

# Avinash vs The State Of Karnataka on 11 March, 2025

**Author: S Vishwajith Shetty**

**Bench: S Vishwajith Shetty**

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NC: 2025:KHC:10169  
CRL.P No. 893 of 2025

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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 11TH DAY OF MARCH, 2025

BEFORE

THE HON'BLE MR JUSTICE S VISHWAJITH SHETTY  
CRIMINAL PETITION NO. 893 OF 2025

BETWEEN:

AVINASH,  
S/O .SURENDRA  
AGED ABOUT 22 YEARS  
R/AT LAMANI TEMPLE,  
NEAR MANDUF NAVELIM,  
MARGAM SALLETE, SOUTH GOA,  
GOA STATE - 433 705.

...PETITIONER

(BY SRI. VACHAN GOWDA, ADVOCATE)

AND:

THE STATE OF KARNATAKA,  
THROUGH SOUTH EAST CEN CRIME POLICE,

THE STATE BY REPRESENTED BY SPP OFFICE,  
HIGH COURT BUILDING, AMBEDKAR VEEDI,  
BANGALORE - 560 001.

...RESPONDENT

(BY SMT. PUSHPALATHA, ADDL. SPP A/W  
SRI. VINAY MAHADEVAIAH, HCGP)

THIS CRL.P IS FILED U/S 439 OF CR.PC (FILED U/S 483  
BNSS) PRAYING TO ALLOW THE PETITION AND ENLARGE  
PETITIONER ON BAIL, ARISING OUT OF BEING ORDER DATED  
21.01.2025 PASSED BY THE PRL. LXI ADDL. CITY CIVIL AND  
SESSIONS JUDGE BANGALORE (CCH-62)  
CRL.MISC.NO.264/2025 AND THE PETITIONERS / ACCUSED  
NO.2 IS SEEKING REGULAR BAIL IN CR.NO.794/2024 OF

Digitally  
signed by  
NANDINI D  
Location:  
High Court  
of Karnataka

SOUTH EAST CEN CRIME POLICE STATION, PENDING ON THE  
FILE OF 45TH ACJM COURT, BENGALURU FOR THE OFFENCE  
P/U/S 66(D) OF I.T. ACT AND 318(4), 319(2) AND 113(3) AND  
(4) OF BNS ACT.

THIS PETITION, COMING ON FOR ORDERS, THIS DAY,  
ORDER WAS MADE THEREIN AS UNDER:  
CORAM: HON'BLE MR JUSTICE S VISHWAJITH SHETTY

ORAL ORDER

Accused No.2 in Crime No.794/2024 registered by South East CEN Crime Police Station, Bengaluru City for the offences punishable under Sections 318(4), 319(2) of BNS, 2023 and 66(D) of Information Technology Act, 2000 (for short 'IT Act') is before this Court under Section 483 of BNSS Act, 2023 seeking regular bail.

2. Heard the learned Counsel for the parties.

3. FIR in Crime No.794/2024 was registered by South East CEN Crime Police Station, Bengaluru City against unknown persons for the aforesaid offences, on the basis of the first information dated 24.08.2024 received from Ms.Manthalir N, daughter of Keshav Singh K. NC: 2025:KHC:10169

4. During the course of investigation, petitioner herein was issued with the notice under Section 35(3) of BNS 2023 and in response to the said notice, petitioner had appeared before the police on 06.01.2025 and on the said date he was arrested and subsequently, remanded to judicial custody. Bail application filed by the petitioner before the Jurisdictional Sessions Court in Crl.Misc.No.264/2025 was rejected on 20th January, 2025. Therefore, petitioner is before this court.

5. Learned Counsel for the petitioner submits that petitioner has no other criminal antecedents. Except the petitioner, till date no other accused has been arrested in the present case. In spite of that, the Investigation Officer has filed an application before the Trial Court seeking permission to invoke the offences punishable under Sections 111(3) and 111(4) of BNS, 2023 which was mechanically allowed by the Trial Judge without application of mind. He submits that since the chargesheet is not filed within period provided under the statute, NC: 2025:KHC:10169 petitioner is entitled for statutory bail. Accordingly, he prays to allow this petition.

