

Altaf S/O Kutabuddin Ainapur vs The State Of Karnataka on 13 September, 2022

Author: P.N.Desai

Bench: P.N.Desai

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IN THE HIGH COURT OF KARNATAKA
KALABURAGI BENCH

DATED THIS THE 13th DAY OF SEPTEMBER, 2022

BEFORE

THE HON'BLE MR. JUSTICE P.N.DESAI

CRIMINAL PETITION NO.201133/2022

BETWEEN:

ALTAF
S/O KUTABUDDIN AINAPUR
AGED ABOUT 33 YEARS
OCC, BUSINESS
R/O JULAI GALLI
DIST VIJAYAPUR.

...Petitioner

(By Sri: S S MAMADAPUR, ADVOCATE)

AND:-

THE STATE OF KARNATAKA
THROUGH PSI GANDHI CHOWK POLICE STATION
VIJAYAPURA,
REP BY ITS ADDL. STATE PUBLIC PROSECUTOR,
ADVOCATE GENERAL'S OFFICE
HIGH COURT BUILDING
KALABURAGI 585103.

...Respondent

(By Sri:GURURAJ V. HASILKAR, HCGP)

THIS CRL.P. IS FILED U/S. 439 OF CR.P.C PRAYING TO,
RELEASE THE PETITIONER ON BAIL IN CRIME No.150/2022
GANDHI CHOWK VIJAYAPUR POLICE STATION, DISTRICT

VIJAYAPURA, FOR THE OFFENCES PUNISHABLE UNDER SECTIONS
399, 402 OF IPC PENDING BEFORE THE HONOURABLE JMFC -I,
VIJAYAPUR.

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THIS PETITION COMING ON FOR ORDERS THIS DAY, THE
COURT PASSED THE FOLLOWING:

ORDER

This petition is filed under Section 439 of the Code of Criminal Procedure, 1973, (for short hereinafter referred to as 'Cr.P.C.') seeking to enlarge the petitioner on regular bail who is arraigned as accused No.3, in Crime No.150/2022 of Gandhi Chowk Police Station, Vijayapura for the offences punishable under sections 399 and 402 Indian Penal Code, 1860 (for short hereinafter referred to as 'IPC') pending on the file of JMFC-I, Vijaypur.

2. An FIR came to be registered on the basis of the complaint lodged by Gandhi Chowk police that at about 2.00 a.m. on 01.08.2022, the PSI received a message that about 5-8 persons holding ropes, rods, knife and chilli powder near Nayara Petrol Bunk, Vijayapura were obstructing the public on the way and trying to commit dacoity and robbery. Accordingly, he alongwith other staff went to the spot and found that five to six persons were found there holding rods, ropes, knives. After seeing the police, they tried to run away. The police caught hold of accused Nos.1 to 5. Other accused ran away. When they searched for accused, they found chilli powder, iron rod, rope and a knife. Said properties were recovered and the case is registered. The bail petition filed by the petitioner came to be rejected by the Sessions Court. Hence, this petition is filed.

3. Heard Shri. S.S. Mamadapur, learned counsel for the petitioner and Sri. Gururaj V.Hasilkar, learned HCGP for the respondent/State and perused the material on record.

4. Learned counsel for the petitioner argued that there are no grounds to believe that the petitioner has committed the offence. The ingredient necessary to attract the offence of dacoity is not made out. It is evident that the alleged offence has taken place on 01.08.2022 at 2.00 a.m. when no persons will be moving. The petitioner has not stopped the vehicle nor there is any material against him. Only on imagination, a false case has been filed against him. The offences alleged are not punishable with death or imprisonment for life. The petitioner is from a respectable family and he is ready to abide by any conditions.

5. Against this, learned HCGP argued that the alleged offences are serious one. If the petitioner is released on bail, he may commit or repeat the offence, he may tamper the prosecution witnesses or he may also abscond. There are two other cases pending against him. He is an habitual offender, may tamper the prosecution witnesses. Hence, prayed to reject the bail petition.

6. I have perused the materials, FIR and the complaint.

7. It is evident that on 01.08.2022, at about 2.00 a.m., the police found that this petitioner alongwith other accused were stopping the vehicles near Nayara petrol bunk and threatening the persons with rods, ropes and knife and snatching money and valuable articles by threatening them. But there is no material to show that these accused persons had stopped any vehicle. When the police enquired the accused persons standing on the road, a Chevrolet vehicle was also there. The accused disclosed the same belonged to accused No.4 and certain rods, ropes, knife, chilli powder and monkey caps were lying in the vehicle. It is evident that the petitioner has produced the documents to show that other accused viz., accused Nos.1, 2, 4 to 6 are already enlarged on bail by the Sessions Court. The only ground on which the bail petition of the petitioner is rejected is that two other criminal cases are pending against the petitioner. As evident from the order sheet, it is seen that Cr.No.84/2016 is for offences under sections 504, 506 IPC and the other case is for offences under sections 323, 504 and 506 IPC. Therefore, it appears, this petitioner is not involved in such robbery or dacoity cases earlier. It cannot be said that he is a habitual offender simply some case of assault are pending against him. Other accused are already released on bail. Hence, the petitioner is also entitled to be enlarged on bail.

8. It is the settled principle of law that bail is a rule and rejection is an exception. While granting or rejecting the bail application, the Court will have to take into consideration, (1) the nature and seriousness of the offence; (2) character of the accused;

(3) circumstances which are peculiar to accused;

(4) reasonable probabilities of presence of the accused not being secured at trial;

(5) reasonable apprehension of witnesses being tampered with; and (6) larger interest of public or the State and similar other considerations, which arise when a court is asked to admit the accused to bail in a non-bailable offence. However, the apprehension of the prosecution that the petitioners may abscond, may not be available for trial, may tamper with the prosecution witnesses, can be meted out by imposing reasonable conditions on the petitioners. Accordingly, I proceed to pass the following:

ORDER The criminal petition filed under Section 439 of Cr.P.C. is allowed. The petitioner/accused No.3-Altat, S/o. Kutabuddin Ainapur, in Crime No.150/2022 registered by the Gandhi Chowk Police Station, Vijaypur, for the offences punishable under sections 399 and 402 of Indian Penal Code, pending on the file of JMFC-1, Vijaypur shall be released on bail, subject to the following conditions.

i) The petitioner shall execute a personal bond for Rs.1,00,000/- (Rupees One Lakh only) with a surety for the like sum, to the satisfaction of the Trial Court or the Committal Court where the case is now pending.

ii) The petitioner shall not try to tamper and threaten the prosecution witnesses directly or indirectly.

iii) The petitioner shall appear before the S.H.O of Gandhi Chowk Police Station, Vijaypur on every Saturday between 10.00 a.m. to 4.00 p.m. for a period of three months or till the filing of charge sheet whichever is earlier.

iv) The petitioner shall furnish proof of his residential correct address and shall inform the Court/Investigating Officer if there is any change in the address.

v) The petitioner shall not leave the jurisdiction of the trial Court without prior permission of the Court.

vi) The petitioner shall not involve in any criminal activities.

In case if any of the conditions are violated, the prosecution is at liberty to move application for cancellation of bail.

Sd/-

JUDGE *MN/-