

Shashi Poojari @ Shadow @ Shashikumar vs State Of Karnataka on 2 November, 2022

Author: M. Nagaprasanna

Bench: M. Nagaprasanna

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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 02ND DAY OF NOVEMBER, 2022

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

CRIMINAL PETITION No.5263 OF 2022

BETWEEN:

SHASHI POOJARI @
SHADOW @ SHASHIKUMAR
S/O VIJAY A AMEEN
AGED ABOUT 29 YEARS
R/AT 11TH MAIN ROAD,
9TH CROSS, 2ND STAGE
J.P.NAGAR
BENGALURU - 560 078.

... PETITIONER

(BY SRI SANDESH J.CHOUTA, SR.ADVOCATE A/W
SRI CHANDRASHEKAR R.P., ADVOCATE)

AND:

STATE OF KARNATAKA
BY UDUPI TOWN POLICE STATION
UDUPI DISTRICT(REPRESENTED BY
STATE PUBLIC PROSECUTOR
HIGH COURT BUILDING
BENGALURU - 560 001.

... RESPONDENT

(BY SRI VIJAYAKUMAR MAJAGE, ADDL.SPP)

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THIS CRIMINAL PETITION IS FILED UNDER SECTION 439 OF CR.P.C., PRAYING TO ENLARGE THE PETITIONER ON BAIL IN CR. NO. 42/2019 OF BRAHMAVAR P.S., UDUPI FOR THE OFFENCE P/U/S 507, 504, 506, 384, 387, 120B, 109, 201 R/W 34 OF IPC AND 364A, 397 OF IPC AND SEC. 3(1)(ii), 3(2), 3(4) AND 3(5) OF KCOCA, NOW PENDING ON THE FILE OF THE PRINCIPAL DISTRICT AND SESSIONS JUDGE, MYSURU.

THIS CRIMINAL PETITION HAVING BEEN HEARD AND
RESERVED FOR ORDERS ON 18.10.2022, COMING ON FOR
PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

The petitioner is before this Court seeking his enlargement on bail for it having been turned down by the Principal District & Sessions Judge, Mysore in Special Case No.366 of 2019 arising out of FIR in Crime No.25 of 2019 registered for offences punishable under Sections 384, 387, 504, 506, 507.120B, 109, 201 read with 34 of the IPC and Sections 3(1)(ii) 3(2), 3(4) and 3(5) of the Karnataka Control of Organised Crimes Act, 2000 ('the Act' for short).

2. Brief facts that lead the petitioner to this Court in the subject petition, as borne out from the pleadings, are as follows:-

A First Information Report comes to be registered on 15.03.2019 based upon a complaint registered by one Rathnakar D. Shetty in Crime No.42 of 2019 against certain unknown persons.

On registration of the crime, a non-cognizable report was made in N.C.R.No.98 of 2019. Later it transpires that permission was sought from the learned Magistrate under Section 155(2) of the Cr.P.C. for conduct of investigation in the light of the offences so alleged in Crime No.42 of 2019. After registration of the crime, the case was transferred on the point of jurisdiction to Udupi Town Police Station and the impugned FIR comes to be registered in Crime No.25 of 2019 for the same offences.

3. The contents of the complaint is that the complainant, a resident of Udupi runs a factory in the name of Royal Soda Factory and had recently sold his land at Royal Garden, Udupi for which he had received several crores. On 13-03-2019, it is the case of the complainant, that he had received three calls on his mobile phone from a particular mobile number. The person who spoke on the other side appears to have abused him in Tulu language saying that he has not been receiving phone calls that the said person is making for days. It is alleged that the person who spoke threatened of killing him and his son if he did not answer the phone call. It appears that the response of the complainant was that he was in the temple and, therefore, he had not answered the phone calls. Again on the same

day at 12.20 p.m. he is alleged to have received a call spoken in Tulu language threatening him to pay him money. Therefore, a crime was sought to be registered in Crime No.42 of 2019 against unknown persons for having made certain threatening calls.

4. During the investigation, the petitioner/accused No.2, accused Nos.3 and 4 were arrested and remanded to judicial custody. The arrest comes about on 21-03-2019. The petitioner is said to be in custody even as on date after him being housed in prison from 21.03.2019. This was on the basis of the complaint. Investigation is conducted and the Investigating Officer files a charge sheet before the concerned Court on 11-09-2019. Not stopping at the offences that were alleged in the FIR, further offences were alleged as aforementioned. The investigation had been sought and a supplementary charge sheet comes to be filed on 30-12-2019 adding offences punishable under Sections 364A and 397 of the IPC.