6. Per contra, learned Additional State Public Prosecutor has opposed the petition. She submits that during the course of interrogation, statement of one Hazarat Ali Malhakatti was recorded and based

on the same, enquiry notice was issued to the petitioner and on 06.01.2025 he has been arrested. She submits that further investigation of the case is under progress. Accordingly, she prays to dismiss this petition.

7. FIR in the present case has been registered for the offences punishable under Sections 318(4), 319(2) of BNS, 2023 and Section 66(D) of the IT Act and the alleged offences are triable by the Court of Magistrate and the maximum punishment for the aforesaid offences is imprisonment for a period of 7 years. Undisputedly, petitioner has no other criminal antecedents and except the petitioner, till date no other accused has been arrested in the present case. In the remand application of the NC: 2025:KHC:10169 petitioner, it is stated that petitioner has admitted his guilt, and therefore, he was arrested. In the remand application, it is also stated that during the course of investigation one Hazarat Ali Malhakatti, to whose bank account amount was transferred was issued with a enquiry notice under Section 35(3) of BNS, 2023 and during the course of interrogation of the said Hazarat Ali Malhakatti on 21.11.2024, he had stated that he had asked his friend Avinash (petitioner) to withdraw a sum of Rs.1,00,000/- from his account using his ATM card and accordingly, Avinash had withdrawn a sum of Rs.1,00,000/- from his bank account using his ATM card. Except the aforesaid allegation, there is no other allegation as against the petitioner.

8. Section 187 of BNSS, 2023 provides for procedure when investigation cannot be completed in 24 hours. Section 187 of BNSS, 2023 reads as follows:

"Section 187. Procedure when investigation cannot be completed in twenty NC: 2025:KHC:10169 four hours.-(1) Whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by section 58, and there are grounds for believing that the accusation or information is well-founded, the officer in charge of the police station or the police officer making the investigation, if he is not below the rank of sub-inspector, shall forthwith transmit to the nearest Magistrate a copy of the entries in the diary hereinafter specified relating to the case, and shall at the same time forward the accused to such Magistrate.

(2) The Magistrate to whom an accused person is forwarded under this section may, irrespective of whether he has or has no jurisdiction to try the case, after taking into consideration whether such person has not been released on bail or his bail has been cancelled, authorise, from time to time, the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole, or in parts, at any time during the initial forty days or sixty days out of detention period of sixty days or ninety days, as the case may be, as provided in sub-section (3), and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he NC: 2025:KHC:10169 may order the accused to be forwarded to a Magistrate having such jurisdiction.

(3) The Magistrate may authorise the detention of the accused person, beyond the period of fifteen days, if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this sub-section for a total period exceeding-

(i) ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of ten years or more;

(ii) sixty days, where the investigation relates to any other offence, and, on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this sub-section shall be deemed to be so released under the provisions of Chapter XXXV for the purposes of that Chapter. (4) No Magistrate shall authorise detention of the accused in custody of the police under this NC: 2025:KHC:10169 section unless the accused is produced before him in person for the first time and subsequently every time till the accused remains in the custody of the police, but the Magistrate may extend further detention in judicial custody on production of the accused either in person or through the audio-video electronic means.

(5) No Magistrate of the second class, not specially empowered in this behalf by the High Court, shall authorise detention in the custody of the police.

Explanation I. - For the avoidance of doubts, it is hereby declared that, notwithstanding the expiry of the period specified in sub-section (3), the accused shall be detained in custody so long as he does not furnish bail.

Explanation II. - If any question arises whether an accused person was produced before the Magistrate as required under sub-section (4), the production of the accused person may be proved by his signature on the order authorising detention or by the order certified by the Magistrate as to production of the accused person through the audio-video electronic means, as the case may be:

NC: 2025:KHC:10169 Provided that in case of a woman under eighteen years of age, the detention shall be authorised to be in the custody of a remand home or recognised social institution:

Provided further that no person shall be detained otherwise than in police station under police custody or in prison under judicial custody or a place declared as prison by the Central Government or the State Government.

