

# Ravichandra Poojari vs State Of Karnataka on 20 September, 2023

**Author: K.Natarajan**

**Bench: K.Natarajan**

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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 20TH DAY OF SEPTEMBER, 2023

BEFORE

THE HON'BLE MR. JUSTICE K.NATARAJAN

CRIMINAL PETITION NO.3476 OF 2023

BETWEEN

RAVICHANDRA POOJARI @ VIKKI POOJARI  
S/O. VIJAYA A AMEEN  
AGED ABOUT 32 YEARS,  
RESIDING AT 11TH MAIN ROAD,  
9TH CROSS, 2ND STAGE,  
J.P.NAGAR,  
BENGALURU - 560 076.

... PETITIONER

(BY SRI RAVI B. NAIK, SENIOR ADVOCATE  
FOR MS. VIJETHA R NAIK, ADVOCATE)

AND

STATE OF KARNATAKA  
THROUGH UDUPI TOWN POLICE STATION  
REPRESENTED BY SPECIAL PUBLIC PROSECUTOR,  
HIGH COURT OF KARNATAKA,  
HIGH COURT BUILDING.  
BENGALURU - 560 001.

...RESPONDENT

(BY SRI VIJAYKUMAR MAJAGE, SPP-II)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 439  
OF THE CODE OF CRIMINAL PROCEDURE, PRAYING TO  
ENLARGE THE PETITIONER ON BAIL IN THE CR.NO.42/2019  
REGISTERED BY BRAHMAVAR POLICE STATION, UDUPI  
DISTRICT FOR THE OFFENCES PUNISHABLE UNDER SECTIONS  
384, 387, 109, 120(B) READ WITH SECTION 34 OF IPC AND  
SECTIONS 3(1)(ii), 3(2), 3(4), 3(5) OF KARNATAKA CONTROL

OF ORGANIZED CRIMES ACT (KCOCA), PENDING ON THE FILE  
OF PRL. DISTRICT. AND SESSIONS JUDGE, MYSURU.

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THIS CRIMINAL PETITION HAVING BEEN HEARD AND  
RESERVED FOR ORDERS ON 13.9.2023, THIS DAY, THE COURT  
MADE THE FOLLOWING:

ORDER

This successive bail petition is filed by the petitioner- accused No.4 under 439 of Cr.P.C. for granting bail in Crime No.25/2019 registered by Udupi Town Police station, for the offences punishable under Sections 507, 504, 385, 506 of IPC and Sections 3(1)(ii), 3(2), 3(4) and 3(5) of the Karnataka Control of Organized Crimes Act, 2000 (hereinafter referred as 'KCOC Act').

2. Heard learned senior counsel for the petitioner and learned Additional SPP-II for the respondent-State.

3. The case of the petitioner is that on the complaint of one Rathnakar D. Shetty, the Police have registered a case in Crime No.42/2019 for the aforesaid offences. Later, on the point of jurisdiction, it was transferred to Udupi Town Police and was registered in Crime No.25/2019. After the investigation, charge sheet came to be filed against the petitioner invoking KCOC Act. It is alleged by the complainant, that he received a phone call on 13.03.2019 at 12.00 p.m. to his mobile No.9448888388 from 9742477467 for three times and a person spoke in Tulu language and again at 12.20 p.m., they demanded money, otherwise they will kill his son. Therefore, he requested the Police to investigate into the matter and to find out the person who called. The Police during the investigation, traced out the phone call, arrested accused Nos.2 to 5 in Bengaluru and remanded them to judicial custody. Subsequently, it was revealed in the investigation that this petitioner is also involved in more than 4 to 5 similar cases like extortion, murder and other cases. Therefore, the Police invoked the provisions of KCOC Act by obtaining sanction from the higher authorities, investigated into the matter and filed the charge sheet. The petitioner was arrested on 22.03.2019 and remanded to the judicial custody. He has approached this court for granting of bail in Crl.P.No.2708/2021 which came to be dismissed on 01.10.2021. Hence once again the petitioner is before this court with an additional grounds.

