

# Mohammad Shabbir Banagar vs The State Of Karnataka on 27 August, 2018

**Author: K.Somashekar**

**Bench: K.Somashekar**

:1:

IN THE HIGH COURT OF KARNATAKA  
DHARWAD BENCH

DATED THIS THE 27TH DAY OF AUGUST, 2018

BEFORE

THE HON'BLE MR.JUSTICE K.SOMASHEKAR

CRIMINAL PETITION NO.101215 OF 2018  
C/W. CRIMINAL PETITION NO.101216 OF 2018

IN CRL.P.NO.101215 OF 2018:

BETWEEN

MOHAMMAD SHABBIR BANAGAR  
AGE: 32 YEARS, OCC: ENGINEER,  
R/O: VISTA LUXURIA C-805,  
SOLAPUR MAIN ROAD, NEAR NANDINI  
RESTAURANT, HADUPSAR, HAVELI,  
LAXMI COLONY, PUNE-412307

... PETITIONER

(BY SRI.K.L.PATIL, FOR SRI.S.B.NAIK, ADVOCATE)

AND

THE STATE OF KARNATAKA  
THORUGH GADAG TOWN POLICE STATION GADAG,  
REP BY STATE PUBLIC PROSEUCTOR,  
HIGH COURT OF KARNATAKA,  
DHARWAD BENCH.

... RESPONDENT

(BY SRI.V.M.BANAKAR, SPP)

THIS CRIMINAL PETITION IS FILED UNDER SECTION  
438 OF CR.P.C., SEEKING TO GRANT ANTICIPATORY BAIL TO

THE PETITIONER/ACCUSED NO.1 IN THE EVENT OF HIS  
ARREST IN CRIME NO.138/2018 OF GADAG TOWN POLICE  
STATION, REGISTERED FOR THE OFFENCES PUNISHABLE  
:2:

UNDER SECTION 149, 323, 498A, 504, 506 OF IPC 3 AND 4  
OF DOWRY PROHIBITION ACT.

IN CRL.P.NO.101216 OF 2018:

BETWEEN

1. MOHAMMAD YASUF JANI  
S/O KHAJASAB BANAGAR,  
AGE: 62 YEARS, OCC: RETIRED NMDC  
EMPLOYEE, R/O: T.B. DAM HOSAPETE,  
DIST: BALLARI.
2. DILSHADBEGUM  
W/O MAHAMMAD YUSUF JANI BANAGAR,  
AGE: 52 YEARS, OCC: HOUSEWIFE,  
R/O: T.B. DAM HOSAPETE,  
DIST: BALLARI.

... PETITIONERS

(BY SRI.K.L.PATIL, FOR SRI.S.B.NAIK, ADVOCATE)

AND

THE STATE OF KARNATAKA  
THOROUGH GADAG TOWN POLICE STATION GADAG,  
REP BY STATE PUBLIC PROSECUTOR,  
HIGH COURT OF KARNATAKA  
DHARWAD BENCH.

... RESPONDENT

(BY SRI.V.M.BANAKAR, SPP)

THIS CRIMINAL PETITION IS FILED UNDER SECTION  
438 OF CR.P.C., SEEKING TO GRANT ANTICIPATORY BAIL TO  
THE PETITIONERS/ACCUSED NO.2 & 3 IN THE EVENT OF  
THEIR ARREST IN CRIME NO.138/2018 OF GADAG TOWN  
POLICE STATION, REGISTERED FOR THE OFFENCES  
PUNISHABLE UNDER SECTION 149, 323, 498A, 504, 506 OF  
IPC 3 AND 4 OF DOWRY PROHIBITION ACT.

THESE PETITIONS COMING ON FOR ORDERS, THIS  
DAY, THE COURT MADE THE FOLLOWING:

:3:

ORDER

Both these petitions are filed under Section 438 of Cr.P.C., wherein the petitioners seek direction to the respondent-Police to release them on anticipatory bail in the event of their arrest in Crime No.138 of 2018 of Gadag Town P.S. for the offences punishable under Sections 323, 498(A), 504 and 506 read with Section 149 of IPC besides Sections 3 and 4 of Dowry Prohibition Act.

2. Heard the learned counsel for the petitioners and the learned SPP for the respondent in both these petitions respectively.

