

Karnataka High Court

Kartik S/O Yallappa Lesappanavar vs The State Of Karnataka on 27 April, 2023

Bench: C M Bycmjj

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CRL.P No. 100824 of 2023

IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 27TH DAY OF APRIL, 2023

BEFORE

THE HON'BLE MR JUSTICE C M JOSHI

CRIMINAL PETITION NO. 100824 OF 2023 (439-)

BETWEEN:

KARTIK S/O YALLAPPA LESAPPANAVAR  
AGE 20 YEARS, OCC PRIVATE SERVICE  
R/O DASARA ONI, BHAIRIDEVARAKOPPA,  
HUBBALLI

...PETITIONER

(BY SRI. SANKOLLI MOHAN SHRIPAD, ADVOCATE)

AND:

THE STATE OF KARNATAKA  
APMC NAVANAGAR P S  
R/BY STATE PUBLIC PROSECUTOR  
HIGH COURT OF KARNATAKA BENCH DHARWAD

...RESPONDENT

(BY SRI.RAMESH B CHIGARI, HCGP)

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by JAGADISH T  
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Location: high  
court  
karnataka  
Dharwad bench

THIS CRIMINAL PETITION IS FILED U/SEC. 439 OF CR.P.C.

SEEKING TO RELEASE PETITIONER/ACCUSED NO.9 ON BAIL IN

APMC NAVANAGAR PS CRIME NO.05/2023, IN RESPECT OF

OFFENCE U/SEC. 143, 147, 148, 307, 323, 324, 326, 427, 504

AND 506 R/W SEC. 149 OF IPC.

THIS PETITION COMING ON FOR ORDERS, THIS DAY, THE

COURT MADE THE FOLLOWING:

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ORDER

Heard the learned counsel for the petitioner and learned HCGP appearing for the respondent/State.

2. The petitioner, who is arrayed as accused No.9, has approached this Court under Section 439 of Cr.P.C. seeking grant of bail.

3. APMC Navanagar PS of Hubballi has registered a case in Crime No.5/2023 for the offences punishable under Sections 143, 147, 148, 307, 323, 324, 326, 427, 504 and 506 read with Section 149 of IPC on the basis of the complaint filed by one Siddappa, wherein it was alleged that he and his uncle Bhimappa were residing in the same village separately. His uncle Bhimappa was a Corporator of Municipal Corporation and relationship was not well with the accused. It was alleged that the uncle of the complainant had advised the accused not to quarrel with the complainant Siddappa and there were several other incidents, wherein he was having rivalry. It was further alleged that on 14.02.2023, the complainant had CRL.P No. 100824 of 2023 been to Jatra festival at Savadatti Yellamma Temple and there accused No.2-Beerappa and accused No.3-Arjun had abused uncle of the complainant in filthy words. Thereafter, on return to Hubballi on 15.02.2023, when the complainant met accused No.2-Beerappa near Karigannavar lake, he questioned accused No.2 as to why he had abused his elderly uncle Bhimappa in filthy words and that was ensued with a scuffle between them. It was alleged that with that intention to kill the complainant- Siddappa, accused No.2-Beerappa and Accused No.3-Arjun and several others, who came in 8-10 two-wheelers, assaulted the complainant with stick, stones etc., and his friend Shivakumaraswami also tried to rescue him. There were threats to the life of the complainant and all the accused went away from the spot. The complainant was admitted to the hospital and came to know that there were some stone pelting on the house of the complainant's uncle Bhimappa. The complaint came to be lodged on 16.02.2023.

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4. The petitioner, who is before this Court, contends that he is innocent, law abiding person, aged about 20 years and looking after his widowed mother, grand mother and two sisters. As such, he is the only earning member in the family. He further contends that offence under Section 307 of IPC is not made out by the prosecution and there are no overt acts attributed against the petitioner herein. He further contends that the complainant himself had approached accused No.2 while he was going on motorcycle and therefore, motive, preparation and execution of offence of attempt to murder is not made out by the prosecution. Therefore, there is no need for custodial detention of the petitioner.

5. Per contra, learned HCGP submits that the petitioner has been arrested by the investigating officer and recoveries have been made in the form of stick, iron rod and knife. He further submits that there are prima facie materials against the petitioner herein. It is submitted that if the

petitioner is released on bail, he may CRL.P No. 100824 of 2023 tamper the prosecution witnesses. As such, bail application was rightly rejected by the Sessions Court. It is also contended that there are eye-witnesses to the incident in question and there are several possibilities that the petitioner may tamper the prosecution witnesses.

6. Having heard the learned counsel for the petitioner and learned HCGP, it is evident that FIR does not mention the name of the petitioner herein. Records also reveal that accused Nos.2, 3, 5 and 8 have criminal antecedents. The learned Sessions Court had mainly rejected the bail application on the ground that other accused had criminal antecedents. It is pertinent to note that the name of the petitioner do not find place in the FIR and only on the basis of the subsequent statement made by the prosecution witnesses, his name has been included during the investigation. FIR also suffers from a day's delay and it is evident that the injured-complainant had been discharged from the hospital on the same day. At this juncture, there is no such material which shows that it CRL.P No. 100824 of 2023 was pre-planned assault on the complainant. It is evident that while on the way, the complainant had met accused No.2-Beerappa and another and there was scuffle between them. Therefore, at this juncture, grounds for offence under Section 307 of IPC are not made out and other offences which are alleged are bailable except offence under Section 326 of IPC.

7. Considering the fact that the injured was discharged from the hospital on the same day, it appears that the gravity of the offence is not as appreciated by the prosecution. Scuffle had ensued between two rival groups. Therefore, I do not find any reason to deny the bail to the petitioner herein. Evidently, no criminal antecedents are forthcoming insofar as the petitioner is concerned. Under these circumstances, apprehension expressed by the learned HCGP may be met by imposing suitable conditions. It is also brought to the notice of this Court that in CrI.P.No.100752/2023, a co-ordinate Bench of this Court has granted bail to accused No.10-Niyaz CRL.P No. 100824 of 2023 Ahmed. Therefore, on the ground of parity also, the petitioner is entitled for bail. As such, the petition filed under Section 439 of Cr.P.C. deserves to be allowed. Hence, the following:

#### ORDER

i) This Criminal Petition is allowed.

ii) The petitioner is ordered to be released on bail in Crime No.5/2023 of APMC Navanagar PS of Hubballi for the offences punishable under Sections 143, 147, 148, 307, 323, 324, 326, 427, 504, 506 read with Section 149 of IPC, subject to following conditions:

a) Petitioner shall execute a personal bond in a sum of Rs.1,00,000/-

with two sureties for the likesum to  
the satisfaction of the learned  
Magistrate.

b) Petitioner shall make himself  
available for the purpose of

investigation as and when required  
and he shall co-operate with the  
investigation.

c) Petitioner shall not tamper with the prosecution witnesses either directly or indirectly.

d) Petitioner shall not indulge in any criminal activities during the pendency of case.

Sd/-

JUDGE JTR