

Mr Shridhar K Pujar vs The State Of Karnataka on 23 September, 2024

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NC: 2024:KHC:39348
CRL.P No. 7781 of 2024

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 23RD DAY OF SEPTEMBER, 2024

BEFORE

THE HON'BLE MRS JUSTICE M G UMA
CRIMINAL PETITION NO. 7781 OF 2024

BETWEEN:

MR. SHRIDHAR K PUJAR
S/O KESARINANDAN
AGED ABOUT 47 YEARS,
DY. SP INTERNAL SECURITY
DIVISION, R/AT NO. 31104,
B-3, T-1, PRESTIGE JINDAL
CITY, CHIKKABIDARAKALLU,
BENGALURU NORTH
BENGALURU - 560 073

... PETITIONER

Digitally signed
by SWAPNA V

(BY SRI: ARUNA M. SHYAM, SR. ADVOCATE FOR

SRI: SUYOG HERELE .E., ADVOCATE)

Location: high
court of
karnataka

AND:

THE STATE OF KARNATAKA
THROUGH COTTONPET PS
REP BY SPECIAL PUBLIC
PROSECUTOR, HIGH COURT,
BUILDING, BENGALURU - 01.

... RESPONDENT

(BY SRI: PRASANNA KUMAR P., SPL.P.P.)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 438 OF
CR.P.C. PRAYING TO ENLARGE THE PETITIONER ON BAIL IN THE
EVENT OF HIS ARRESTE IN CR.NO.302/2023 ON THE FILE OF THE
4TH ADDL.C.M.M COURT NRUPATUNGA ROAD, BENGALURU
REGISTERED BY COTTONPET P.S. FOR THE OFFENCE PUNISHABLE
UNDER SECTION 204, 120B, 409, 426 OF IPC.

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THIS CRIMINAL PETITION HAVING BEEN HEARD AND
RESERVED FOR JUDGMENT ON 05.09.2024 COMING ON FOR
PRONOUNCEMENT OF ORDERS THIS DAY, THE COURT PASSED THE
FOLLOWING:

CAV O R D E R

The petitioner being one of the accused, who is not
specifically named in the FIR is seeking grant of anticipatory
bail in Crime No.302/2023 of Cottonpet Police Station,
Bengaluru, registered for the offences punishable under
Sections 204, 120B, 409 and 426 of Indian Penal Code (for
short 'IPC') on the basis of the first information lodged by the
informant - K.Ravishankar.

2. Brief facts of the case are that, the Cottonpet Police
registered Cr.No.302/2023 on 09.08.2023 on the basis of first
information lodged by the informant, who is also a Police
Officer, against previous Investigating Officers of KG Nagar
Police Station in Cr.No.91/2020 being accused No.1, other
Police Officers who are arrayed as accused Nos.2 and 3. It is
the contention of the informant that he is working as Dy.SP in
CID and acting as Investigating Officer in the Special
Investigating Team (for short 'SIT') to investigate
Cr.No.91/2020 of KG Nagar Police Station registered for the

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offences punishable under Sections 20(B), 23(B), 24, 25, 27, 27(A) and 29 of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short the 'NDPS' Act) and also under Sections 37, 109, and 201 of IPC. During investigation, the informant came to know that the accused in the said case were booking narcotic drugs through dark websites and used to get the contraband through parcels to be delivered at the Foreign Post Office, Chamarajpet, Bengaluru. Accordingly, on 04.11.2020, a parcel was received in Foreign Post Office in the name of Arnav Gowda and it was found that hydro ganja was found in the parcel. After preliminary investigation, Cr.No.91/2020 came to be registered against accused Nos.1 and 2. During investigation, pen drive, hard disk, Apple Macbook were seized from the custody of the accused. After investigation, the charge sheet came to be filed against the accused and the same was pending before the Trial Court in CC No.187/2022.

3. It is the contention of the informant that the petitioner was the Investigating Officer in Cr.No.91/2020, who undertook major portion of the investigation including seize of various electronic gadgets seized from the custody of the accused in the said case. Same were sent for scientific

