

# Shivukumar @ Shivu Nelogi vs The State Of Karnataka on 21 September, 2024

**Author: K Natarajan**

**Bench: K Natarajan**

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NC: 2024:KHC-K:7217  
CRL.P No. 201138 of 2024  
C/W CRL.P No. 201087 of 2024  
CRL.P No. 201142 of 2024  
AND 1 OTHER

IN THE HIGH COURT OF KARNATAKA

KALABURAGI BENCH

DATED THIS THE 21ST DAY OF SEPTEMBER, 2024

BEFORE  
THE HON'BLE MR. JUSTICE K NATARAJAN

CRIMINAL PETITION NO.201138 OF 2024  
(439(Cr.PC)/483(BNSS))

C/W  
CRIMINAL PETITION NO.201087 OF 2024  
(439(Cr.PC)/483(BNSS))

CRIMINAL PETITION NO.201142 OF 2024  
(439(Cr.PC)/483(BNSS))

CRIMINAL PETITION NO.201143 OF 2024  
(439(Cr.PC)/483(BNSS))

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Location: High

Court Of Karnataka

IN CRL.P.NO.201138/2024:

BETWEEN:

RUDRAGOUDA @ MANG S/O MALLANNA,  
AGE: 36 YEARS, OCC: SENIOR ENGINEER,  
KNNL R/O SWAMY PLOT HULAGABALI ROAD,  
EXCISE OFFICE, ATHANI, NOW R/O NELOGI  
VILLAGE,

TQ. JEWARGI, DIST. KALABURAGI -585107.

...PETITIONER

(BY SRI. ASHOK MULAGE, ADVOCATE)

AND:

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NC: 2024:KHC-K:7217

CRL.P No. 201138 of 2024

C/W CRL.P No. 201087 of 2024

CRL.P No. 201142 of 2024

AND 1 OTHER

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

...RESPONDENT

(BY SRI. B. N. JAGADEESHA, ADDL. SPP (BY V.C.);  
AND SMT. ANITA M. REDDY, HCGP(PH)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 439  
OF CR.P.C (OLD), 483 OF BNSS (NEW), PRAYING TO ALLOW  
THE PETITION AND ENLARGE THE PETITIONER/ ACCUSED NO.9  
ON BAIL IN CRIME NO.160/2023 OF ASHOK NAGAR P.S.,  
KALABURAGI FOR THE OFFENCES PUNISHABLE UNDER  
SECTIONS 409, 420, 120B, 109, 201, 114 READ WITH SEC.  
34, 36, 37 OF IPC AND SEC. 3(1)(II)(2)(4) OF KCOCA- 2000,  
PENDING ON THE FILE OF PRL. DISTRICT AND SESSIONS  
COURT KALABURAGI IN SPL. CASE (KCOCA) NO.1/2024 IN THE  
INTEREST OF JUSTICE AND EQUITY.

IN CRL. P. NO.201087 OF 2024:  
BETWEEN:

SHIVAKUMAR @ SHIVU NELOGI,  
S/O PREMANGOUDA  
AGE: 29 YEARS, OCC: SECRETARY,  
PRIMARY AGRICULTURAL CO-OPERATIVE SOCIETY,  
NELOGI VILLAGE, TQ. JEWARGI  
DIST. KALABURAGI-585201

...PETITIONER

(BY SRI. ASHOK MULAGE, ADVOCATE)

AND:

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NC: 2024:KHC-K:7217  
CRL.P No. 201138 of 2024  
C/W CRL.P No. 201087 of 2024  
CRL.P No. 201142 of 2024  
AND 1 OTHER

