

Basavaraj vs The State Of Karnataka on 30 September, 2024

Author: K Natarajan

Bench: K Natarajan

- 1 -

NC: 2024:KHC-K:7535
CRL.P No. 201139 of 2024
C/W CRL.P No. 201144 of 2024
CRL.P No. 201190 of 2024
CRL.P.NO.201201/2024

IN THE HIGH COURT OF KARNATAKA

KALABURAGI BENCH

DATED THIS THE 30TH DAY OF SEPTEMBER, 2024

BEFORE

THE HON'BLE MR. JUSTICE K NATARAJAN

CRIMINAL PETITION NO.201139 OF 2024
(439(Cr.PC)/483(BNSS))

C/W

CRIMINAL PETITION NO. 201144 OF 2024
(439(Cr.PC)/483(BNSS))

CRIMINAL PETITION NO. 201190 OF 2024
(439(Cr.PC)/483(BNSS))

CRIMINAL PETITION NO. 201201 OF 2024
(439(Cr.PC)/483(BNSS))

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by KHAJAAMEEN
L MALAGHAN

Location: High
Court Of
Karnataka

IN CRL.P.NO.201139/2024:

BETWEEN:

1. SIDDARAM DATTU KOLLI @ SIDDU KOLLI
S/O DATTU KOLLI,
AGE: 24 YEARS, OCC: STUDENT,
R/O HAIDRA VILLAGE, TQ. AKKALAKOTA,
DIST. SOLAPUR, STATE MAHARASHTRA-413216
2. RAVIKUMAR @ RAVI UKKALI

S/O CHANDRAKANT UKKALI,
AGE: 24 YEARS, OCC: BUSINESS,

-2-

NC: 2024:KHC-K:7535
CRL.P No. 201139 of 2024
C/W CRL.P No. 201144 of 2024
CRL.P No. 201190 of 2024
CRL.P.NO.201201/2024

R/O SHIRAVALL VILLAGE,
TQ. AFZALPUR, DIST. KALABURAGI-585107

3. RAIM CHOWDARI
S/O ALEESAB CHOWDARI,
AGE: 30 YEARS, OCC: COOLIE WORK,
R/O M.S.K MILL NEAR CHIDUPURI,
BEHIND MIJEBBA NAGAR KALABURAGI
PRESENT R/O JERATAGI VILLAGE,
TQ. JEWARGI, DIST. KALABURAGI-585310
4. SAGAR HANCHINALL
S/O SHIVALINGA HANCHINALLA,
AGE: 24 YEARS, OCC: CIVIL CONTRACT,
R/O CHOUDA LAYOUT AKKAMAHADEVI COLONY,
KALABURAGI PRESENTS
R/O GHOLLANOOR TQ. AFZALPUR,
DIST. KALABURAGI-585107
5. BASAVARAJ YALLAVARA
S/O MALLIKARJUN,
AGE: 28 YEARS, OCC: HOSTEL WARDEN BOYS
CHIKKABALLAPUR R/O SAGANOR VILLAGE,
TQ. AFZALPUR DIST. KALABURAGI-585107
(NOT PRESS)

...PETITIONERS

(BY SRI. RAJESH DODDAMANI, ADVOCATE FOR
SRI. PATIL SHIVKUMAR DEVENDRAPPA, ADVOCATE)

AND:

THE STATE OF KARNATAKA
THROUGH ASHOK NAGAR POLICE STATION,
KALABURAGI (REPRESENTED BY LEARNED ADDL.
S.P.P.
HIGH COURT OF KARNATAKA AT KALABURAGI-
585107

...RESPONDENT

(BY SMT. ANITA M. REDDY, HCGP)

-3-

NC: 2024:KHC-K:7535

CRL.P No. 201139 of 2024
C/W CRL.P No. 201144 of 2024
CRL.P No. 201190 of 2024
CRL.P.NO.201201/2024

THIS CRIMINAL PETITION IS FILED UNDER SECTION 439 OF CR.P.C (OLD) UNDER SECTION 483 OF BNSS (NEW) ACT, PRAYING TO ALLOW THE PETITION AND RELEASED THE ACCUSED PETITIONERS ON BAIL IN CRIME O. 160/2023 OFFENCES PUNISHABLE UNDER SECTIONS 409, 420, 120(B), 109, 114, 201, 36, 37, 34 OF I.P.C AND SECTION 3(1) (II)(2) (3) (4) OF KCOCA ACT OF ASHOK NAGAR P.S PENDING PRL. DIST AND SESSION JUDGE AT KALABURAGI IN THE INTEREST OF JUSTICE AND EQUITY.