5. After filing the charge sheet and supplementary charge sheet, the petitioner knocks the doors of the Sessions Court in Special Case No.366 of 2019 seeking his enlargement on bail as by then the petitioner was in prison for close to 15 months and the fact that the charge sheet and the supplementary charge sheet had both been filed by the Investigating Officer. The learned Sessions Judge, rejects the petition seeking enlargement of the petitioners on bail, in terms of his order dated 10-07-2020, after which the petitioner sought to knock the doors of this court in Criminal Petition No.3231 of 2022 which comes to be withdrawn on 12-05- 2022 as not pressed seeking liberty to file a fresh petition. It is in tune with the said liberty so granted in terms of the memo that was filed, the subject petition is preferred seeking enlargement of the petitioner on bail.

6. Heard Sri Sandesh J. Chouta, learned senior counsel appearing for the petitioner and Sri Vijayakumar Majage, learned Additional State Public Prosecutor appearing for the respondent.

7. The learned senior counsel would contend that the petitioner has nothing to do with the allegations made by the complainant. A crime comes to be registered against unknown persons and the allegations in the complaint, if noticed, cannot even make out a cognizable offence. The allegation is threatening calls made and therefore action was sought to be taken. Based upon statement of the complainant action is taken, investigation is conducted and the Investigating Officer has deliberately invoked the provisions of the Act only with an object to deny bail to the petitioner. Accused No.1 is said to have been involved in several acts of crime of extortion and other offences. Accused No.2, the petitioner has nothing to do with any of the crimes committed by any other accused. Therefore, he would seek his enlargement on bail.

7.1. The learned senior counsel would submit that all the offences under the IPC are punishable for a maximum period of 7 years viz., Section 387 of the IPC. While filing the charge sheet, along with the IPC offences certain provisions of the Act were also alleged which were offences punishable with imprisonment of not less than five years or may extend to life. It is in the supplementary charge sheet that is filed certain other offences under Sections 364A and 397 of the IPC are invoked which makes punishment of imprisonment for life and not less than seven years respectively. He would submit that the petitioner is in prison for the last 3 years and 7 months. There is no warrant for the prosecution to interrogate the petitioner at this juncture. Therefore, the concept of bail is a rule and

jail is an exception would become applicable in the case of the petitioner and he be enlarged on grant of such bail. The learned senior counsel has placed reliance upon several judgments of the Apex Court to contend that even in cases which were concerning Maharashtra Control of Organized Crimes Act, which is in pari materia with the Act, bail is granted to several of the accused.

8. On the other hand, the learned Additional State Public Prosecutor who has filed his objections seeks to demonstrate that the petitioner is in the habit of extortion. It is not that this is the solitary case, but there are several cases against him concerning such extortion. The call detail analysis and call detail records pertaining to the petitioner, the confession statement of the petitioner and the confession statement of the co-accused clearly demonstrate nexus between the petitioner and other co-accused and the offences are grave in nature as the petitioner is part of an organized crime syndicate which is involved in the acts of extortion.

8.1. He would submit that this Court has rejected a bail petition filed by Ravichandra Poojary, accused No.4 who is said to be brother of the petitioner, in terms of its order dated 01.01.2021 in Criminal Petition No.2708 of 2021. He would further submit that this Court has rejected a petition in Crl.R.P.624/2021 by order dated 03.09.2021, filed by one Mohammed Mudassir seeking release of his vehicle seized at the instance of the petitioner herein which was purchased by the petitioner from the proceeds of extortion amount. He would further submit that the petition seeking enlargement on bail of Ullas Shenoy, accused No.6 has been rejected by this Court in Crl.P.No.4714/2020 on 11-12-2020.

8.2. The learned Additional State Public Prosecutor would contend that there is abundant material, as the charge sheet would run into 7000 pages to show that the petitioner is a co-accused in an extortion racket and taking Hafta is his motive. This is clearly brought out by the other accused in their confession statements. The crux of the submission, therefore, is that the main avocation of the petitioner is extortion and he lives on means of extortion.

9. I have given my anxious consideration to the submissions made by the respective learned counsel and perused the material on record.

