

Anthony Infant Raj @ Infant vs State Of Karnataka on 11 December, 2018

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Crl.P.No.7183/2018 C/W
Crl.P.Nos.7763/18, 7342/18,
7762/18, 7184/18

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 11TH DAY OF DECEMBER, 2018

BEFORE

THE HON'BLE MRS. JUSTICE K.S.MUDAGAL

CRIMINAL PETITION No.7183/2018
C/W
CRIMINAL PETITION Nos.7763/2018, 7342/2018,
7762/2018, 7184/2018

In Crl.P.No.7183/2018

Between:

Anthony Infant Raj @ Infant,
S/o John Anthony,
aged about 23 years,
R/a #5, Chikkanna Building,
Garden Street, Ramaswampalya,
Kammanahalli Main Road,
Banasavadi,
Bangalore City-560043.

... PETITIONER

(By Sri.Manjunath G, Advocate)

And:

State of Karnataka,
By Varthur police,
Bangalore (r) District-562 106,
Represented by learned,
SPP High Court of Karnataka,
Bangalore-560001.

... RESPONDENT

(By Sri.Nasrulla Khan, HCGP)

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Crl.P.No.7183/2018 C/W
Crl.P.Nos.7763/18, 7342/18,
7762/18, 7184/18

This Crl.P is filed under Section 439 of Cr.P.C praying

to enlarge the petitioner on bail in Cr.No.134/2018 of
Varthur Police Station, Bengaluru city for the offences
punishable under Sections 143,144,147,148,341,302 r/w
149 of IPC.

In Crl.P.No.7763/2018

Between:

Kishor Kumar @ Kishore,
Aged about 35 years,
S/o Venkatesh,
R/at No. 1119, M.V.Nilaya,
Munegowda road,
Ramaswamy palya,
Kammanahalli main road,
Banasawadi,
Bengaluru-560043.

... PETITIONER

(By Sri. Manjunath.G, Advocate)

And:

The State Of Karnataka,
By Varthuru Police Station,
Bengaluru Rural District - 562 106.

Rep by their Special,
Public Prosecutor,
High Court Complex,
Bengaluru - 560 001.

... RESPONDENT

(By Sri. Nasrulla Khan, HCGP)

This Crl.P is filed under Section 439 of Cr.P.C praying
to enlarge the petitioner on bail in Cr.No.134/2018
(C.C.No.6585/2018) of Varthur police station, Bengaluru city

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Crl.P.No.7183/2018 C/W
Crl.P.Nos.7763/18, 7342/18,
7762/18, 7184/18

for the offences punishable under Sections
143,144,147,148,341,302 r/w 149 of IPC.

In Crl.P.No.7342/2018

Between:

Naveen Kumar @ Naveen,

S/o Ellumalai,
Aged about 23 years,
R/a #77, 2nd Cross,
Ramaswampalya,
Kamma Halli Main Road,
Banasavadi,
Bengaluru City-560043.

... Petitioner

(By Sri. M.V.Charati, Advocate)

And:

State of Karnataka,
By Varthur Police,
Bangalore (R) District-562106,
Represented by Learned SPP,
High Court of Karnataka,
Bengaluru-560001.

... Respondent

(By Sri.Nasrulla Khan, HCGP)

This Criminal Petition is filed under Section 439 of
Cr.P.C praying to enlarge the petitioner on bail in
Cr.No.134/2018 of Varthur Police Station, Bengaluru City
for the offences punishable under Sections
143,144,147,148,341,302 read with 149 of IPC.

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Crl.P.No.7183/2018 C/W
Crl.P.Nos.7763/18, 7342/18,
7762/18, 7184/18

In Crl.P.No.7762/2018

Between:

David John @ John,
Aged about 29 years,
S/o Jnanraj,
R/at No.122, Indira Street,
Ramswamy Palya,
Kammanahalli,
Banaswadi,
Bengaluru.

... Petitioner

(By Sri. M.V.Charati, Advocate)

And:

The State of Karnataka,
By Varthuru Police Station,

Bengaluru Rural District - 562 106.

Rep. by their Special,
Public Prosecutor,
High Court Complex,
Bangalore - 560 001.

... Respondent

(By Sri.Nasrulla Khan, HCGP)

This Criminal Petition is filed under Section 439 of Cr.P.C praying to enlarge the petitioner on bail in Cr.No.134/2018 of Varthur Police Station, Bengaluru City for the offences punishable under Sections 143,144,147,148,341,302 and 120(B) read with 149 of IPC.

In Crl.P No.7184/2018
Between:

Anthraj @ Antha,
S/o. John Anthony,
Aged about 25 years,

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Crl.P.No.7183/2018 C/W
Crl.P.Nos.7763/18, 7342/18,
7762/18, 7184/18

R/at #5, Chikkanna Building,
Garden Street,
Ramaswamypalya,
Kammana Halli Main Road,
Banasavadi,
Bengaluru City-560 043.

... Petitioner

(By Sri. Manjunath.G, Advocate)
And:

State of Karnataka,
By Varthur Police,
Bangalore (R) District-562 106,
Represented by,
Learned SPP,
High Court of Karnataka,
Bangalore-560 001.