4. Learned senior counsel appearing for petitioner has contended that the petitioner was arrested on 22.3.2019, he is in custody more than 4½ years. The alleged offence charge sheeted for the offence punishable under Sections 507, 504, 384, 387, 506 of IPC in the first charge sheet and subsequently the police have filed additional charge sheet by invoking the provision of 364A and 397 of IPC. There is no ingredient to attract any of the provisions against this petitioner. Absolutely, there are no averments in the charge sheet in order to show prima facie material against this petitioner. Even otherwise, he is not the habitual offender in order to connect with the accused No.1. It is the first case for this petitioner, he is not member of the banned organization. Therefore, the KCOC Act is not applicable to this petitioner. There is no recovery from him, the minimum punishment under the KCOC Act is 5 years and in 397 IPC it is punishable for 7 years. The petitioner is in custody for

more than 4½ years the trial is not begun, even charges were not framed. The trial will not start or will not conclude in any near future, detaining the petitioner amounts to pre-trial detention hence prayed for allowing the application.

5. Per contra, Learned SPP-II, filed statement of objections and contended that the petitioner is involved in almost five similar cases. The Police have invoked the provisions of KCOC Act. Following the procedure, the confession statement of the accused has been recorded by taking him before the Magistrate. There is no violation of the procedure. The petitioner is involved in four to five cases. CW.159 has given statement under Section 164 of Cr.P.C., wherein, he has paid Rs.4.50 Lakhs to the account of accused No.3 by way of bank transfer and the said amount has been transferred to other accused and they used it for the purpose of purchasing of vehicle etc., At paragraphs 6 to 10 of the objection statement, learned Additional SPP-II has mentioned the crime numbers of other cases pending against the accused and others. Learned Additional SPP has also contended, that if the petitioner is granted bail, definitely he will hamper and tamper the prosecution witnesses and commit similar offences. There is a CD report available apart from the address of the complainant and if the same is supplied to the accused, definitely they will threaten the witnesses. Such being the case, if the petitioner is granted bail, he will commit similar offences and threaten the witnesses. Hence, prayed for rejection of bail petition. The petitioner not made out any additional grounds for granting bail. The police have filed additional charge sheet showing the name of this petitioner received money by kidnapping the prosecution witness and assaulted him. The statement of CW158 & CW159 under Section 164 of Cr.P.C clearly reveals CW159 transferred Rs.4,35,000/- to the account of accused No.3. Out of the said amount, the accused No.6 purchased a car from CW158 and also purchased a bike by the accused No.2 who is brother of this petitioner. The accused No.1 who runs organized crimes indicates that he conspired with co-accused for committing the crime which was revealed in the investigation. The petitioner dragged the case, without co-operating with the court. The petitioner is rowdy element and, if he is released on bail, he will threaten the witnesses and he is already involved in a murder case. The accused persons filing the discharge application one after the another and delaying the process, hence prayed for dismissing the petition.

7. Having heard the arguments, perused the records, on perusal of the same and as per section 2 of the KCOC Act, there must be more than one charge sheet to be filed before the competent court within 10 years. As per the statement of objections filed by the Additional SPP- II, there are five cases registered against this petitioner between 2013 and 2019. This petitioner is accused in all the cases. That apart, as per the charge sheet material, the Investigating Officer has stated in which offences are the accused involved. It also reveals that this petitioner was in jail during the relevant point of time and from the jail, he has contacted his brother accused No.2 and other accused for collecting money from the public and business people. The CD Report reveals that he was in constant touch with other accused through his mobile phone. The CD report is not given to learned counsel for the petitioner as it is the apprehension that the petitioner may threaten and tamper the witnesses of the prosecution. Of-course the petitioner is entitled to receive a copy of the same before the Trial Court.

8. The main contention of the petitioner counsel is that, he is in custody for more than 4½ years and there is no ingredient to attract section 397 and 364 A of IPC. Learned senior counsel relied upon

the judgment of the co- ordinate Bench of this Court in various cases. All the cases are on a different footing. Learned counsel relied upon an unreported judgment of the Hon'ble Supreme Court in Special Leave to Appeal (Crl.) No.6429/2018 wherein, it is stated that at the time, the accused was in custody and therefore, bail has been granted.