10. The afore-narrated facts and genesis of the complaint are not in dispute. The examination of this Court in a petition concerning enlargement of an accused on bail is limited to consider whether the petitioner would be a threat to the society, if he is enlarged on bail, in the teeth of the offences alleged against him being either with imprisonment for life or otherwise. The complaint though comes to be registered against unknown persons for non-cognizable offences, the permission of the learned Magistrate was sought to register the FIR and later when investigation is made, the entire operation of the organized crime syndicate comes into light. The attempts made by the other accused - one Ravichandra Poojary, accused No.4 to seek enlargement on bail have all been futile. The facts that led to denial of bail by the coordinate Bench of this Court in the case of Ravichandra Poojary would also become applicable to the petitioner in the case at hand. The evidence against the petitioner and the documents produced clearly bring about allegations of extortion.

11. The co-ordinate Bench while considering the petitions seeking enlargement on bail of accused No.4 and accused No.6 has considered all the facts with regard to all the accused, which would cover the petitioner as well. The voluntary statements made by co- accused clearly point at the allegations that would become the aforesaid crime against the petitioner. In the statement of objections, the State brings out enormous circumstances which would lead to an unmistakable conclusion that if the petitioner is enlarged on bail, he would become a threat to the society, inasmuch as, being in prison he has used the cell phone of accused Nos. 4 and 6 and sought to call other witnesses and threatened them. The statement of objections would further demonstrate that the petitioner is involved in several such crimes.

12. The statements recorded under Section 164 of the CrPC of complainant's witnesses 88, 90 and 92 would clearly demonstrate that accused No.4, the brother of the petitioner was using mobile phones in the jail which stood in the name of the petitioner for making certain threatening calls. Accused No.1 is also convicted for running an organized crime syndicate and the petitioner has met accused No.1 on several occasions including at the time when accused No.1 was housed in prison. The charge sheet, according to the learned Additional State Public Prosecutor, would make it clear that the petitioner is an active associate or a member of the organized crime syndicate and the petitioner has also been charge sheeted for offences under Section 201 of the IPC for destroying the sim he has used for commissioning of crime and since provisions of the Act are invoked, the emphatic submission of the learned Additional State Public Prosecutor is that such persons should not be released on bail.

13. The crime involved, in the case at hand, is a maze of facts. The charge sheet admittedly filed runs into 7000 pages. A perusal at the documents appended to the statement of objections would clearly indicate albeit prima facie that the petitioner is a part of the organized crime syndicate of which accused No.1 Rajendra Kumar S.V. @ Bannaje Raja is the chief of that syndicate. With the facts being thus and invocation of the Act against the petitioner as well, as also the fact that application of accused Nos. 4 and 6 who had approached this Court seeking enlargement on bail having been turned down, there is no warrant for consideration of the case of the petitioner for enlargement on bail.

14. The submission of the learned senior counsel appearing for the petitioner is that the petitioner has been in prison for the last 3 years and 7 months and that should weigh as a circumstance for consideration of the case at hand for his release on bail. Though the complaint begins with a frivolous allegation, the investigation reveals an organized crime syndicate. If the investigation has revealed organized crime syndicate and charge sheet is filed on that basis, this Court is of the considered view that the finding rendered by the coordinate Bench while rejecting bail plea of accused Nos. 4 and 6 would become applicable to the case at hand as well, as the link in the chain of events would completely demonstrate that the petitioner is involved and is a part of the said crime syndicate.

15. The definition 'Organized crime syndicate' and 'Organized crime' under the Act clearly bring out offences by the syndicate and offences by the individual who is a part of the syndicate. Therefore, if it is construed that the petitioner has committed certain offences being a part of the crime syndicate,

he is also open to those allegations which make the offences punishable under the Act. If the petitioner has acted individually for the crime syndicate, even then he could be punished for those offences under the Act. Therefore, it is not a case where the petitioner is to be enlarged on bail.

16. In-so-far as the judgments relied on by the learned senior counsel appearing for petitioner in plethora of cases, there could be no qualm about the principles so laid down by the Apex Court but it is also the law that is laid down by the Apex Court that if release of an accused would pose a threat to the society, such accused should not be enlarged on bail. The material on record does warrant rejection of the petition seeking enlargement on bail.

17. For the aforesaid reasons, I do not find any merit in the petition and the petition is accordingly dismissed.

Sd/-

JUDGE bkp CT:MJ