

Brayan Bogonko S/O Philip vs The State Of Karnataka on 24 November, 2021

Author: Shivashankar Amarannavar

Bench: Shivashankar Amarannavar

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IN THE HIGH COURT OF KARNATAKA
DHARWAD BENCH

DATED THIS THE 24 T H DAY OF NOVEMBER 2021
BEFORE
THE HON'BLE MR. JUSTICE SHIVASHANKAR AMARANNAVAR

CRIMINAL PETITION NO.102058/2021

BETWEEN:

BRAYAN BOGONKO S/O. PHILIP
(BOGONKO BRAIN MAYIEKA)
AGED 22 YEARS, OCC: STUDENT,
R/O. MANTANGO,
DIST: NIYAMIRA
STATE KISSTI,
NATION: KEENYA
PRESENTLY RESIDING AT SHRUKANT,
DHARWAD PRAGATI VIDYALAYA,
GIRINAGAR,
DHARWAD.
...PETITIONER
(BY SRI ANKIT RAMESH DESAI, ADVOCATE)

AND:

THE STATE OF KARNATAKA,
REPRESENTED BY
STATION HOUSE OFFICER,
CYBER CRIME POLICE STATION,
HUBBALLI-DHARWAD TOWN
ALSO REPRESENTED BY
STATE PUBLIC PROSECUTOR,

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HIGH COURT OF KARNATAKA
BENCH AT DHARWAD-580 011

... RESPONDENT

(BY SRI RAMESH B. CHIGARI, HCGP)

THIS CRIMINAL PETITION IS FILED UNDER
SECTION 439 OF CR.P.C., PRAYING TO GRANT
BAIL TO THE PETITIONER IN CYBER CRIME P.S.
NO.38/2021 REGISTERED BY CYBER CRIME
POLICE STATION, HUBBALLI FOR THE
OFFENCES PUNISHABLE UNDER SECTION 66(C)
OF INFORMATION TECHNOLOGY ACT,
SECTIONS 109, 403 AND 201 OF IPC AND
SECTION 14(a) (b) OF FOREIGNERS ACT.

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

ORDER

This petition is filed by accused No.3 under Section 439 of The Code of Criminal Procedure, 1973 (hereinafter referred to as the 'Cr.P.C.', for brevity) seeking bail in Crime No.38/2021 registered by Cyber Crime Police Station, Hubballi, for the offences punishable under Sections 66(C) of Information Technology Act, (hereinafter referred to as 'I.T. Act' for brevity), Sections 109, 403 and 201 of The Indian Penal Code (hereinafter referred to as the 'IPC', for brevity) and Section 14(a) and (b) of the Foreigners Act.

2. It is the case of the prosecution that the complainant is having the Instagram account since the year 2018 and he had received suggestion from one Nshimiya to his Instagram account and followed him, started making chat and given the phone number and also WhatsApp and phone calls. On 03.05.2019 at about 01.15 p.m., complainant had received a call from one Devas stating that the petitioner is studying in Dharwad College and College Authorities are telling to deposit the College and Exam Fees through Bank. As the petitioner is NRI, he could not open a bank account in a local bank and requested the complainant to open a bank account and link his mobile number to that account. To help Devas, complainant opened the account in the month of May 2019 in Bank of Baroda Dharwad Branch and linked Devas's mobile number to that account and informed the same to him. Devas also requested the complainant in the month of October, 2019 to open another account for his friend by name M.R. Yuji for the same purpose as he is also NRI. Accordingly complainant opened another account in the same bank in his brother's name Mithun and linked petitioner's friend's mobile number and informed the said fact to the petitioner. On 12.02.2021 at about 4.00 p.m., when the complainant visited the Bank and enquired for educational loan of his brother, Bank Authorities verified the account and informed that there are several transactions in their account and given the statement of account and found several illegal transactions. It is alleged

