

Mr Mohammed Mustafa vs State Of Karnataka on 23 January, 2025

Author: S Vishwajith Shetty

Bench: S Vishwajith Shetty

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NC: 2025:KHC:3020
CRL.P No. 13068 of 2024
C/W CRL.P No. 12766 of 2024
CRL.P No. 12841 of 2024
AND 2 OTHERS

IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 23RD DAY OF JANUARY, 2025
BEFORE
THE HON'BLE MR JUSTICE S VISHWAJITH SHETTY
CRIMINAL PETITION NO. 13068 OF 2024 (439(Cr.PC) /
483(BNSS))
C/W
CRIMINAL PETITION NO. 12766 OF 2024
CRIMINAL PETITION NO. 12841 OF 2024
CRIMINAL PETITION NO. 12877 OF 2024
CRIMINAL PETITION NO. 13028 OF 2024

IN CRL.P No. 13068/2024
BETWEEN:

SHOAIB
S/O LATE UMMAR HUSSAIN,
AGED ABOUT 45 YEARS,
R/AT. NO 7-216, SITE NO 298,
AYISHA AIMAN, 7TH BLOCK,
KATIPALLA KRISHNAPURA MANGALURU,
PRESENTLY R/AT. PLOT NO 1003,
VISHWAS HERITAGE,
KULSHEKARA MANGALURU CITY,
D K DISTRICT 575001

Digitally signed
by SHILPA R
TENIHALLI
Location: HIGH
COURT OF
KARNATAKA

...PETITIONER

(BY SRI SYED AKBAR PASHA., ADVOCATE)

AND:

1. THE STATE OF KARNATAKA
BY KAVOOR POLICE STATION,
MYSURU DISTRICT,

REP BY SPP HIGH COURT BUILDING,
BANGALORE 560001

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CRL.P No. 13068 of 2024

C/W CRL.P No. 12766 of 2024

CRL.P No. 12841 of 2024

AND 2 OTHERS

2. HYDER ALI
S/O B.M. AHAMAD BAVA,
AGED ABOUT 52 YEARS,
R/O. FLAT NO. 1904, ABHIMAN HILLS,
LIGHT HOUSE, HILL ROAD,
MANGALURU,
D.K DIST.-575003

AMENDED CAUSE TITLE AS PER ORDER
DATED 16.12.2024

...RESPONDENTS

(BY SRI THEJESH P. HCGP FOR R1;
SRI P.P. HEGDE, SENIOR COUNSEL FOR
SRI VENKATESH SOMAREDDI, ADVOCATE FOR R2)

THIS CRL.P IS FILED U/S 439 CR.PC (FILED U/S 483
BNSS) PRAYING TO RELEASE HIM ON BAIL IN CR.NO.150/2024
OF KAVOOR P.S. MANGALURU CITY FOR THE OFFENCE
PUNISHABLE UNDER SECTIONS 308(2),308(5),352,351,108
R/W 190 OF BNS PENDING ON THE FILE OF J.M.F.C III COURT
MANGALURU D.K. IN THE INTEREST OF JUSTICE.

IN CRL.P NO. 12766/2024

BETWEEN:

MR. MOHAMMED MUSTAFA
S/O B. H. IDDINABBA,
AGED ABOUT 50 YEARS,
R/AT D NO 7-44B,
7TH BLOCK, KRISHNAPURA,
MANGALORE TALUK,
DAKSHINA KANANDA DISTRICT 575001

...PETITIONER

(BY SRI HASHMATH PASHA, SENIOR COUNSEL FOR
SRI MOHAMMED MUBARAK., ADVOCATE)

AND:

1. STATE OF KARNATAKA
BY KAVOOR POLICE STATION,

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CRL.P No. 13068 of 2024
C/W CRL.P No. 12766 of 2024
CRL.P No. 12841 of 2024
AND 2 OTHERS

MANGALORE DISTRICT 575015
REPRESENTED BY LEARNED
STATE PUBLIC PROSECUTOR
HIGH COURT OF KARNATAKA,
BANGALORE 560001

2. HYDER ALI
AGED ABOUT 52 YEARS,
S/O B.M. AHAMMED BAVA,
R/O. FLAT NO. 1904, ABHIMAN HILLS,
LIGHT HOUSE, HILL ROAD,
MANGALURU,
D.K DIST.-575003

