

KABC010207582023



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

DATED THIS THE 5TH DAY OF SEPTEMBER, 2023

PRESENT:

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

CRL.MISC. No.7470/2023

Petitioners	<p>1.Ganesh Murthy S/o Late Adhimulam, a/a 33 Yrs.,</p> <p>2.Mrs. Neelavathi W/o late Adhimulam, a/a 59 Yrs.,</p> <p>both are r/a No.14, I Block, Chinnappa Garden, Horamavu Main Road, Bengaluru-43.</p> <p>3.Mrs Latha W/o Babu, a/a 41 Yrs., R/o Sarva Nilaya, SBM Colony, mathikere, Bangalore-560 054.</p> <p>4.Mrs. A. Bhuvaneshwari D/o late Adhimulam, a/a 32 Yrs., r/a No.14, I Block, Chinnappa Garden, Horamavu Main Road, Bengaluru-43.</p> <p>5.Ms. Ramya.B, D/o Babu, a/a 19 Yrs., R/o Sarva Nilaya, SBM Colony,</p>
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	Mathikere, Bangalore-560 054. (By Sri/Smt: Priyadarshini, Advocate)
	AND
Respondent	State by Subramanyapura 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 Crime No.102/2023 in the interest of justice.

2. On perusal of the bail petition reveals that on the basis of the information of informant-Smt. S. R. Niveda, a/a 29 Yrs., the respondent police have registered case in Crime No.102/2023 against the petitioners for the offence punishable U/s.341, 324 and 504 r/w Sec.34 of IPC. The petitioners being accused persons apprehending their arrest by the respondent police. Therefore, the petitioners have constrained to file this petition to grant bail.

3. The learned Public Prosecutor has filed objection in detail by reiterating the contents of the complaint and contended that this bail petition is not maintainable in law or on facts of the case. Accordingly, prayed for rejection of bail petition.

4. Heard the arguments on both sides and perused the materials on record.

The learned counsel for petitioners has relied upon

a.Criminal Appeal No.851 of 2009(Mathura Singh and Ors. Vs. State of UP),

b/Criminal Appeal No.749/2010(Hirabhai Jhaverbhai Vs., State of Gujarat and others, Hon'ble Supreme Court of India, and

c.Criminal revision No.146/2010 (Shamsher Bahadur Singh Chandel @ Golend Singh Vs., State of Madhya Pradesh) of Hon'ble High Court of Madhyapradesh, Jabalpur)

5. The following points that 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.102/2023 of Hennur 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 Negative

*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 case against the Petitioners and another in Crime No.102/2023

for the offences punishable U/s.341, 324 and 504 r/w Sec.34 of IPC on the complaint of Smt. Niveda, a/a 29 Yrs., ,

8.It is alleged that on 10.04.2023 when she had been to the house of her husband, ie., accused No.1, bearing House No.14, situated at I Cross, Chinnaswap Layout, behind Dyapodills Apartment, Horamavu Main Road, Bangalore, the accused persons wrongfully restrained her by abusing picked up quarrel with her, accused No.5 assaulted her with the help of wooden billet, and caused bleeding injuries to her. Accordingly, complainant has filed the complaint against accused persons before respondent police for the offences as alleged.

9.On perusal of the record, the complaint and FIR discloses that the offences punishable U/s.341, 324 and 504 r/w Sec.34 of IPC registered against the petitioners, are bailable, and exclusively triable by the Magistrate. It is important to note that a person seeking anticipatory bail has to convince the Court that the respondent police have registered a non-bailable case and there is an apprehension of arrest.

10.*Hon'ble Bombay High Court in 2012 Supreme Bom) 2319, 2013 0 AllMR (Cri) 626 ; 2013 1 BombCR(Cri) 617(Chandra Kanjappa Kuchchikurve Vs., State of Maharashtra and Another)(Criminal Anticipatory Bail Application No.1207 of 2013 Decided on 14.12.2012)* has held that

The question that arises is whether the provision of Clause(f))iii) of Section 42 of the 2005 Act have been brought in force by appointing a date therefor. It transpires that no notification giving effect to the said amendment i.e., making the offence punishable under Section 324 of the IPC"non-bailable"

has been issued by the Centra Governments, so far. If no notification giving effect to the amendment in question i.e., amendment to the Fift Column in the entry relative to "Section 324 of the IPC', has been issued till today, (Which aspect is undisputed) it means that the offence punishable under Section 324 of the IPC, continues to be a "bailable" offence.

The main contention of the prosecution is that the offence alleged in FIR is bailable in nature, and the petitioners are not entitle for relief as prayed. On perusal of the materials before the Court it is clear that the offence alleged against the petitioners is bailable and triable by the Magistrate. In the view of the fact and circumstances of the case, and applying the law of granting anticipatory bail there appears no reason for grant anticipatory bail to the petitioner at this stage, when the offence alleged and registered is bailable. The petitioners have also produced the certified copies of FIR and complaint in Crime No.208/2022 of East Zone Women P.S., Bangalore, for the offences punishable U/s.498A, 323, 504 and 506 r/w Sec.34 of IPC and Sec.3 and 4 of DP Act registered based on the complaint of informant, and copy of the order sheet of MC Petition No. 3881/2022 etc., The decisions cited by the learned counsel for petitioners deals with compoundable offences, which cannot be made applicable to the case on hand. Hence, in the circumstances, the petitioners have not made out sufficient ground for granting anticipatory bail in their favour at this stage as prayed for. Accordingly, I answer Point No.1 in the **Negative**.

10.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 dismissed.

(Typed to my dictation by the Stenographer directly on Computer, corrected by me and then pronounced in open Court on this the **5th day of September, 2023**)

(Manjunatha)
XLV Addl. CC and SJ, Bangalore.

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 dismissed.

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