in the complaint that the said Nsimiyeman Dyus @ Devas and M.R. Yuji who become the friends of the complainant through Instagram, made the transactions with dishonest intention in the name of complainant with linked number and the petitioner has committed mischief by using the complainant's bank account. It is further alleged in the complaint that a case is pending before Rachakonda Crime Police Station of Telangana State in Crime No.55/2021 under Section 66(c) and (d) of I.T. Act 2000 and under Sections 417, 419 and 420 of IPC. Therefore, the complainant lodged a complaint on 28.02.2021, which came to be registered in Crime No.38/2021 by the respondent police. The petitioner was arrested on 14.07.2021 and remanded to judicial custody. The petitioner filed bail application before the Civil Judge and JMFC Dharwad which came to be rejected by order dated 11.08.2021. The petitioner filed Crl.Misc.No.629/2021 seeking bail and the same also came to be rejected by the IV Additional District and Sessions Judge at Dharwad by order dated 08.09.2021. Therefore, the petitioner is before this Court seeking bail.

3. Heard the learned counsel appearing for the petitioner and the learned High Court Government Pleader for the respondent-State.

4. Learned counsel for petitioner would contend that there is delay of 14 days in filing complaint and the role of the petitioner has not been stated in the complaint. It is submitted that petitioner is a student of D. Pharma studying in Soniya Education Trusts - College of Pharmacy and he is having 90% of attendance and he has been falsely implicated in the case. He submits that charge sheet has been filed and the alleged offences are not punishable with death or imprisonment for life. With this, he prayed for allowing the petition.

5. Per contra, learned High Court Government Pleader for the respondent-State contended that the petitioner is a foreigner, he came to India for study purpose and he got opened the Bank account at the instance of accused No.1 in Bank of Baroda and he has opened four accounts and had received Rs.8,000/- per account from accused No.1. It is his further submission that the charge sheet material shows prima facie case against the petitioner and if he is granted bail, he will tamper the prosecution witnesses and flees from justice. With this, he prayed to dismiss the petition.

6. Having regard to the submission made by the learned counsel for the petitioner and the learned High Court Government Pleader for respondent-State, this Court has gone through the charge sheet records.

7. The accusation leveled against the petitioner-accused No.3 is that, at the instance of accused No.1 for transfer of currency the petitioner who is studying in Soniya Education Trusts College of Pharmacy, acquainted with complainant requested the complainant to open bank account for transfer College and Exam Fees through Bank and got opened four Bank accounts and linked the mobile number of accused No.1 to the said accounts and for that he received commission of Rs.8,000/- per account in all Rs.32,000/- from accused No.1. The serious accusations are leveled against accused No.1. The accusation leveled against this petitioner is only that he got opened four accounts and received consideration of Rs.8,000/- per account from accused No.1. The petitioner is a student studying in Soniya Education Trusts College of Pharmacy for the period from 2019 to 2025. The VISA belonging to the petitioner was valid upto 19.07.2020 and it has been extended till

19.07.2022 and his passport is valid till 09.06.2029. As charge sheet is filed petitioner is not required for custodial interrogation. There are no criminal antecedents of the petitioner. If the petitioner is not granted bail it will affect his educational career. The apprehension of the prosecution that if the petitioner is granted bail, he will go back to his native country and may not be available for trial and also he may cause threat to the complainant and other prosecution witnesses, can be met with by imposing stringent conditions.

8. In the facts and circumstances of the case and the submission of the counsel, this Court is of the view that there are valid grounds for granting bail subject to certain terms and conditions. Hence, I proceed to pass the following:

ORDER The petition filed under Section 439 of Cr.P.C. is allowed. Consequently, the petitioner shall be released on bail in Crime No.38/2021 of Cyber Crime Police Station, Hubballi, subject to the following conditions:

i) Petitioner shall execute a personal bond for a sum of Rs.5,00,000/-

(Rupees Five Lakhs Only) with one surety for the like sum to the satisfaction of the jurisdictional Court.

ii) Petitioner shall not indulge in tampering the prosecution witnesses.

iii) Petitioner shall attend the Court on all the dates of hearing unless exempted and co-operate in speedy disposal of the case.

iv) Petitioner shall surrender his passport before the jurisdictional Court within a period of two weeks from the date of his release.

v) Petitioner shall obtain prior permission of the jurisdictional Court to go out of India.

Sd/-

JUDGE Sbs*