AMENDED CAUSE TITLE AS PER ORDER
DATED 16.12.2024

...RESPONDENTS

(BY SRI THEJESH P., HCGP FOR R1;
SRI P.P. HEGDE, SENIOR COUNSEL FOR
SRI VENKATESH SOMAREDDI, ADVOCATE FOR R2)

THIS CRL.P IS FILED U/S 439 CR.PC (FILED U/S 483
BNSS) PRAYING TO ENLARGE HIM ON BAIL IN
CR.NO.150/2024 OF KAVOOR P.S. MANGALORE CITY
WHICH IS PENDING ON THE FILE OF HONBLE III J.M.F.C
COURT MANGALURU FOR THE OFFENCE PUNISHABLE
UNDER SECTIONS 108, 308(2), 308(5), 352, 351(2), 190 OF
BHARATIYA NYAYA SANHITA ON SUCH TERMS AND
CONDITIONS, IN THE ENDS OF JUSTICE.

IN CRL.P NO. 12841/2024

BETWEEN:

ABDUL SATHAR
S/O BAVA BEARY
AGED ABOUT 48 YEARS
R/T. NO 4-132/1, 4TH BLOCK BOLLAJE
KATIPALLA, MANGALORE TALUK
D. K DISTRICT-575030.

...PETITIONER

(BY SRI LETHIF B., ADVOCATE)

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CRL.P No. 13068 of 2024
C/W CRL.P No. 12766 of 2024
CRL.P No. 12841 of 2024

AND 2 OTHERS

AND:

1. THE STATE OF KARNATAKA
BY KAVOOR POLICE STATION
D. K. DISTRICT
REP. BY SPP,
HIGH COURT BUILDING,
BANGALORE 560001.
2. HYDER ALI
S/O B.M. AHAMAD BAVA,
AGED ABOUT 52 YEARS,
R/O. FLAT NO. 1904, ABHIMAN HILLS,
LIGHT HOUSE, HILL ROAD,
MANGALURU,
D.K DIST.-575003

AMENDED CAUSE TITLE AS PER ORDER
DATED 16.12.2024

...RESPONDENTS

(BY SRI THEJESH P., HCGP FOR R1;
SRI P.P. HEGDE, SENIOR COUNSEL FOR
SRI VENKATESH SOMAREDDI, ADVOCATE FOR R2)

THIS CRL.P IS FILED U/S.439 (FILED U/S.483 BNSS)
CR.P.C PRAYING TO RELEASE HIM ON BAIL IN CRIME
NO.150/2024 OF KAVOOR POLICE STATION, MANGALURU
CITY FOR THE OFFENCE UNDER SECTION
308(2),308(5),352,351(2),108 R/W SEC.190 OF BNS,
PENDING ON THE FILE OF THE JMFC III COURT,
MANGALURU D.K. DISTRICT IN THE INTEREST OF JUSTICE.

IN CRL.P NO. 12877/2024

BETWEEN:

KALANDER SHAFI
S/O LATE ISMAIL
AGED ABOUT 39 YEARS,
R/AT NO.1-140/12
KURUBARA KERI, NEAR SALAFI MASJID
BADRIYA MANZILA

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NC: 2025:KHC:3020

CRL.P No. 13068 of 2024
C/W CRL.P No. 12766 of 2024
CRL.P No. 12841 of 2024
AND 2 OTHERS

MANGALORE TALUK
D K DISTRICT-575030

...PETITIONER

(BY SRI. PRATHEEP K. C., ADVOCATE)

AND:

1. THE STATE OF KARNATAKA
BY KAVOOR POLICE STATION
D K DISTRICT
REP BY SPP, HIGH COURT BUILDING
BANGALORE-560001

2. HYDER ALI
S/O B.M. AHAMAD BAVA,
AGED ABOUT 52 YEARS,
R/O. FLAT NO. 1904, ABHIMAN HILLS,
LIGHT HOUSE, HILL ROAD,
MANGALURU, D.K DIST.-575003

AMENDED CAUSE TITLE AS PER ORDER
DATED 16.12.2024

...RESPONDENTS

(BY SRI THEJESH P., HCGP FOR R1
SRI P.P. HEGDE, SENIOR COUNSEL FOR
SRI VENKATESH SOMAREDDI, ADVOCATE FOR R2)

THIS CRL.P IS FILED U/S 439 CR.PC (FILED U/S 483
BNSS) PRAYING TO RELEASE HIM ON BAIL IN
CR.NO.150/2024 OF KAVOOR POLICE STATION
MANGALURU CITY FOR THE OFFENCE UNDER SECTION
308(2),308(5),352,351(2),108 R/W 190 OF BNS PENDING
ON THE FILE OF J.M.F.C III COURT MANGALURU D.K
DISTRICT IN THE INTEREST OF JUSTICE.