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

...RESPONDENT

(BY SRI. B. N. JAGADEESHA, ADDL. SPP (BY V.C.);  
AND SMT. ANITA M. REDDY, HCGP(PH)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 439  
OF CR.P.C (OLD), 483 OF BNSS (NEW), PRAYING TO ALLOW  
THE PETITION AND ENLARGE THE PETITIONER/ ACCUSED NO.6  
ON BAIL IN CRIME NO.160/2023 OF ASHOK NAGAR P.S.,  
KALABURAGI FOR THE OFFENCES PUNISHABLE UNDER  
SECTIONS 420, 120B, 109, 114, 201 READ WITH SECTIONS  
36, 37, 34 OF IPC AND SEC. 3(1)(II)(2)(3)(4) OF KCOCA-  
2000, PENDING ON THE FILE OF PRL. DISTRICT AND  
SESSIONS JUDGE AT KALABURAGI IN SPECIAL CASE (KCOCA)  
NO.1/2024 IN THE INTEREST OF JUSTICE AND EQUITY.

CRL.P.NO. 201142 OF 2024:

BETWEEN:

SANTOSH KATTOLLI S/O SHRIMANTH  
AGE: 42 YEARS, OCC: PHYSICAL TEACHER,  
AT MILENIYAM SCHOOL SWAMI VIVEKANAND  
NAGAR, SANTOSH COLONY, ALAND ROAD,  
KALABURAGI  
R/O ASHOK NAGAR, KALABURAGI

...PETITIONER

(BY SRI. CHANNABASAPPA HAYYALAPPA, ADVOCATE)

AND:

THE STATE OF KARNTAKA  
THROUGH ASHOK NAGAR, POLICE STATION,

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NC: 2024:KHC-K:7217  
CRL.P No. 201138 of 2024  
C/W CRL.P No. 201087 of 2024  
CRL.P No. 201142 of 2024  
AND 1 OTHER

THROUGH ADDL. SPP HIGH COURT OF KARNATAKA  
BENCH AT KALABURAGI-585107

...RESPONDENT

(BY SRI. B. N. JAGADEESHA, ADDL. SPP (BY V.C.);  
AND SMT. ANITA M. REDDY, HCGP(PH)

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 NO.5 ON BAIL IN SPL. CASE KCOCA NO.1 OF 2024  
IN CRIME NO. 160/2023 ASHOK NAGAR PS FOR THE OFFENCES  
PUNISHABLE UNDER SECTIONS 409, 420, 120(B), 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.

IN CRL. P. NO. 201143 OF 2024:

BETWEEN:

CHANDRAKANT  
S/O BHEEMASHANKAR BURKAL,  
AGE: 59 YEARS, OCC: INCHARGE  
PRINCIPAL OF GOVERNMENT COLLEGE,  
KARAJGI, R/O KARAJGI,  
TQ. AFZALPUR, DIST. KALABURAGI-585301.

...PETITIONER

(BY SRI. RAJESH DODDAMANI, ADVOCATE)

AND:

THE STATE OF KARNATAKA  
ASHOK NAGAR POLICE STATION, KALABURAGI,  
NOW REPRESENTED BY  
THE ADDITIONAL STATE PUBLIC PROSECUTOR,

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CRL.P No. 201138 of 2024

C/W CRL.P No. 201087 of 2024

CRL.P No. 201142 of 2024

AND 1 OTHER

HIGH COURT OF KARNATAKA,  
KALABURAGI BENCH-585105.

...RESPONDENT

(BY SRI. B. N. JAGADEESHA, ADDL. SPP (BY V.C.);  
AND SMT. ANITA M. REDDY, HCGP(PH)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 439 OF CR.P.C (OLD) UNDER SECTION 483 OF BNSS (NEW) ACT, PRAYING TO ALLOW THIS PETITION AND RELEASE THE PETITIONER/ACCUSED NO. 13 AS PER CHARGE SHEET ON BAIL IN CONNECTION WITH CRIME NO. 160/2023 OF ASHOK NAGAR POLICE STATION KALABURAGI REGISTERED FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 409, 420, 120(B), 201, 109, 114, 36, 37, 34, OF INDIAN PENAL CODE AND UNDER SECTIONS 3(1), (II)(2), (3)(4) OF KCOCA ACT, NOW PENDING ON THE FILE OF THE HON'BLE PRINCIPAL DISTRICT AND SESSIONS JUDGE, KALABURAGI IN SPL.C (KCOCA) NO. 1/2024 IN THE INTEREST OF JUSTICE.