6) Notwithstanding anything contained in sub-section (1) to sub-section (5), the officer in charge of the police station or the police officer making the investigation, if he is not below the rank of a sub-inspector, may, where a Magistrate is not available, transmit to the nearest Executive Magistrate, on whom the powers of a Magistrate have been conferred, a copy of the entry in the diary hereinafter specified relating to the case, and shall, at the same time, forward the accused to such Executive Magistrate, and thereupon such Executive Magistrate, may, for reasons to be recorded in writing, authorise the detention of the accused person in such custody as he may think fit for a term not exceeding seven days in the aggregate; and, on the expiry of the period of detention so authorised, the accused person shall

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NC: 2025:KHC:10169 be released on bail except where an order for further detention of the accused person has been made by a Magistrate competent to make such order; and, where an order for such further detention is made, the period during which the accused person was detained in custody under the orders made by an Executive Magistrate under this sub-section, shall be taken into account in computing the period specified in sub-section (3):

Provided that before the expiry of the period aforesaid, the Executive Magistrate shall transmit to the nearest Judicial Magistrate the records of the case together with a copy of the entries in the diary relating to the case which was transmitted to him by the officer in charge of the police station or the police officer making the investigation, as the case may be.

(7) A Magistrate authorising under this section detention in the custody of the police shall record his reasons for so doing.

(8) Any Magistrate other than the Chief Judicial Magistrate making such order shall forward a copy of his order, with his reasons for making it, to the Chief Judicial Magistrate.

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NC: 2025:KHC:10169 (9) If in any case triable by a Magistrate as a summons-case, the investigation is not concluded within a period of six months from the date on which the accused was arrested, the Magistrate shall make an order stopping further investigation into the offence unless the officer making the investigation satisfies the Magistrate that for special reasons and in the interests of justice the continuation of the investigation beyond the period of six months is necessary.

(10) Where any order stopping further investigation into an offence has been made under sub-section (9), the Sessions Judge may, if he is satisfied, on an application made to him or otherwise, that further investigation into the offence ought to be made, vacate the order made under sub-section (9) and direct further investigation to be made into the offence subject to such directions with regard to bail and other matters as he may specify.

9. From a reading of the aforesaid provision of law, it is clear that for the offences for which FIR has been filed in the present case, if the investigation is not completed and final report is not filed within a period of sixty days, the

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NC: 2025:KHC:10169 accused person shall be released on bail if he is prepared to and does furnish bail.

10. In the present case, an application was filed by the Investigation Officer before the Trial Court seeking permission of the Trial Court to invoke the offence punishable under Sections 111(3) and 111(4) of BNS, 2023. It is not in dispute that the petitioner has no other criminal antecedents and except the petitioner no other accused has been arrested in the present case. Section 111 of BNS, 2023 reads as follows:

Section 111. Organised crime (1) Any continuing unlawful activity including kidnapping, robbery, vehicle theft, extortion, land grabbing, contract killing, economic offence, cyber-crimes trafficking of persons, drugs, weapons or illicit goods or services, human trafficking for prostitution or ransom, by any person or a group of persons acting in concert, singly or jointly, either as a member of an organised crime syndicate or on behalf of such syndicate, by use of violence, threat of violence, intimidation, coercion, or by any other unlawful means to obtain direct or

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NC: 2025:KHC:10169 indirect material benefit including a financial benefit, shall constitute organised crime.

Explanation. For the purposes of this sub- section,-

(i) "organised crime syndicate" means a group of two or more persons who, acting either singly or jointly, as a syndicate or gang indulge in any continuing unlawful activity;

(ii) "continuing unlawful activity" means an activity prohibited by law which is a cognizable offence punishable with imprisonment of three years or more, undertaken by any person, either singly or jointly, as a member of an organised crime syndicate or on behalf of such syndicate in respect of which more than one charge-sheets have been filed before a competent Court within the preceding period of ten years and that Court has taken cognizance of such offence, and includes economic offence:

(iii) "economic offence includes criminal breach of trust, forgery, counterfeiting of currency-notes, bank-notes and Government stamps. hawala transaction, mass-marketing fraud or running any scheme to defraud several persons or doing any act in any manner with a view to defraud any bank or financial institution or any other institution or organisation for obtaining monetary benefits in any form.