IN CRL.P NO. 201144 OF 2024:

BETWEEN:

MR. BASANNA PUJARI
S/O SHANTAPPA PUJARI,
AGED ABOUT 55 YEARS,
RESIDENCE AT PLOT NO. 212,
KASHIKAMAL APARTMENT,
NEAR HIGH COURT,
AFZALPUR ROAD,
KALABURAGI-585301.

...PETITIONER

(BY SRI. ANAND MUTTALLI, AND
SRI. VIJAY HIREMANATH, ADVOCATES)

AND:

STATE OF KARNATAKA
BY ASHOK NAGAR POLICE STATION,
REPRESENTED BY
ITS ADDL. STATE PUBLIC PROSECUTOR,
HIGH COURT OF KALABURAGI COURT COMPLEX,
KALABURAGI-585103.

...RESPONDENT

(BY SMT. ANITA M. REDDY, HCGP)

-4-

NC: 2024:KHC-K:7535
CRL.P No. 201139 of 2024
C/W CRL.P No. 201144 of 2024
CRL.P No. 201190 of 2024
CRL.P.NO.201201/2024

THIS CRIMINAL PETITION IS FILED UNDER SECTION 439 OF CR.P.C (OLD) / UNDER SECTION 483 OF BNSS ACT (NEW) PRAYING TO ALLOW THE INSTANT APPLICATION AND ENLARGE THE PETITIONER /12TH ACCUSED ON BAIL IN SPL.C(KCOCA) NO. 01/2024 REGISTERED BY THE COMPLAINT ASHOK NAGAR POLICE FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 409, 420, 120B, 201, 109, 114, 36, 37, 34 OF IPC AND SECTIONS 3(1) (II) (2) (4) OF KCOCA ACT PENDING BEFORE THE HON'BLE COURT OF THE PRINCIPAL SECTIONS JUDGE AT KALABURAGI,

IN CRL. P. NO. 201190 OF 2024:

BETWEEN:

BASAVARAJ
S/O MALLIKARJUN YALAWAR,
AGE: 29 YEARS, OCC: HOSTEL WARDEN BOYS
CHIKKABALLAPUR,
R/O SAGANUR VILLAGE,
TQ. AFZALPUR, DIST. KALABURAGI-585315

...PETITIONER

(BY SRI. MAHANTESH PATIL, ADVOCATE)

AND:

THE STATE OF KARNATAKA
REP. BY ADDL. SPP KALABURAGI BENCH,
THROUGH ASHOK NAGAR PS KALABURAGI-585102

...RESPONDENT

(BY SMT. ANITA M. REDDY, HCGP)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 439 OF CR.P.C (OLD), 483 OF BNSS (NEW), PRAYING TO GRANT THE REGULAR BAIL TO THE PETITIONER IN SPL. CASE (KCOCA) NO.01/2024 (ASHOK NAGAR P.S. CRIME NO. 160/2023) FOR THE OFFENCES PUNISHABLE UNDER SECTION 409, 420, 120B, 201, 109, 114, 36, 37, 34 OF IPC READ WITH 3(1)(II)(2), (3)(4) OF KCOCA, PENDING ON THE FILE OF

-5-

NC: 2024:KHC-K:7535
CRL.P No. 201139 of 2024
C/W CRL.P No. 201144 of 2024
CRL.P No. 201190 of 2024
CRL.P.NO.201201/2024

LEARNED PRL. DISTRICT AND SESSIONS JUDGE (SPECIAL COURT) AT KALABURAGI, IN THE INTEREST OF JUSTICE AND EQUITY.

IN CRL. P. NO. 201201 OF 2024:

BETWEEN:

SHASHIDAR JAMADAR
S/O SHIVASHARANAPPA JAMADAR,
AGE: 27 YEARS, OCC: STUDENT,
R/O KOBHRA COLONY, KALABURAGI
TQ. AND DIST. KALABURAGI-585107

...PETITIONER

(BY SRI. CHANNABASAPPA HAYYALAPPA, ADVOCATE)

AND:

THE STATE OF KARNATAKA
THROUGH ASHOK NAGAR POLICE STATION,
THROUGH ADDL. S.P.P.
HIGH COURT OF KARNATAKA
BENCH AT KALABURAGI-585107

...RESPONDENT

(BY SMT. ANITA M. REDDY, HCGP)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 439
OF CR.P.C (OLD) / U/SEC. 483 OF BNSS ACT (NEW) PRAYING
TO ALLOW THIS BAIL PETITION AND RELEASE THE ACCUSED
PETITIONER ON BAIL IN SPL.CASE KCOCA NO.1 OF 2024 IN
CRIME NO. 160 OF 2023 ASHOK NAGAR PS FOR THE
OFFENCES PUNISHABLE UNDER SECTIONS 409, 420, 120B,
201, 109, 114, 36, 37 READ WITH 34 OF IPC AND SECTION
3(1) (II)(2)(3)(4) OF KCOCA ACT, PENDING ON THE FILE OF
PRINCIPLE DISTRICT AND SESSION JUDGE AT KALABURAGI,
IN THE INTEREST OF JUSTICE AND EQUITY.