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

CORAM: HON'BLE MR. JUSTICE K NATARAJAN

ORAL ORDER

(PER: HON'BLE MR. JUSTICE K NATARAJAN) The CrI.P.No.201138/2024 is filed by accused No.9, CrI.P No. 201087/2024 is filed by the petitioner/accused No.6, CrI.P No.201142/2024 is filed by the petitioner/accused No.5 and CrI.P.No.201143/2024 is filed Petitioner Accused No.13 for NC: 2024:KHC-K:7217 AND 1 OTHER granting bail in Crime No.160/2023 of 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 in Spl.C (KCOCA) no. 1/2024.

2. Heard the learned counsel for the petitioners and learned Addl. SPP Sri.B.N.Jagadeesha along with learned HCGP for the State.

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. held in their Institution on 28.10.2023 for the recruitment of FDA posts. There were 21 candidates in row No. 38, 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 NC: 2024:KHC-K:7217 AND 1 OTHER receiving the answers from outside from the venue from his brother Ambarish, accused No.2. The accused No.1 was caught red handed and the Bluetooth device said to be seized. The police arrested accused No.1, and during the investigation it came to know that accused No.3/R.D Patil was involved in supplying the Bluetooth devices. It is also

found during the investigation that the police that the petitioners also involved in the Commission of the offence, where it is alleged, as per the instructions of the accused No.3/R.D.Patil, he has contacted accused Nos.12 and 13 who were the Superintendent, deputed at Royal View College at Afzalpur and he had assured to give Rs.20 lakhs each to accused Nos.12 and 13 and thereby a day prior to the examination, accused No.13 sent accused No.5 to Afzalpur and also sent money through accused No.15 to accused No.12. Accused No.13 said to have received money from accused No.12 for leaking the question papers and said to have allowed accused No.5 to the campus by giving the badge. Accordingly, the paper was leaked outside and were sent through the WhatsApp to accused No.3. Inturn he said to have obtained the answers from accused No.19 and supplied to the NC: 2024:KHC-K:7217 AND 1 OTHER candidates through the persons who have contacted accused No.3. Thereby, the accused No.3 said to be involved and this petitioner said to be syndicate of accused 3. They have been arrested on 14.11.2023 and some of them were arrested on 11.11.2023. They have been remanded to the judicial custody. Their bail petition came to be rejected. Accordingly they are before this court.

4. Learned counsel for the petitioners seriously contended the petitioners are actually arrested 3 days prior to the arrest shown in the remand application. They have been kept in illegal custody and the same was brought to the notice of Magistrate at the time of production. It is also contended the police have not issued the notice under Section 41 A of Cr.P.C., prior to their arrest. They have abruptly arrested and produced before the Court and got remanded to judicial custody. It is also contended previously the KCOCA ACT was not invoked. Even otherwise, the KCOCA ACT is not attracted against this petitioner. It may attract accuse No.3. They are in custody for more than 10 months. Investigation is completed and charge sheet has been filed. The coordinate bench of this NC: 2024:KHC-K:7217 AND 1 OTHER court granted bail to accused Nos.1, 2, 4 and 19. And this court granted bail to accuse No.19. Therefore, on the ground of parity, these petitioners are entitled for the bail. It is also contented that there is no recovery from the petitioners, except the voluntary statement, nothing has been produced to connect accused with the crime. They are ready to abide by any condition, some of them are public servant working in a Government School and one of them are working in Private College, one of them Executive Engineer, all of them ready to abide by any conditions. Hence prayed for granting bail.