3. The brief facts of the prosecution case are that the marriage of the complainant with the petitioner- accused No.1 was performed on 30.08.2015 and during the marriage, considerable dowry has been given to the accused. After the marriage, for few days, the complaint lead happy marital life and thereafter the complainant blessed with a female child. After some days, there was some misunderstanding between the accused as well as the complainant. Due to the said misunderstanding the complainant got separated from the petitioner and also started residing separately at Gadag. All the accused persons started to give physical and mental harassment to the complainant, for which she filed complaint on 18.08.2017 under Section 12 of Domestic Violence Act against the petitioner in Crl.P.No.101215 of 2018, as he being arraigned as accused No.1. Subsequent to filing of the petition under Section 12 of Domestic Violence Act, the elders tried to settle the dispute amicably. All the efforts and meeting held by the elders went in vain. Based upon the complaint filed by the complainant, crime came to be registered against the accused persons for the aforesaid offences, but the Police are making hectic efforts to arrest these petitioners without there being any reasons, as contended by the counsel.

4. Learned counsel for the petitioners has taken me through the accusation made in the complaint as well as the substances reflected in the FIR said to be recorded by the Police it is relevant to state that during the marriage of the complainant with the accused No.1, considerable dowry has been given, despite of it the accused were insisting the complainant to bring additional dowry in terms of cash and other articles, the said allegation made in the complaint is far away from the truth of the alleged incident. Apart from that, it is submitted that the petitioners are innocent persons and they hail from respectable family and also having respect in the eye of society and moreover the petitioners are ready to abide by any terms and conditions imposed by this Court while granting bail to them. On all these grounds, the learned counsel for the petitioners praying for anticipatory bail by considering the grounds as urged in these petitions.

5. On the other hand, the learned SPP during the course of arguments has taken me through the averments made in the complaint in Crime No.138 of 2018 and submitted that during the marriage, the accused received considerable dowry, despite of it the accused persons were given physical and mental harassment to her. The same has been seen in the material allegation, which find place in the records. It is further contended that subsequent to committing the alleged offences, petitioners had absconded from the clutches of law and that itself indicates that there are prima facie materials against the petitioners. Therefore, the learned SPP submits that the petitioners do not deserve for anticipatory bail and the petition filed by them be rejected.

6. Having regard to the contentions taken by the learned counsel for the petitioners and the learned SPP for the respondent-State in both petitions are concerned, it is relevant to state that the subsequent to marriage of the complainant with the petitioner-accused No.1, the complaint lead happy marital life for few days and thereafter she blessed with a female child. After some days, there was some misunderstanding between the accused as well as the complainant. Due to the said misunderstanding the complainant got separated from the petitioner and also started residing separately at Gadag. All the accused persons started to give physical and mental harassment to the complainant, for which she filed complaint on 18.08.2017 under Section 12 of Domestic Violence Act against the accused. Subsequent to filing of the petition under Section 12 of Domestic Violence Act, the elders tried to settle the dispute amicably. All the efforts and meeting held by the elders went in vain. However, subsequent to registration of the crime against the accused, the case is still under investigation by the Investigating Officer and it also requires recording statement of witnesses and securing the material documents. therefore, at this stage, it does not require any detail discussion, while considering the bail petition filed by the petitioners in both these petitions, as there are substances in the contention of the learned counsel for the petitioners in seeking the relief of anticipatory bail and at this stage, it cannot be said that there are enough materials to decline the bail. Whereas the learned SPP submits that if the petitioners are supposed to be released on bail, certainly they would come in the way of prosecution case and destroy the evidence. As this apprehension expressed by the learned SPP could be curtailed by imposing certain suitable conditions to safeguard the interest of the prosecution. Therefore, for the aforesaid reasons as well as in the circumstances of the case, I am of the considered opinion that the petitioners deserve for bail. Hence, I proceed to pass the following:

ORDER The petitions filed by the petitioners under Section 438 of Cr.P.C. is allowed, subject to the following conditions:

(1) The petitioners in both the petitions shall appear before the Investigating Officer in Crime No.138 of 2018 of Gadag Town Police Station within a period of two weeks from the date of receipt of a copy of this order and shall execute a bond for a sum of Rs.1,00,000/- each with one surety for the like sum to the satisfaction of him, in the event of their arrest by the Gadag Town P.S. in the said crime.

(2) The petitioners in both the petitions shall co-operate with Investigating Officer during the course of investigation.

(3) The petitioners in both the petitions shall not indulge with any other criminal activities henceforth.

(4) The petitioners in both the petitions shall not tamper or hamper the case of prosecution witnesses.

If the petitioners violate any of the conditions, the bail order shall automatically stand ceased.

Sd/-

**JUDGE Vnp\***