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examination to FSL Madiwala, Bengaluru on 21.04.2021. A special team of technical experts was constituted to investigate

into the matter with the permission of the jurisdictional Magistrate. It is stated that the informant took over the further investigation and received the expert opinion from FSL, Bengaluru. On going through the FSL report, the informant found that the pen drive of 16GB and 8GB that were seized under PF No.99/2020 on 09.11.2020 were meddled with and two different files were created on 11.11.2020. The hard disk of 1 TB seized on 17.11.2020 disclosed creation of multiple files on various dates referred to in the FSL report since from 19.11.2020 till 10.12.2020. The Apple Macbook Pro seized on 17.11.2020 also revealed that multiple files were created from 18.11.2020 till 16.12.2020. Another Macbook Pro Model seized on 19.11.2020 revealed that duplicate file was created on 20.11.2020 and 21.11.2020. The FSL report disclosed the mirror images that were created from the files found in the electronic gadgets, even though the same were seized under the mahazar and kept under sealed condition and when the gadgets reached FSL, the seals were intact. Therefore, it was suspected that the Investigating Officers who conducted

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investigation at the initial stage by apprehending the accused and seizing the electronic gadgets must have meddled with the same, for the reasons best known to them.

4. It is alleged that when the articles were in lawful

possession of CCB police, additional files or mirror images were created unauthorizedly. Even after the electronic gadgets reached the technical wing, there was meddling with the gadgets and therefore, he requested the police to register the case and to investigate into the matter. Accordingly, FIR in Cr.No.302/2023 came to be registered against the previous Investigating Officers and the Police Officers concerned with Cr.No.91/2020 of Cottonpet police Station. The petitioner, who was the Investigating Officer in Cr.No.91/2020 is before this Court seeking grant of anticipatory bail on the apprehension of being arrested.

5. Heard Sri. Aruna M.Shyam, learned senior advocate for Sri. Suyog Herele E, learned counsel for the petitioner and Sri. Prasanna Kumar.P., learned Special Public Prosecutor for the respondent-State. Perused the materials on record.

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6. Learned senior advocate for the petitioner contended that the petitioner is enjoying the order of interim anticipatory bail, which was granted by this Court from the beginning till date. Since the petitioner was the Investigating Officer in Cr.No.91/2020 of Cottonpet Police Station and since it is alleged that the Investigating Officer in the said case is responsible for creation of additional files and mirror images from the seized electronic devices, the petitioner has

approached this Court. The gadgets after seizing under the mahazar were sent to the technical division and this Court has denied grant of anticipatory to the technical head, who is also arrayed as one of the accused.

7. Learned senior advocate contended that the petitioner is also arrayed as one of the accused in Cr.No.1/2024 of Cyber Crime Police Station CID, making similar allegations. He had approached this Court and was granted anticipatory bail as per order dated 27.06.2024. Later, the petitioner had appeared before the Investigating Officer on multiple times and co-operated in the investigation. Under such circumstances, nothing is to be recovered at the instance of the petitioner nor he is required for custodial interrogation. The petitioner is a

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responsible Police Officer, who conducted investigation in hundreds of such cases. He cannot be treated as an ordinary accused, that too, when there is no reason for denying the pre-arrest bail. When this Court denied grant of pre-arrest bail to the technical head while dismissing Criminal petition No.6403/2024 found that there are prima facie materials, which disclose that the electronic gadgets were tampered with when the same were in the possession of the technical head. Therefore, it cannot be said that the petitioner is involved in any manner in the commission of offences. The investigation in

Cr.No.91/2020 is already entrusted to CCB and under such circumstances, there is no reason to reject the petition filed by the petitioner. It will be a black mark on the petitioner, if he is taken to custody without any reasonable cause as he has investigated number of cases and rejection of the petition will have an adverse impact on all those cases, as well as on his career. Therefore, learned senior advocate prays for allowing the petition, in the interest of justice.

8. Per contra, learned Special Public Prosecutor opposing the petition submitted that even though initially a contention was raised by the petitioner that the allegations in

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Cr.No.302/2023 and Cr.No.1/2024 are one and the same and two different FIRs came to be registered with regard to the same offence, and Crl.P.No.8505/2023 was filed under Section 482 of CrP.C. seeking to quash the criminal proceedings and the second FIR, the same came to withdrawn by the petitioner and thereby, he has given up his contention that in respect of same offence two FIRs in Cr.No.302/2023 and Cr.No.1/2024 came to be registered. Such contention is not available to the petitioner at present.