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NC: 2025:KHC:10169 (2) Whoever commits organised crime shall.-

(a) if such offence has resulted in the death of any person, be punished with death or imprisonment for life, and shall also be liable to fine which shall not be less than ten lakh rupees;

(b) in any other case, be punished with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine which shall not be less than five lakh rupees.

(3) Whoever abets, attempts, conspires or knowingly facilitates the commission of an organised crime, or otherwise engages in any act preparatory to an organised crime, shall be punished with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine which shall not be less than five lakh rupees.

(4) Any person who is a member of an organised crime syndicate shall be punished with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life, and shall also be liable to fine which shall not be less than five lakh rupees.

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NC: 2025:KHC:10169 (5) Whoever, intentionally, harbours or conceals any person who has committed the offence of an organised crime shall be punished with imprisonment for a term which shall not be less than three years but which may extend to imprisonment for life, and shall also be liable to fine which shall not be less than five lakh rupees:

Provided that this sub-section shall not apply to any case in which the harbour or concealment is by the spouse of the offender.

(6) Whoever possesses any property derived or obtained from the commission of an organised crime or proceeds of any organised crime or which has been acquired through the organised crime, shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to imprisonment for life and shall also be liable to fine which shall not be less than two lakh rupees.

(7) If any person on behalf of a member of an organised crime syndicate is, or at any time has been in possession of movable or immovable property which he cannot satisfactorily account for, shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to imprisonment for ten years

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NC: 2025:KHC:10169 and shall also be liable to fine which shall not be less than one lakh rupees.

11. The primary intent behind introducing Section 111 of BNS, 2023, is to provide a targeted and effective mechanism to dismantle organized crime syndicate. From a reading of the said provision of law, it is manifest that for the purpose of invoking Section 111 of BNS, 2023, there are certain basic parameters and if only it is found that the accused comes within the said parameters, the offence punishable under Section 111 of BNS, 2023 can be invoked. The said parameters are as follows:

- (a) the offences enlisted in the Section must have been committed;
- (b) accused should be a member of an organized crime syndicate;
- (c) he should have committed the crime as a member of an organized crime syndicate or on behalf of such syndicate;

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(d) he should have been chargesheeted more than once before a competent Court within the preceding period of ten years for a cognizable offence punishable with imprisonment for three years or more and the Court before which chargesheet has been filed should have taken cognizance of such offence and includes economic offence;

(e) the crime must be committed by using violence, intimidation, threat, coercion or by any other unlawful means.

12. In the present case, it is not in dispute that the petitioner has no other criminal antecedents and no other accused has been arrested in the present case and it is under these circumstances, this Court had directed the learned Addl. SPP to produce the material collected by the Investigation Officer, which persuaded him to invoke the offences punishable under Sections 111(3) and 111(4) of BNS, 2023 in the present case. In response to the same, the learned Addl. SPP has filed the affidavit of Investigation Officer in the present case, wherein, he has stated that there is a possibility of accused No.2 being

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NC: 2025:KHC:10169 involved in other crime, hence they have included Sections 111(3) and 111(4) of BNS, 2023.

13. Perusal of the order sheet of the Trial Court would go to show that a requisition was filed by the Investigation Officer to invoke Sections 111(3) and 111(4) of BNS, 2023 much prior to the arrest of the petitioner. Petitioner was arrested in the present case on 06.01.2024, whereas the requisition to invoke Sections 111(3) and 111(4) of BNS, 2023 was filed before the Trial Court on 07.12.2024 and the Trial Court without application of mind has allowed the said application on the same day. As on the said date, Investigation Officer had not arrested any accused persons and absolutely there was no material before him so as to invoke the offences punishable under Sections 111(3) and 111(4) of BNS, 2023. Even in the affidavit which was filed before this Court on 10.03.2025 by the Investigation Officer, he has stated that till date no such material has been collected by him to enable him to invoke Sections 111(3) and 111(4) of BNS, 2023. Section