IN CRL.P NO. 13028/2024

BETWEEN:

MR MOHAMMED SIRAJ SALAM
AGED ABOUT 46 YEARS

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NC: 2025:KHC:3020

CRL.P No. 13068 of 2024
C/W CRL.P No. 12766 of 2024
CRL.P No. 12841 of 2024
AND 2 OTHERS

S/O B. K. IJJABBA,
R/AT. D.NO. 7-37A/3,
BADRIYA JUMMA MASJID ROAD,
7TH BLOCK, KRISHNAPURA,

SURATHKAL, MANGALURU
D.K. DISTRICT -575015.

...PETITIONER

(BY SRI. NISHIT KUMAR SHETTY.,ADVOCATE)

AND:

1. STATE OF KARNATAKA BY
SHO, KAVOOR POLICE STATION,
MANGALORE, D.K DISTRICT
REPRESENTED BY
STATE PUBLIC PROSECUTOR,
HIGH COURT BUILDING,
BANGALORE - 560 001
2. HYDER ALI
AGED ABOUT 52 YEARS,
S/O B.M. AHAMAD BAVA,
R/O. FLAT NO. 1904, ABHIMAN HILLS,
LIGHT HOUSE, HILL ROAD,
MANGALURU,
D.K DIST.-575003

AMENDED CAUSE TITLE AS PER ORDER
DATED 16.12.2024

...RESPONDENTS

(BY SRI THEJESH P., HCGP FOR R1
SRI P.P. HEGDE, SENIOR COUNSEL FOR
SRI VENKATESH SOMAREDDI, ADVOCATE FOR R2)

THIS CRL.P IS FILED U/S 439 CR.P.C (U/S 483 BNSS)
PRAYING TO ENLARGE THE PETITIONER ON REGULAR BAIL
IN CR.NO.150/2024 OF KAVOOR POLICE STATION,
REGISTERED AGAINST HIM FOR THE OFFENCE UNDER
SECTION 308(2),308(5),352,351(2),190,108 OF BNS,
2023, PENDING ON THE FILE OF 3RD JMFC COURT,
MANGALORE IN THE INTEREST OF JUSTICE.

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CRL.P No. 13068 of 2024

C/W CRL.P No. 12766 of 2024

CRL.P No. 12841 of 2024

AND 2 OTHERS

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

CORAM: HON'BLE MR JUSTICE S VISHWAJITH SHETTY

ORAL ORDER

1. Accused Nos.2 to 6 in Crime No.150/2024 registered by Kavoor Police Station, Dakshina Kannada District, for the offences punishable under Sections 308(2), 308(5), 352, 351(2), 50, 54, 61(2), 140(2), 108 read with Section 190 of BNS, 2023, are before this Court in the above captioned petitions filed under Section 483 of BNSS, 2023, seeking regular bail.

2. Heard the learned counsel for the parties.

3. FIR in Crime No.150/2024 was registered by Kavoor Police Station, Dakshina Kannada District, against Smt. Rehamath and the petitioners herein initially for the offences punishable under Sections 308(2), 308(5), 352, 351(2) and 190 of BNS, 2023, on the basis of the first information dated 06.10.2024 received from Hydar Ali - brother of deceased B.M.Mumtaz Ali. During the course of investigation, accused No.2 was arrested on 08.10.2024 and accused Nos.3 NC: 2025:KHC:3020 AND 2 OTHERS to 5 were arrested on 10.10.2024 and accused No.6 was arrested on 11.10.2024 and subsequently, remanded to judicial custody. Bail application filed by the aforesaid accused persons before the jurisdictional Sessions Court in Crl.Misc.Nos.934/2024, 917/2024, 920/2024 & 960/2024, were rejected. Therefore, they are before this Court.

