

KABC010206912023



**IN THE COURT OF XLV ADDL. CITY CIVIL & SESSIONS
JUDGE, BENGALURU CITY (CCH-46)**

DATED THIS THE 9TH DAY OF AUGUST, 2023

PRESENT:

**Sri. Manjunatha, B.A., LL.B.,
XLV Addl. City Civil & Sessions Judge, Bengaluru.**

CRL.MISC. No.7449/2023

Petitioners	1.M. Nagesh S/o Maruthi, a/a 32 yrs., R/o Ekalavyanagar, No.45, 9 th Cross, Gokula I Stage, near LCR School, I Phase, Mathikere, bangalore Northy, Bangalore-560 054. 2.Smt. Rathnamma W/o Maruthi, a/a 52 Yrs., R/o Kanchakara Oni, Maski Taluk, Raichur District. (By Sri/Smt; M. N. Ningaraj, Adv.)
	AND
Respondent	State by Basavanagudi Women P. S., Bengaluru. (By the learned Public Prosecutor)

ORDER ON BAIL PETITION FILED U/S.438 OF Cr.P.C.,

The learned counsel for the Petitioners has filed bail petition U/s.438 of Cr.P.C., to grant anticipatory bail in favour

of the Petitioners and also direct the Respondent Police to release them on bail in the event of their arrest in their **Crime No.210/2023** in the interest of justice.

2. The brief facts of the bail petition is that on the basis of the information of Smt.N. Rashmi Joshi, a/a 32 Yrs., W/o first petitioner, the Respondent Police have registered a case in Crime No.210/2023 against the Petitioners for an offences punishable U/s.498A, 494 and 504 of IPC and Sec.4 of DP Act. The Petitioners being accused persons apprehending their arrest at the hands of respondent police and constrained to file this petition to grant bail.

3. The learned Public Prosecutor has filed objection in detail along with report of I.O., and case diary by reiterating the contents of the Complaint and contended that this bail petition is not maintainable in law or on facts of the case since the investigation of the case is in progress. Further, she has reiterated the contents of Complaint and also contended that if Petitioners is granted bail then they again will involve in causing mental and physical harassment to the Complainant and also chance of destroying the evidence, tamper the prosecution witnesses and hamper the investigation. Accordingly, prayed for dismissal of the bail petition.

4. Heard the arguments. Perused the relevant materials on record.

5. The following points are arises for consideration of this Court:

1. *Whether the Petitioners have made out sufficient grounds for granting Anticipatory bail in their*

*favour in Cr. No.210/2023 of Basavanagudi
Women P. S., at this stage as sought for?*

2. What order?

6. This court has answered the above points are as under:

Point No. 1 : In the Affirmative

Point No. 2 : As per final order

for the following:-

REASONS

7. **Point No.1:** On considering the papers on record, it is evident to note that the Respondent Police have registered a Crime No.210/2023 against the Petitioners for the offences punishable U/s.498A, 494 and 504 of IPC and Sec.4 of DP Act on the Complaint of Smt.Rashmi Joshi.N, a/a 32 Yrs., who is the W/o first petitioner. Admittedly the petitioner No.1 is the husband and petitioner No.2 is the relative of the husband of the alleged complainant-Smt.Rashmi Joshi, which is not in dispute.

8.It is the case of the complainant that on 12.06.2012 the marriage of accused No.1 was solemnized with the complainant, and out of the wedlock they blessed with two children. After the marriage complainant started to reside along with family members of accused No.1, accused No.1 was doing astrology work, complainant advised the accused No.1 to quit the astrology work, as public were complaining against him, and to search other work, by enraging the accused No.1 abused the complainant in filthy language. It is the case of the complainant that the accused No.1 and 2 subjected her to

physical and mental cruelty in demanding additional dowry from her parents and also insulting her as she is a handicap, and ousted her from the matrimonial house, and on demand received Rs.4,00,000/- from the parents of complainant, and when she had been to the house of accused No.1, accused No.1 informed the complainant he was not in station for a period of one week she has to stay in her parents house, and accused No.1 had vacated the house and undergone 2nd marriage during the subsistence of marriage with complainant without her consent and knowledge. Unable to bear the physical and mental cruelty caused by the accused persons, complainant constrained to file complaint against the petitioners before respondent police.