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NC: 2025:KHC:10169 187(3) of BNSS, 2023 which is pari materia to Section 167(2)(a) of Cr.P.C provides for a right to statutory bail to the accused and the Hon'ble Supreme Court in the case Bikramjit Singh V/s State of Punjab, 2020 SCC Online SC 824, has observed that the right to statutory/default bail is not a mere statutory right, but is part of the procedure established by law under Article 21 of the Constitution of India, which is, therefore, a fundamental right guaranteed to an accused person.

14. This Court has noticed that Investigation Officer has filed an application before the Trial Court seeking permission to invoke the offence punishable under Section 111 of BNS, 2023 and the Trial Court without application of mind has allowed the said application. Offence under Section 111 of BNS, 2023 is punishable with life imprisonment and therefore, statute provides ninety days time to complete the investigation and file a final report.

15. In the present case, chargesheet was required to be filed within sixty days from the date of arrest of the

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NC: 2025:KHC:10169 accused. However since the Trial Court has permitted the Investigation Officer to invoke the offences punishable under Sections 111(3) and 111(4) of BNS, 2023, the time to complete investigation and submit final report, automatically gets extended and thereby, the precious right guaranteed to an accused under Section 187(3) of BNSS, 2023 is infringed and his right to liberty guaranteed under Article 21 of the Constitution of India is also curtailed.

16. The Courts are therefore required to be more cautious while permitting the Investigation Officer to invoke the offence punishable under Section 111 of BNS, 2023 and whenever such an application/requisition is filed by the Investigation Officer, the Courts are required to apply their mind and thereafter pass necessary orders. The application/requisition of the Investigation Officer seeking permission of the Court to invoke Section 111 of BNS, 2023, shall be accompanied with necessary documents/materials which would prima-facie show the

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NC: 2025:KHC:10169 necessity to invoke the offence punishable under Section 111 of BNS, 2023 and it is only after considering such material which is are produced by the Investigation Officer along with the application/requisition, the concerned Court can consider his request to invoke the offence punishable under Section 111 of BNS, 2023.

17. On the merits of the present case, it is found that except the allegations that the petitioner had withdrawn a sum of Rs.1,00,000/- from the account of Hazarat Ali Malhakatti using his ATM card on his instructions, there is no other allegations. Undisputedly, petitioner has no other criminal antecedents. He has been arrested on 06.01.2025 and learned Addl. SPP has fairly submitted that charge sheet is not filed and at this stage there is no material collected by the Investigation Officer, so as to invoke the offences punishable under Sections 111(3) and 111(4) of BNS, 2023. Under the

circumstances, I am of the view that prayer made by the petitioner for grant of regular bail

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NC: 2025:KHC:10169 needs to be answered affirmatively. Accordingly, the following:

ORDER The petition is allowed.

The petitioner is directed to be enlarged on bail in Crime No.794/2024 was registered by South East CEN Crime Police Station, Bengaluru City for offences punishable under Sections 318(4), 319(2) of BNS Act 2023 and 66(D) of IT Act, subject to the following conditions:

- a) The petitioner shall execute personal bond for a sum of Rs.1,00,000/- (Rupees One Lakh only) with two sureties for the likesum, to the satisfaction of the jurisdictional Court;
- b) The petitioner shall appear regularly on all the dates of hearing before the Trial Court unless the Trial Court exempts his appearance for valid reasons;
- c) The petitioner shall not directly or indirectly threaten or tamper with the prosecution witnesses;

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- d) The petitioner shall not involve in similar offences in future;
- e) The petitioner shall not leave the jurisdiction of the Trial Court without permission of the said Court until the case registered against his is disposed off. The Registrar General of this Court shall ensure that the copy of this order is circulated to all the Presiding Officers of the District Judiciary, for information and compliance.

Sd/-

(S VISHWAJITH SHETTY) JUDGE KVR CT: BHK-