9. Learned Special Public Prosecutor submitted that specific allegations are made against the accused in

Cr.No.302/2023 and Cr.No.1/2024. In Cr.No.1/2024, the petitioner is granted anticipatory bail by holding that Court by holding that there are no reasons to subject the petitioner for custodial interrogation. But in the present case, i.e., in Cr.No.302/2023, the statement of the witness - Gagan Jain was recorded by the learned Magistrate under Section 164 of Cr.P.C., wherein, the witness specifically refers to this petitioner, who was with the co-accused - Prashanth Babu, whose petition filed for seeking anticipatory bail came to be rejected and the witness who is a cyber expert was summoned

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by them for the purpose of analyzing the files found in the electronic gadgets. The witness has referred to the name of the present petitioner on multiple times and specifically stated that it was this petitioner who drawn the panchanama for seizing the gadgets from the custody of the accused - Shrikrishna @ Sreeki, but had not taken the signatures of any of the witnesses. The witness also stated that the petitioner had visited the technical center at Adugodi and had given Rs.50,000/- to him as advance and demanded to trace the database to hack the Macbook. The witness has also referred to files relating to hacking the database files, which were listed and a preliminary report was prepared by Prashanth Babu and the petitioner. The witness specifically stated that when he opened the file at the instance of the accused, they demanded

the report relating to all the files pertaining to 4000 bit coins.

The witness further states that the accused including the petitioner were frequently calling him over phone and also accompanied with the accused Shrikrishna @ Sreeki.

10. Learned Special Public Prosecutor contended that similar statement under Section 164 of Cr.P.C of the accused Shrikrishna @ Sreeki was recorded by the learned Magistrate,

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wherein, the accused has specifically referred to the involvement of the petitioner in commission of the offences.

Accused has stated before the learned Magistrate that the petitioner had threatened him of finishing in an encounter and managed to get Macbook valet password and also the password relating to AWS cloud account. This witness has also stated regarding drawing of the mahazar by the petitioner about seizure of the Macbook and other gadgets, but not taking the signatures of any of the witnesses and not following any of the procedures as contemplated under law while seizing the gadgets. The witness repeatedly refers to the role played by the petitioner and Prashanth Babu regarding the electronic gadgets, which prima facie disclose that it was this petitioner along with Prashanth Babu, had tampered with the seized gadgets with illegal motive.

11. Learned Special Public Prosecutor has also referred to the statement of one Siddappa Malli recorded by the learned Magistrate under Section 164 of Cr.P.C., who is none other than a Police Constable working in the Department and stated that it was this petitioner, who insisted him to obtain mirror image of the data found in Apple laptop and other gadgets. The

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petitioner had also insisted him to retrieve the data. But he pleaded his inability to do the same. This witness as well stated that the petitioner even though drawn the mahazar for seizing the gadgets, had not taken the signatures of any of the witnesses, but after about a year, when bit coin controversy surfaced, it was this petitioner who summoned the witness, insisting him to sign the mahazar drawn long back. Therefore, it is contended that there are strong prima facie materials to show the active involvement of the present petitioner in commission of the offences.

12. Learned Special Public Prosecutor produced the copy of the CD for perusal of the Court, which contains the FSL report, Centre for Development of Advanced Computing (C-DAC) report, statements of the witnesses recorded under Section 164 of Cr.P.C, the statement of the accused in Cr.No.91/2020 and the relevant documents. Placing reliance on the CDAC report submitted by Cyber Forensic Analyst,

contended that it was on the basis of this report, this Court had rejected similar bail petition filed by the co-accused - Prashanth Babu by assigning valid reasons. When it is prima facie shown that the present petitioner had also hand in glove with the said

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Prashanth Babu, the petitioner is not entitled for the relief claimed.

13. Learned Special Public Prosecutor placed reliance on the decision of the Hon'ble Apex Court in 'Pratibha Manchanda and another Vs. State of Haryana and another' to contend that when the Police Officer, who was the Investigating Officer in a sensational case, colluded with the co-accused to hamper the investigation, his custodial interrogation is very much necessary. He highlighted that the Hon'ble Apex Court has referred to the facts of the said case to hold that even though the offence alleged is punishable with imprisonment of less than 7 years, and even though an ordinary accused may be entitled for grant of the relief in his favour, such benefits cannot be made available to the Police Officer who was inside the system and tried to meddle with the documents in collusion with the other accused. Under such circumstances, it is contended that the custodial interrogation of the petitioner is very much necessary to unearth the truth by getting his custody and it is not a case to extend the protective

umbrella by granting pre-arrest bail. Learned counsel has also

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placed reliance on the decision of the Hon'ble Apex Court in
'The State of Jharkhand Vs. Sandeep Kumar' in support of
his similar contention.

14. Placing reliance on these decisions and also on the
case diary learned prosecutor contended that the petitioner is a
high profile accused, who had directly involved in tampering
with the electronic gadgets seized by him as the Investigating
Officer from the main accused and therefore, is not entitled for
grant of anticipatory bail. Accordingly, he prays for dismissal of
the petition.