THESE PETITIONS, COMING ON FOR ORDERS THIS DAY,
ORDER WAS MADE THEREIN AS UNDER:

-6-

NC: 2024:KHC-K:7535
CRL.P No. 201139 of 2024
C/W CRL.P No. 201144 of 2024
CRL.P No. 201190 of 2024
CRL.P.NO.201201/2024

CORAM: HON'BLE MR. JUSTICE K NATARAJAN

ORAL ORDER

(PER: HON'BLE MR. JUSTICE K NATARAJAN) The CrI.P.No.201139/2024 is filed by petitioners/accused Nos.7,8,10 and 11. The CrI.P.No.201144/2024 is filed by the petitioner/accused No.12 and CrI.P.No.201190/2024 is filed by the petitioner/accused No.15 and CrI.P.No.201201/2024 is filed petitioner/accused No.14 under Section 483 of the Bharatiya Nagarik Suraksha Sanhita (in short 'BNSS Act') Act for granting regular bail in Spl.C.(KCOCA) No.1/2024 arising out of Crime No.160/2023 registered by Ashok Nagar Police Station Kalaburagi and charge sheeted for the offences punishable under sections 409, 420, 120(B), 201, 109, 114, 36, 37, 34, of IPC and under Sections 3(1), (II)(2), (3)(4) of KCOCA ACT, now pending on the file of the Principal District and Sessions Judge, Kalaburagi.

2. Heard the arguments of learned counsel for the petitioners in all the aforementioned petitions and learned HCGP appears on behalf of the Addl. SPP for the State.

NC: 2024:KHC-K:7535

3. The case of the prosecution is that, on the complaint of one Shilpa, the Assistant Lecturer at Sharanabasava University, the police registered the FIR, where it is alleged that she was posted as Supervisor for a competitive examination, to be held in their Institution on 28.10.2023 for the recruitment of FDA posts, There were 21 candidates in room No. 38 and at about 11:58 AM, the Deputy Director of Karnataka Education Authority (for short KEA) came to the room along with the police, where the accused No.1 said to have indulged in writing the examination by using the Bluetooth device by receiving the answers from the outside of the venue from his brother Ambarish, accused No.2. The accused Nos.1 and 2 were caught red handed and the Bluetooth device and other devices were seized. The police arrested accused No.1 and after taking the accused persons into custody and during the investigation it came to know that accused No.3/R.D Patil was involved in supplying the Bluetooth devices by receiving money from the candidates engaging the persons for supplying the devices and answers. Accordingly, the police arrested accused No.3 and also these petitioners. The accused Nos.7, 8, 10 and 11 are NC: 2024:KHC-K:7535 in custody from 15.11.2023. The accused No.12 is in custody from 28.11.2023. Accused No.15 is in custody from 21.02.2024. The accused No.14 is in custody from 04.12.2024. They have been arrested and remanded to the judicial custody. Their bail petitions came to be dismissed. Accordingly they are before this court.

4. Learned counsel for the petitioners seriously contended all these petitioners are innocent of the alleged offence they have been falsely implication. Only on the voluntary statement of the co-accused persons. They are in custody for almost 9 to 10 months. The co-accused persons accused Nos.5, 6, 9 and 13 as well as accused No.19 are granted bail by this court. Therefore, they are entitled for bail on ground of parity. The investigation is completed long back, charge sheet is also filed, except for trial their presence is not required. Therefore, prayed for allowing the petition.

5. Per contra, learned HCGP seriously objected the petition contending that because of help made by these petitioners and conspiracy made by them along with accused NC: 2024:KHC-K:7535 No.3, otherwise the accused No.3 might not have been able to succeed and conduct the PSI scam as well as the FDA recruitment scam. Therefore, the prima facie materials placed on record, against this petitioner for having helped the accused Nos.3 and the syndicate of the accused No.3. Therefore,

they are not entitled for bail. This court already rejected the bail petition of accused No.3/RD Patil who is in custody, if these petitioners are granted bail, definitely they will once again involve in similar offences, by helping the accused No.3. Therefore, merely they are in custody is not a ground for granting bail. Some of the accused persons abated the accused No.3 and the candidates were receiving money and were involving the commission of offence. The Bluetooth devices were purchased and given to the candidates by one of the accused, money was received and handed over to one of the accused. Therefore, all are jointly committed the offence. Therefore, prayed for dismissing the petition..