9. Learned senior counsel also relied upon the recent judgment of the Hon'ble Supreme Court reported in (2021) 3 SCC 713 UOI VS K.A. Najeeb, wherein the Hon'ble Supreme Court has granted bail to the accused who was facing trial for the offence punishable under UAPA Act, where the accused was in custody for long time. Here in this case, though the police have filed charge sheet and additional charge sheet against the accused persons, but in the first charge sheet there is no offences made out punishable under Sections 364A and 397 of IPC and while further investigation the police added Sections 364A and 397 of IPC where this petitioner received Rs.4,35,000/- transferred by the CW159 in his account, but the abduction was made by the accused No.3, not by this petitioner and amount has been transferred to this petitioner account and it was given by him to his brother for purchasing the motor cycle. Except receiving the amount from the CW158 at the instruction of the accused no.3, he has not directly involved in this case, for extortion. The allegation against this petitioner is lesser than the allegation against the other accused persons. Ofcourse, the accused No.2 brother of the petitioner filed 227 of Cr.P.C application for discharge of the other accused, who also filed similar application for discharge which were pending and no order passed by the trial court for the purpose of framing of charges and that the petitioner is in custody for more than 4½ years. That apart as per the submission made by the Additional SPP there were more than 240 witnesses cited in the charge sheet and in order to examine those witnesses, it may take atleast two years to conclude the trial which reveals, it is not possible to conclude the trial in near future. There is no recovery from this petitioner and it is only first case for this petitioner along with the co accused. The Hon'ble Supreme Court held in the Najeeb's case stated supra at paragraph 10 as under:-

" 10. It is a fact that the High Court in the instant case has not determined the likelihood of the respondent being guilty or not, or whether rigours of Section 43-D(5) of the UAPA are alien to him. The High Court instead appears to have exercised its power to grant bail owing to the long period of incarceration and the unlikelihood of the trial being completed anytime in the near future. The reasons assigned by the High Court are apparently traceable back to Article 21 of our Constitution, of course without addressing the statutory embargo created by Section 43-D(5) of the UAPA."

10. The Hon'ble Supreme Court granted bail in the said case with conditions. The coordinate bench also granted bail in a similar case reported in 2020 SCC online Karnataka 2307. The Hon'ble Supreme Court also granted bail in Mukeshbhai Vallabhabahi Vs State of Gujarat reported in (2023) 4 SCR 1137 in a similar case. Considering the judgment of Hon'ble Supreme Court in Mukehs Bhai's case and Najeeb's case, I am of the view, the petitioner is in custody for more than 4½ years and there is no serious allegation against him for having kidnapped the CW158 and extortion of ransom except receiving the money. Therefore, in view of the delay in conducting trial keeping accused petitioner will be a pre- trial detention and minimum sentence is only 5 years in KCOC Act. Therefore I am of the opinion the petitioner shall be enlarged on bail by imposing certain

conditions.

ORDER Accordingly, the criminal petition is allowed. The trial court is directed to release petitioner - accused No.4 on bail in Crime No.25/2019 registered by Udupi Town Police station, subject to the following conditions:

- (i) Petitioner-accused shall execute a personal bond for a sum of Rs.5,00,000/- (Rupees Five Lakhs only) with two sureties for the likesum to the satisfaction of the trial court;
- (ii) Petitioner shall not strictly indulge in similar offences;

(iii) Petitioner shall not tamper with the prosecution witnesses directly/ indirectly;

(iv) Petitioner shall not leave the jurisdiction of this Court without prior permission of the trial Court;

(v) Petitioner shall take up the trial without causing any further delay; and

(vi) Petitioner shall mark his attendance before the concerned police station once in a month on every first Saturday of the calendar month until further orders.

If any of the above conditions are violated, the prosecution is at liberty to seek cancellation of this bail order.

Sd/-

JUDGE AKV