15. In view of the rival contentions urged by the
learned counsel for both the parties, the point that would arise
for my consideration is:

"Whether the petitioner is entitled
for grant of bail under Section 438 of
Cr.P.C.?"

My answer to the above point is in 'Negative' for the
following:

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REASONS

16. Cr.No.302/2023 of Cottonpet Police Station was registered on the basis of the first information lodged by the Inspector of Police of Special Investigation Team against the Investigating Officers who investigated Cr.No.91/2020 of KG Nagar Police Station and other Police Officers, who are involved in investigating the matter.

17. It is the specific allegations made by the prosecution that during investigation of Cr.No.91/2020 by the petitioner as Investigating Officer, he seized a Macbook from the accused in that case by name Shrikrishna @ Sreeki on 17.11.2020 and sent the same for FSL on 21.04.2021. Several digital gadgets were seized by the Investigating Officer during the course of investigation and the same were sent to FSL in a sealed condition. When the petitioner was investigating the matter, a Special Investigating Team was constituted and further investigation in the matter was referred to the said team.

18. The FSL report regarding the electronic gadget was received by the subsequent Investigating Officer of SIT. It is

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stated that as per the FSL report, the hard disk seized on

17.11.2020 under the mahazar and reported to the learned Magistrate contained files created on 19.11.2020, 25.11.2020, 28.11.2020, 5.12.2020 and on 10.12.2020. Similarly, the Apple Macbook pro seized on 17.11.2020 under the seizure mahazar also found the files created on 18.11.2020, 30.11.2020, 01.12.2020, 03.12.2020, 05.12.2020, 10.12.2020 to 13.12.2020, 15.12.2020 and 16.12.2020. Another Apple Macbook seized on 19.11.2020 found with files created on 20.11.2020 and 21.11.2020. As per the mahazars drawn by the petitioner as Investigating Officer, all these gadgets were in sealed condition from 17.11.2020 to 21.11.2020 and there was no occasion for creating additional files during this period of time. Similarly, the Apple Macbook Pro seized on 19.11.2020 was in sealed condition from 19.11.2020 to 21.11.2020. But files were created when the gadgets were supposed to be in a sealed condition. Therefore, it is the allegation against the petitioner that seized gadgets were accessed illegally even after seizure and when it is supposed to be in sealed condition in the custody of the petitioner. It is therefore, Cr.No.302/2023 came

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to be registered on 09.08.2023 mainly based on the findings found in FSL report.

19. It is stated that during the course of investigation, the personal desktop of one of the accused- Prashanth Babu

was seized on 11.01.2024 and the same was sent for analysis to C-DAC at Trivendrum for analysis. The report was received on 24.01.2024, according to which, the electronic gadgets including Apple Macbook Pro were illegally accessed while they were in lawful custody of Investigating Officer, which were supposed to be in a sealed condition. The C-DAC report dated 21.05.2024 confirms copying of files found in Macbook seized in Cr.No.91/2020 of KG Nagar Police Station into the personal desktop of the accused - Prashanth Babu and subsequently, the said files were wiped off during December 2023.

20. It is also the contention of the prosecution that the SIT got recorded the statements of three witnesses i.e, B.S.Gagan Jain, Shrikrishna @ Sreeki and Siddappamalli before the learned Magistrate under Section 164 of Cr.P.C. The witness - B.S.Gagan Jain said to have stated in his statement regarding the presence of accused - Prashanth Babu, the Police

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Inspector and the present petitioner, who is also a Police Inspector, in the Technical Center at Adegudi and the petitioner and Prashanth Babu offering him Rs.50,000/- as an advance for the purpose of hacking the database in the Macbook. The witness also stated that the petitioner being the Investigating Officer, seized the laptop under the mahazar on 26.11.2020. But he had not taken signatures of any of the witnesses. The

witness appears to have stated that the petitioner and the Prashanth Babu have informed him regarding arrest of Shrikrishna @ Sreeki a hacker and asked the witness to analyze the files found in the laptop.

21. Similar statement of the accused - Shrikrishna @ Sreeki before the learned Magistrate discloses that on 14.11.2020 in the afternoon, he was invited to the lunch by the petitioner and taken him along with his friends to CAR - IPS guesthouse and kept him illegal detention till 17.11.2020. Thereafter, it is shown that Shrikrishna @ Sreeki is arrested in CCB office. The witness stated that the petitioner had intimidated to encounter him and got the passwords of Macbook, the valet and also the cloud account. The witness stated that when he was taken to police custody, the petitioner

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being the Investigating Officer taken him to the house of the accused and seized the Macbook, cannabis grinder, but no procedure was followed while seizing the gadgets. The witness states that the files found in the gadgets were edited with the help of the witness Gagan and the edited files were copied in the pen drive and also in the desktop of the accused- Prashanth Babu. The witness stated that the petitioner and Prashanth Babu started operating the devices with the help of Gagan. Few files were edited and few were deleted.