4. Learned counsels for the petitioners submit that deceased had illicit relationship with accused no.1. After his family members came to know about the same, he has committed suicide. False allegations have been made against the petitioners for extraneous reasons. There was no allegation in the first information about demand of ransom or kidnap of the deceased by the accused. Even in the remand applications, there is no mention about demand of ransom or kidnap of deceased by the accused. As against accused Nos.3 to 6 are concerned, charge sheet has been filed only for offences punishable under Sections 50, 61(2), 108 read with Section 190 of BNS, 2023 and the maximum punishment for the said offences is imprisonment for a period of ten years. Petitioners NC: 2025:KHC:3020 AND 2 OTHERS do not have any serious criminal antecedents. Accordingly, they pray to allow the petitions.

5. Per contra, learned High Court Government Pleader for respondent No.1 and learned Senior counsel for respondent No.2/defacto complainant, who has filed statement of objections have opposed the prayer made in the petitions.

6. Learned Senior counsel for respondent No.2 submits that accused No.2, who is the husband of accused No.1, with whom deceased had illicit relationship, was aware of the said relationship and he along with other accused persons has conspired to commit the alleged offences. He submits that accused persons are persons with criminal antecedents and accordingly, prays to dismiss the petitions.

7. In the typed first information dated 06.10.2024 submitted by the brother of deceased B.M.Mumtaz Ali, it is averred that the first informant had a suspicion that his brother B.M.Mumtaz Ali had parked his car near Kuloor bridge at about 4.00 a.m. on 06.10.2024 and committed suicide by jumping into the river and his dead body is not yet traced. It is further alleged in the

NC: 2025:KHC:3020 AND 2 OTHERS first information that B.M.Mumtaz Ali was being blackmailed from the month of July 2024 onwards by the accused persons and lakhs of rupees were swindled by threatening him. The accused persons had conspired to finish B.M.Mumtaz Ali who was a respected man and an active politician. The accused persons were allegedly making a false propaganda that Mumtaz Ali was having illicit relationship with accused no.1 and by threatening, they had received more than a sum of Rs.50 lakhs from Mumtaz Ali and a cheque for a sum of Rs.25 lakhs was received from him which was encashed. It is further averred that accused persons were demanding for a further sum of Rs.50 lakhs from Mumtaz Ali and Mumtaz Ali had sent a whatsapp message from his mobile phone to the mobile phone of the first informant stating that accused are the cause for his death. It is in this background, first informant had submitted a typed first information on 06.10.2024, based on which, FIR in Crime No.150/2024 was registered against Smt. Rehamath and the petitioners herein.

8. During the course of investigation, accused No.2 was arrested on 08.10.2024 and accused Nos.3 to 5 were arrested

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NC: 2025:KHC:3020 AND 2 OTHERS on 10.10.2024 and accused No.6 was arrested on 11.10.2024 and subsequently, remanded to judicial custody. Investigation in the case is completed and charge sheet has been filed. Insofar as accused Nos.3 to 6 are concerned, charge sheet has been filed against them only for offences punishable under Sections 50, 61(2), 108 read with Section 190 of BNS, 2023 and as against accused No.2, charge sheet has been filed for the offences punishable under Sections 308(2), 308(5), 54, 61(2), 140(2), 108 read with Section 190 of BNS, 2023. Insofar as offences for which charge sheet has been filed against accused Nos.3 to 6 are concerned, the maximum punishment for the said offences is imprisonment for a period of ten years. As against accused No.2, charge sheet has been filed invoking the offence punishable under Section 140(2) of BNS, 2023 and the said offence is punishable with death or life imprisonment. It is relevant to take note of the fact that no allegation was made in the first information as against accused about demand of ransom or kidnap of deceased by accused. Such an allegation is not made even in the remand applications of accused persons. The allegation of ransom and kidnap was made for the first time based on the statement of

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NC: 2025:KHC:3020 AND 2 OTHERS CW-38/Lakshmi, which was recorded after a period of more than 50 days from the date of registration of FIR.

9. A perusal of the charge sheet material would go to show that deceased had illicit relationship with accused No.1 and accused No.1 allegedly had recorded her conversation with deceased in her mobile phone and she also had recorded certain private videos in her mobile phone and was threatening the deceased. The allegation against accused No.2 is that he had conspired with accused Nos.1, 3, 4, 5 and 6 and was threatening the deceased on the basis of the conversation and private videos that were recorded by accused No.1 in her mobile phone and therefore, deceased had committed suicide.