... Respondent

(By Sri. Nasrulla Khan, HCGP)

This Criminal Petition is filed under Section 439 of Cr.P.C praying to enlarge the petitioner on bail in Cr.No.134/2018 of Varthur Police Station, Bengaluru for the offences punishable under Sections 143, 144, 147, 148, 341, 302 and 149 of IPC.

These Criminal Petitions coming on for Orders this

day, the Court made the following:

ORDER

Petitioners in these cases are accused Nos.3 to 7 in Crime No.134/2018 of Varthur Police Station. The petitioners and eight others were charge sheeted in the said case for the offences punishable under Sections 143, 144, 147, 148, 341, 302 and 149 IPC.

Crl.P.No.7183/2018 C/W Crl.P.Nos.7763/18, 7342/18, 7762/18, 7184/18

2. The case of the prosecution in brief is as follows:

That deceased Chella Kumar was involved in rowdy activities and few days before the crime in this case, he had assaulted accused Nos.5 and 7. Accused Nos.1 to 12 are friends. Accused No.1 was the friend of Chella Kumar also. Due to the above said enmity, accused Nos.2 to 7 along with the other accused conspired to commit murder of Chella Kumar. In execution of such conspiracy, accused No.1 got installed in his phone a GPS application device to track the movements of the car bearing No.KA-41/7810 belonging to the deceased. Thus accused tracked and way laid the car of the victim on 17.05.2018 at 11.20 p.m. when Chella Kumar and accused No.1 were traveling near Shell Petrol Bunk within the limits of Varthur Police Station. Then all the accused attacked him with deadly weapons. Accused Nos. 3 to 5 and 9 assaulted him with long swords, accused Nos. 6 and 7 assaulted him with Crl.P.No.7183/2018 C/W Crl.P.Nos.7763/18, 7342/18, 7762/18, 7184/18 spear, accused No.8 assaulted him with axe, accused Nos.10, 11 and 13 assaulted with knives and caused his death.

3. Learned counsel for the petitioners submits that in the FIR, the names of accused Nos.5 to 7 and 11 did not appear and this Court has granted bail to Accused No.11, therefore parity applies to accused No.7 also. It is further submitted that the complainant was not an eye-witness and the eye-witness named by her in the complaint is not examined and statements of alleged eye witnesses are too general.

4. Per contra, learned High Court Government Pleader submits that CWs.2 to 4 are the eye-witnesses to the incident and the eye-witness named in the complaint could not be examined as he has gone missing under terror and the Investigating Officer has sought liberty to file additional charge sheet whenever the said witness is traced. He further submits that Crl.P.No.7183/2018 C/W Crl.P.Nos.7763/18, 7342/18, 7762/18, 7184/18 accused Nos.6 and 7 are involved in other cases of similar nature.

5. In the charge sheet, the Investigating Officer has sought liberty to examine the eye-witness named in the complaint after tracing him and to file an additional charge sheet. In the complaint except accused Nos.6 and 7 the names of other accused find place. Though it is contended that in the remand application alleged eye witnesses names are not found, at this stage, this Court cannot hold a mini trial.

6. Hon'ble Supreme Court in the judgment in Siddharam Satilingappa Mhetre vs. State of Maharashtra (AIR 2011 SC 312) relied on by the learned counsel for the petitioners has laid down the following guidelines in consideration of anticipatory bail applications:

- "i) The nature and gravity of the accusation and the exact role of the Crl.P.No.7183/2018 C/W Crl.P.Nos.7763/18, 7342/18, 7762/18, 7184/18 accused must be properly comprehended before arrest is made;
- ii) The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;
- iii) The possibility of the applicant to flee from justice;
- iv) The possibility of the accused's likelihood to repeat similar or the other offences.
- v) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her.
- vi) Impact of grant of anticipatory bail particularly in case of large magnitude affecting a very large number of people.
- vii) The Courts must evaluate the entire available material against the accused very carefully. The Court must also clearly comprehend the exact role of the accused in the case. The cases in which accused is implicated with the help of Crl.P.No.7183/2018 C/W Crl.P.Nos.7763/18, 7342/18, 7762/18, 7184/18 Sections 34 and 149 of the IPC, the Court should consider with even greater care and caution because over implication in the cases is a matter of common knowledge and concern;
- viii) While considering the prayer for grant of anticipatory bail, a balance has to be struck between two facts namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;
- ix) The Court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;
- x) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events the accused is entitled to an order of bail."

(Emphasis supplied) Crl.P.No.7183/2018 C/W Crl.P.Nos.7763/18, 7342/18, 7762/18, 7184/18

7. As per the charge sheet records, CWs.2 to 4 are the eye witnesses and they speak to the overtacts of the accused. The copies of the charge sheets in Crime Nos.400/2015 and 405/2015 of Banaswadi Police Station show that accused Nos.6 and 7 are involved in the attempt to murder case and preparation for commission of dacoity armed with deadly weapons.

8. Learned counsel for the petitioners submits that in both the cases, the petitioners were granted bail and in the trial, the witnesses have turned hostile. That exactly is the apprehension of the learned HCGP in this case also.

9. As per the judgment in Mhetre's case relied on by the learned counsel for petitioners, the facts to be considered are the likelihood of accused committing offences of the similar nature and chances of tampering witnesses.

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10. Under these circumstances and having regard to the material on record, at this stage, these are not the fit cases to grant bail. Therefore, the petitions are dismissed.

Sd/-

JUDGE AKC/-