22. Another witness Siddappa Malli - the Police Constable has also given his statement before the learned Magistrate under Section 164 of Cr.P.C., wherein, he has stated that he was asked by the petitioner to retrieve the files in Apple Lap top and treasure valet, but he pleaded his inability to do so. Witness also states that Prashanth Babu had handed over a tool called black light to a person by name Aprameya. He refers to mirror imaging the files and he also refers to the presence of the petitioner and Shrikrishna @ Sreeki in the technical center. Witness specifically stated that even though the gadgets were seized by the petitioner during investigation, his signature was not taken in the mahazar. But when bit coin scam was started

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publishing in the media, the petitioner called the witness and insisted him to sign the mahazar which was already drawn long back.

23. It is noticed that the FSL report and C-DAC report relied on by the prosecution supports the statements of the witnesses recorded under Section 164 of Cr.P.C. Under these circumstances, it is the contention of the prosecution that the petitioner is required for custodial interrogation.

24. My attention was drawn to the order dated 23.07.2024 passed in Crl.P.No.6403/2024 denying the pre-

arrest bail to one of the accused-Prashanth Babu by forming the opinion that prima facie materials are placed, which disclose that the electronic gadgets were tampered with when the same were supposed to be in sealed condition. When admittedly, the petitioner was the Investigating Officer, who seized several electronic gadgets, he is answerable for tampering of the same along with the co-accused who was said to be the head of the technical center.

25. On verifying the grounds made out by the prosecution for opposing the pre-arrest bail sought by the

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petitioner, I am of the opinion that there are prima-facie materials to reject such relief, looking to the nature and seriousness of the allegations, which are supported by the FSL and C-DAC reports and the statements of the witnesses referred to above recorded under Section 164 of Cr.P.C.

26. Learned senior advocate submitted that denial of pre-arrest bail to the technical head would disclose that the electronic gadgets were tampered with, when it was in his possession. This contention cannot be accepted at this stage as the materials on re`cord prima facie disclose that the petitioner being the Investigating Officer and the co-accused - Prashanth Babu being the head of the technical center, might have accessed electronic gadgets either to temper it or to create

additional files or to delete the files etc.

27. The contention of the learned senior advocate for the petitioner that similar allegations were made against petitioner in Cr.No.1/2024 and the petitioner is granted anticipatory bail in the said case, cannot be the ground to allow this petition. The allegations made in both these cases i.e., Cr. No.302/2023 and 1/2024 are different in nature in respect to

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two different criminal cases, which were handed over for further investigation to the Special Investigation Team. On the basis of the materials that are` placed before the Court, petitioner was granted the relief of pre-arrest bail in Cr.No.1/2024 of Cyber Crime Police Station. But the same would not mean to say that the petitioner is entitled for similar relief in the present case. Looking to the nature and seriousness of the offence, wherein, the Investigating Officer and head of the technical center being the Police Officers of the rank of Inspectors are said to be involved in committing such offences, same is to be dealt with very seriously.

28. The contention of the learned senior advocate for the petitioner that denial of the relief of pre-arrest bail to the petitioner will have an impact on hundreds of cases wherein, the petitioner had investigated as an Investigating Officer

cannot be a ground for granting the relief by allowing the petition. The allegations made against the petitioner and the co-accused shocks the conscience of the Court as well as the general public, where it is alleged that the petitioner and other Police Officers who hold high posts in the criminal justice system have stooped to such a level of tampering the

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documents with the help of the accused in the case. The decisions relied on by the learned Special Prosecutor throw much light about the stand that is to be taken against such high rank police officials when serious allegations are made regarding commission of offence in the garb of investigation. Therefore, a detailed investigation is very much necessary to unearth the true facts. If the petitioner is innocent and if baseless allegations are made against him as contended, he will come out clean after investigation. But at this stage, the materials on record creates a cloud of doubt on the conduct of the petitioner and therefore, I am of the opinion that the petitioner is not entitled for grant of pre arrest bail. Accordingly, I answer the above point in the negative and proceed to pass the following:

ORDER

The Criminal Petition is dismissed. The copy of CD shall be handed over to the learned Special Public Prosecutor, forthwith.

Sd/-

(M.G. UMA) JUDGE