bengaluru. Therefore, there is remote chances of flee from justice. The apprehension of the prosecution could be met by imposing stringent conditions to secure the accused person during trial. Under these facts and circumstances and in view of the law laid down by Hon'ble Supreme Court of India in the case of **Satender Kumar Antil V/s. Central Bureau of Investigation in Miscellaneous Application No.1849/2021 dated 11.07.2022**, I am of the opinion that, to struck the balance between individual liberty and humiliation due to unjustifiable detention against free and fair trial as well as welfare of society, it is proper to enlarge the petitioners on bail by imposing appropriate terms and conditions. Accordingly, point No.1 is answered in the **Affirmative**.

15. **POINT NO.2**: In view of the aforesaid discussion, this court proceed to pass the following :

O R D E R

Anticipatory bail petition U/s.438 of Cr.P.C., filed by the petitioners/accused No.1 and 2 is allowed.

Respondent police is directed to release the petitioners/accused No.1 and 2 on bail in the event of their arrest in Cr.No.61/2023 of Indira Nagar police station, Bengaluru for the offences punishable U/s.423, 120B, 418, 403, 406, 409, 420, 465, 467, 405, 425, 464, 468 R/w.Sec.34 of I.P.C., pending on the file of IV - Addl. Chief Metropolitan Magistrate Court, Bengaluru by taking personal bonds for ₹.50,000/- (fifty thousand) each with two sureties for like sum on following conditions;

1. Petitioners/accused No.1 and 2 shall appear before Investigating Officer and co-operate with investigation within 15 days from the date of this order and make themselves

available for investigation as and when called by the Investigating Officer.

2. They shall furnish documents regarding their address proof and the address proof of their sureties at the time of furnishing surety.
3. They shall mark their attendance at respondent police station on 1st and 3rd Sunday of every month between 10.00 a.m. and 2.00 p.m., till conclusion of investigation or for a period of 3 months, whichever is earlier.
4. They shall not directly or indirectly make any inducement threat or promise to any person acquainted with the facts of the case so as to dissuade them from disclosing such facts either to the Investigation Officer or to the trial court.
5. They shall not leave the jurisdiction of India without prior permission of the trial court.

6. They shall not involve in any criminal activities.
7. In the event any change in the residential address, petitioners and their sureties shall intimate the same to the trial court immediately without fail.

Violation of any of these conditions would entitle cancellation of bail.

(Dictated to the Judgment Writer, transcribed, computerized by her, then corrected, signed and pronounced by me in open court on this 10th day of August 2023).

**(KALPANA M.S.)
LXIV ADDL.CITY CIVIL &
SESSIONS JUDGE, CCH-65,
BENGALURU CITY.**

Order pronounced in the open

Court, vide separate Order:-

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Anticipatory bail petition U/s.438 of Cr.P.C., filed by the petitioners/accused No.1 and 2 is allowed.

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dissuade them from disclosing such facts either to the Investigation Officer or to the trial court.

5. They shall not leave the jurisdiction of India without prior permission of the trial court.
6. They shall not involve in any criminal activities.
7. In the event any change in the residential address, petitioners and their sureties shall intimate the same to the trial court immediately without fail.

Violation of any of these conditions would entitle cancellation of bail.

Consequently, this criminal miscellaneous proceedings is disposed of.

LXIV ADDL.CITY CIVIL &
SESSIONS JUDGE, CCH-65,
BENGALURU CITY.