5. Per contra, learned Addl.SPP seriously objected the petition and he also filed the written statement of objection and contented that the accused persons knowing fully that accused No.3 was involved in PSI, recruitment scam and by receiving money by accused Nos.12 and 13 in collusion with accused No.3 they released and leaked out the question paper of FDA recruitment question paper. Accused no.5 has been sent by accused No.3 to Afzalpur. He has stayed in a hotel and later met accused No.13. He was allowed to enter examination premises where accused No.13 signed batch and released the

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NC: 2024:KHC-K:7217 AND 1 OTHER question paper to accused. Inturn, it was sent to accused No.3. Thereafter he has supplied to various candidates and had enabled the candidates to write the examination by using the Bluetooth devices. The accused persons were arrested. The bail of the

accused No.3 has been rejected by this court. There are 8 cases registered against accused No.3 and others. Therefore, if these petitioners are granted bail, they may likely to commit similar offences. They may tamper with prosecution witnesses and also contended that the police not able to issue notice under Section 41(A) .of Cr.P.C., as they like likely to destroy the evidences they have such as SIM cards etc., Therefore it is eminent danger if notices issued they may destroy the evidence, therefore they have been arrested. It is further contended the police have seized the SIM cards, mobile phone, WhatsApp status and Messages. It was sent to the FSL. FSL report reveals for having contacted accused No.3 by the other accused persons WhatsApp messages and sending the question paper by accused No.3 to other accused overall seized by the police which prima facie material placed on record to show the involvement of the petitioner in this case. Therefore, it is not fit

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NC: 2024:KHC-K:7217 AND 1 OTHER case for granting bail. Hence prayed for dismissing the petitions.

6. Learned Addl. SPP also contended that some of the petitioners being public servant, they have been involved in the recruitment scam. If they are released on bail, it may give wrong message to the society. Therefore, they said to be kept in jail. Hence prayed for dismissing the petition.

7. Having heard the arguments, perused the records especially on perusal of the column. No. 17 of the charge sheet, the police Investigation paper, CID police have filed a charge sheet. Admittedly, the petitioners are in custody from November 2023. Almost 10 months investigation is completed and charges sheet has been filed. The accused Nos.1, 2 and 4, Thrimurthy, Ambareesh and Saleem were granted bail by the coordinate bench of this court in Crl.P.No.200232/2024 dated 24.04.2024 and this court vide order dated 31.08.2024 had granted anticipatory bail to accused No.19/Ravenna Siddappa who said to be prepared answers and sent to accused No.3/ R.D.Patil. However, this court vide order dated 31.03.2024 had rejected the bail application of accused No.3/R.D. Patil, who is

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NC: 2024:KHC-K:7217 AND 1 OTHER a King pin in this case. Admittedly, there were 8 cases registered against R.D.Patil in FDA recruitment scam, 5 in Yadgir and 3 cases in Kalaburgi. The bail application of R.D.Patil was rejected not only for involving in FDA recruitment scam, but he was also involved PSI recruitment scam and some other Junior Engineer Examination at Bangalore. The apprehension of the court, that he be released on the bail. He may commit similar offence, where there is upcoming examination of KPSC which was announced by the State Government,. Once again he may be involved in such case. Therefore, bail has been rejected. However, it is well settled by the Honorable Supreme Court in recent past in catena of decisions that bail is a rule, Rejection is exception. Even this rule is applicable to the cases where the accused persons were involved in unlawful terrorist activities UAPA cases and also in serious offence like murder cases where the accused person languishing in jail and undergoing incarnation. Therefore, Hon'ble Supreme Court has granted bail in most of the accused persons who were languished in jail.

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8. Here in this case, looking to the allegations of the petitioners, one of the petitioner is accused No.6 and accused No.9 said to be acquainted with accused No.3 R.D.Patil when accused No.3 was working as contractor by taking some jobs in their village panchayat etc., One of the accused is Executive Engineer who assigned the job of the contractual work and came in contact, where they said to be helped accused No.3 in the recruitment scam. Of course there are some WhatsApp messages retrieved by the Investigating Officer which reveals there was WhatsApp messages for sending the Hall tickets by the accused. No.3 and contacting accused No.3. There was CDR records also produced by the prosecution. However, accused Nos.5 and 3, there is a specific allegation against them, where accused No.13 was Superintendent deputed to the Royal View College at Afzalpur in examination centre, where accused No.5 met accused No.13, who said to have released or leaked out the question paper to him by allowing him into the campus. It is also seen from the charge sheet the accused No.3 sent Rs.20 lakhs to accused No.13 through accused No.12. Accused No.15 said to have went to Afzal pur on 27.10.2023 and said to be

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NC: 2024:KHC-K:7217 AND 1 OTHER paid Rs.20, lakhs to the hand of accused No.12. In turn accused No.13, said to have received the amount for leaking out the paper.