The allegation against accused Nos.3, 4, 5 and 6 is that they had conspired with accused Nos.1 and 2 and they also were allegedly threatening the deceased to harm his reputation by circulating his private conversation and videos which was recorded in the mobile phone of accused No.1. Though it is submitted by learned counsel for respondent No.2 that the petitioners are persons with criminal antecedents, list of any such criminal cases in which petitioners are accused has not

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NC: 2025:KHC:3020 AND 2 OTHERS been furnished either by learned High Court Government Pleader for respondent No.1 or learned counsel for respondent No.2.

10. It is relevant to take note of the fact that an application was filed by prosecution to invoke Section 111 of BNS, 2023 against accused in the present case. Section 111 of BNS, 2023, provides for punishment for Organised Crime. Though the said application filed by prosecution before the learned Magistrate was allowed, after investigation, charge sheet has been filed only for the aforesaid offences and the offence punishable under Section 111 of BNS, 2023 is dropped in the charge sheet which would prima facie go to show that petitioners do not have any serious criminal antecedents. Investigation in the case is already completed and charge sheet has been filed. Prosecution has all together cited 156 charge sheet witnesses in the present case and therefore, chances of trial being completed and the case being disposed of on merits in the near future is very remote.

11. In the case of SATENDAR KUMAR ANTIL VS CENTRAL BUREAU OF INVESTIGATION & ANOTHER - (2022) 10

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NC: 2025:KHC:3020 AND 2 OTHERS SCC 51, the Hon'ble Supreme Court in paragraph Nos.93 & 94, has observed as under:

"93. The rate of conviction in criminal cases in India is abysmally low. It appears to us that this factor weighs on the mind of the Court while deciding the bail applications in a negative sense. Courts tend to think that the possibility of a conviction being nearer to rarity, bail applications will have to be decided strictly, contrary to legal principles. We cannot mix up consideration of a bail application, which is not punitive in nature with that of a possible adjudication by way of trial. On the contrary, an ultimate acquittal with continued custody would be a case of grave injustice.

94. Criminal courts in general with the trial court in particular are the guardian angels of liberty. Liberty, as embedded in the Code, has to be preserved, protected, and enforced by the criminal courts. Any conscious failure by the criminal courts would constitute an affront to liberty. It is the pious duty of the criminal court to zealously guard and keep a consistent vision in safeguarding the constitutional values

and ethos. A criminal court must uphold the constitutional thrust with

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NC: 2025:KHC:3020 AND 2 OTHERS responsibility mandated on them by acting akin to a high priest."

12. In the case of MANISH SISODIA VS DIRECTORATE OF ENFORCEMENT - 2022 SCC OnLine SC 1920, at paragraph No.53, the Hon'ble Supreme Court has observed as under:

"53. The Court further observed that, over a period of time, the trial courts and the High Courts have forgotten a very well-settled principle of law that bail is not to be withheld as a punishment. From our experience, we can say that it appears that the trial courts and the High Courts attempt to play safe in matters of grant of bail. The principle that bail is a rule and refusal is an exception is, at times, followed in breach. On account of non-grant of bail even in straight forward open and shut cases, this Court is flooded with huge number of bail petitions thereby adding to the huge pendency. It is high time that the trial courts and the High Courts should recognize the principle that "bail is rule and jail is exception."

13. Considering the nature of allegations found as against petitioners in the charge sheet and also having regard to the aforesaid judgments of the Hon'ble Supreme Court, I am of the

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NC: 2025:KHC:3020 AND 2 OTHERS opinion that the prayer made by petitioners for grant of regular bail in these petitions needs to be answered affirmatively. Accordingly, the following order:-

14. The petitions are allowed. The petitioners are directed to be enlarged on bail in Crime No.150/2024 registered by Kavour Police Station, Dakshina Kannada District, for the offences punishable under Sections 308(2), 308(5), 352, 351(2), 50, 54, 61(2), 140(2), 108 read with Section 190 of BNS, 2023, subject to the following conditions:

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

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NC: 2025:KHC:3020 AND 2 OTHERS

d) The petitioners shall not involve in similar offences in future;

e) The petitioners shall not leave the jurisdiction of the Trial Court without permission of the said Court until the case registered against them is disposed off.

Sd/-

(S VISHWAJITH SHETTY) JUDGE DN CT:PK