9.The contention of petitioners is that they are innocent of the offences alleged and there is absolutely no case made out against them for the alleged offences. But, as pointed out by the learned Public Prosecutor, investigation is not yet completed, at this stage if the bail is granted in favour of the petitioners, then they may abscond and also tamper the prosecution witnesses and hamper the investigation, and this stage when investigation is under process, this Court cannot come to the conclusion that the petitioners are innocent of the offences alleged against them. Hence, at this stage the contention of petitioners that they are innocent of the offences alleged against them does not stand for consideration. It is not desirable on the part of this Court at this stage to come to the conclusion that the petitioners are innocent of the offences alleged against them.

10. It is pertinent to note that even for the sake of argument, it is accepted that there is prima-facie case against the Petitioners for the offences punishable U/s.498A, 494 and 504 of IPC and Sec.4 of DP Act, and the said offences are not punishable with death or imprisonment for life. But the offence U/s.498A of IPC is though non-bailable, it is exclusively triable by the Magistrate.

11. It is well settled principle of law that the granting of bail is discretionary power of the Court and every case should be considered on the basis of facts of each case. The certified copies complaint and FIR produced by the petitioners disclose that a complaint has been lodged by the complainant, who is the wife of first petitioner, at Basavanagudi Women P. S., in Crime No.210/2023 on 27.07.2023 at 17.30 hours for the offences punishable U/s.498A, 49 and 504 of IPC and Sec.4 of DP Act. The petitioners have also produced the copies of notice, photographs and copies of Adhaar cards etc., On perusal of the documents, would disclose that there is a matrimonial dispute between first petitioner and the complainant. Admittedly, the petitioner No.1 is the husband and petitioner No.2 is the relative of the husband of the alleged complainant-Smt.Rashmi Joshi, against whom the filing of the complaint is sufficient to draw apprehension in the minds of the petitioners regarding their arrest in non-bailable offence.

12. Whether the petitioners have committed the alleged offences as contended by the complainant is a matter, which has to be decided only at the time of full-fledged trial. At this juncture, when the petitioners are ready to abide by the terms

and conditions imposed by the court and when they are ready to offer due and adequate surety for their release on bail, then this court is of the opinion that no purpose will be served by allowing the respondent police to apprehend the petitioners and to keep them in custody. The petitioners are the permanent residents as shown in the cause title and this fact has not been disputed by the prosecution, as such the presence of petitioners can be secured easily, hence, the question of absconding of the petitioners does not arise at all. The objections raised by the learned Public Prosecutor can be met by imposing stringent conditions. Absolutely there is no grounds made out by the prosecution to reject this bail petition. Hence, under these circumstances, the petitioners have made out sufficient ground for granting anticipatory bail in their favour at this stage as prayed for as there exist reason to believe that they may be arrested in non-bailable offences. Accordingly, I answer Point No.1 in the **affirmative**.

13. **Point No. 2:** In view of answer of this Court on point No.1, this court pass the following:-

ORDER

The bail petition filed by the petitioners U/s.438 of Cr.P.C. is hereby allowed.

The petitioners are ordered to be released on bail on their executing personal bond for Rs.1,00,000/- each with one surety for the like sum to the satisfaction of the concerned I.O./Magistrate in the event of their arrest in the case in Crime No.210/2023

of Basavanagudi Women Women P. S., subject to following conditions:-

- 1.The Petitioners shall make themselves available for interrogation by the I.O. as and when required till the final report is filed. Further, they shall assist the I.O. in further investigation of the case. Further the petitioner No.1 shall mark his attendance once in a month, i.e., first Sunday of every month in between 10.00 a.m. and 2.00 p.m. before the I.O., till filing of final report or further orders whichever is earlier.
- 2.The Petitioners shall surrender before the concerned Police within 30 days from the date of this order without fail.
- 3.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 him/ her from disclosing such facts to the Court or to the concerned I.O.,
- 4.They shall not hamper further investigation of the case and tamper with prosecution witnesses in any manner and shall not intimidate the complainant.
- 5.They shall not commit similar offences or any offences during the pendency of case,
- 6.They shall appear before the concerned Magistrate Court as and when directed.

- 7.They shall not leave the jurisdiction of the Bangalore City without the prior permission,
- 8.They shall not change their place of residence outside the jurisdiction of concerned Court without prior intimation, and
- 9.They shall furnish the notarized copies of their residential id address proof.

(Typed to my dictation by the Stenographer directly on Computer, corrected by me and then pronounced in open Court on this the **9th day of August, 2023**)

(Manjunatha)
XLV Addl. CC & SJ, Bengaluru.

Order pronounced in the open court
vide its separate order

ORDER

The bail petition filed by the petitioners
U/s.438 of Cr.P.C. is hereby allowed.

(Manjunatha)
XLV Addl. CC & SJ, Bengaluru.