6. Having heard the arguments, perused the records and admittedly, the police have investigated the matter and filed the charge sheet. All these petitioners are in custody from

- 10 -

NC: 2024:KHC-K:7535 November-2023, December-2023 and February-2024. On perusal of the charge sheet material it is averred that the accused No.3/RD Patil through accused No.7 distributed the Bluetooth device and other mobile sim cards to the candidates. The accused No.8 supported the accused No.3 in helping the candidates to contact accused No.3. The accused No.10 said to have come in contact with the accused No.3 while supplying chicken and helped the accused No.3 escaping from the Kalaburagi to Solapur and thereby he has harboured the accused No.3. The accused No.11 said to be purchased the Blue tooth devices by procuring from the dealer and handed over to the accused No.3. It is also alleged that accused No.12 said to have taken money from the accused No.3 through accused No.15 and inturn he has given money to the accused No.13 who is superintendent of Royal View college for leaking the question paper. The accused No.15 said to be carried money from accused No.3 and handover to accused No.12 in Afzalpur. Accused No.14 said to be distributed the devices to the candidates and procured the sim cards as per the instruction of accused No.3. It also came in the record, accused No.14 has been arrested and during the investigation, it was

- 11 -

NC: 2024:KHC-K:7535 revealed he has also involved in PSI recruitment scam witness accused No.3/RD Patil.

7. On considering the entire allegations made against the accused persons, shows learned HCPG is right in submitting that because of the help made by all these accused persons, the accused No.3 not able to succeed by supplying the Bluetooth devices, sim cards and answers to the candidate and it is not possible for him alone commit the offence. Ofcourse they are all conspirator and some of the candidates were abated and section 409 of IPC also invoked by the police in respect of some of the accused. For some of the accused there was no notice was served under Section 41(A) of Cr.P.C. by police prior to their arrest.

8. However, this court granted anticipatory bail to the accused No.19 in Crl.P.No.200863/2024 on 31.8.2024. Though the bail application of accused No.3 has been rejected by this court, these

petitioners are also having allegation on par with accused Nos.5, 6, 9 and 13, they also helped accused No.13 in the said recruitment scam. When the co-accused are having similar allegation and are already granted bail by this court

- 12 -

NC: 2024:KHC-K:7535 and these petitioners are also entitled for bail, that apart they are in custody from November-2023, December-2023 and February 2024. It is well settled by the Hon'ble Supreme Court the accused shall not be put in jail, which is pretrial punishment and bail is a rule and rejection is an exception. Based upon the principle, this court granted bail to the other accused persons. The order passed by this court by granting bail to those accused persons has been not challenged by the State before the Hon'ble Supreme Court. Such being the case, I am of the keeping the petitioner in custody is nothing but pre trial punishment and it also violates the right and liberty granted under Article 21 of liberty guaranteed by the Constitution of India. Therefore, I am of the view, the petitioners have made out ground for granting bail and by imposing certain stringent conditions, if bail is granted, no prejudice would cause to the prosecution case. Hence, the following order:

ORDER Accordingly, all these Criminal petitions are allowed. The petitioners/accused Nos.7, 8, 10, 11, 12, 15 and 14 respectively, are ordered to be released on bail, by the Trial

- 13 -

NC: 2024:KHC-K:7535 Court in Crime No.160/2023 of Ashok Nagar Police Station Kalaburagi, now pending on the file of the Principal District and Sessions Judge, Kalaburagi in Spl.C (KCOCA) no. 1/2024, subject to the following conditions:

- (i) Petitioners- accused Nos.7, 8, 10, 11, 12, 15 and 14 shall execute a personal bond for a sum of Rs.5,00,000/- (Rupees Five Lakhs only) with two sureties for the likesum to the satisfaction of the trial Court;
- (ii) Petitioners shall not indulge in similar offences strictly;
- (iii) Petitioners shall not tamper with the prosecution witnesses directly/ indirectly;
- (iv) Petitioners shall not leave the jurisdiction without prior permission of Trial court.
- (v) Petitioners shall not contact accused No.3 R.D.Patil for any purposes and any manner.
- (vi) Petitioners shall take the trial without causing any delay.

- 14 -

NC: 2024:KHC-K:7535

(vii) Petitioners shall appear before the Investigating Officer as when called for the purpose of any further investigation. If any of the bail conditions is violated, the prosecution is at liberty to file an application for cancellation of bail.

(The office to supply the operative portion of the order to the learned counsel for the petitioners, if so applied.) Sd/-

(K NATARAJAN) JUDGE AKV CT:SI