9. On verification of the records, absolutely there is no amount which has been recovered from accused Nos.12 or 13. by the Police even though said to have received Rs.20 lakhs on 27.10.2023, through within 15 days he has been arrested. But not a single penny has been recovered from them. That apart submitted by the learned counsel for the petitioner that a sum of the amount of Rs.30,000 has been transferred from the accounts of accused No.6, who is relative and received some amount from him through the relatives, which is nothing to do with the present case, but the amount was sent by online fraud. But it is contended there is no record to show these petitioner Nos.6 and 9 were received any money from the accused No.3. Though it is contended accused No.3 has been sent by accused No.5 but no money has been recovered either accused No.5 also. However there is FSL report also which reveals there is CDR which reveals there were in touch with each other by telephonic messages, WhatsApp messages and

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NC: 2024:KHC-K:7217 AND 1 OTHER sending the Question paper and receiving and resending to the various persons who were actually involved in writing the examination by the candidate through sending answer to some other person through mobile phone from the blue tooth devices. Though learned counsel for the petitioner contended. KCOCA ACT is not applicable, but they are the members on syndicate of accused No. 3. However, there is no bar for granting bail to them in KCOCA ACT also as held by the learned counsel, the Section 22 (5) KOKA been already struck down as ultra virus.



10. Be as it may, there is prima facie material placed on record to show these accused persons were involved in the offences along with the accused No.3/ R.D. Patil, who is a kingpin in this case, whose bail application came to be rejected, However, as held by Hon'ble Supreme Court the alleged offences are not punishable with death or imprisonment of life and most of the IPC cases are punishable for less than 7 years. Of course, It is held by the Hon'ble Supreme Court in the case of Satender Kumar Antil vs Central Bureau Of Intelligence, when 41(A) Cr.P.C. notice is not issued, it is

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NC: 2024:KHC-K:7217 AND 1 OTHER violation of the mandatory provision. Therefore, accused persons are entitled for bail. Hon'ble Supreme Court has held in the case of Harish Kumar case the offences are less than 7 years, it is mandatory to issue the notice under section 41(A) of Cr.P.C. Of course, learned SPP is right in answering that if the accused persons were issued notice, this petitioner definitely they may destroy the evidence and they may escape from the clutches of the law. Therefore, considering the same, at this stage without expressing any opinion on the merits of the case, in respect of Section 41 (A) of Cr.P.C., even otherwise, the KCOCA-2000 Act is applicable against the petitioners, as except this case, there is no other cases pending against them. Therefore, as a ground of parity they are entitled for bail where in this court granted bail to accused Nos.1, 2 3 and 19 and the offences are not punishable with death or imprisonment. They are in custody for almost than 10 months. Investigation completed and charge sheet has been filed. Therefore, keeping them in jail amounts to pre trial punishment and it is nothing but violation of Article 21 of liberty guaranteed by the Constitution of India. Therefore, considering all this, I

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NC: 2024:KHC-K:7217 AND 1 OTHER am of the view 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.5, 6, 9 and 13 are ordered to be released on bail by the Trial 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.5,6,9, and 13 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;

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(iv) Petitioners shall not leave the jurisdiction without prior permission of Trial court.

(v) Petitioners shall not contact accuse No.3 R.D.Patil for any purposes.

(vi) Petitioners shall take the trial without causing any delay.

(vii) Petitioners shall appear before the I.O. 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.

Sd/-

(K NATARAJAN) JUDGE AKV CT:SI