

# Sri Anup Kiran vs The State Of Karnataka on 15 February, 2022

**Author: H.P. Sandesh**

**Bench: H.P. Sandesh**

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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 15TH DAY OF FEBRUARY, 2022

BEFORE

THE HON'BLE MR. JUSTICE H.P. SANDESH

CRIMINAL PETITION NO.9601/2021

BETWEEN:

SRI ANUP KIRAN  
S/O N.S.CHANNAVEERAPPA  
AGED ABOUT 33 YEARS  
NO.5, 3-B, RICH HOMES  
BESIDES SONATA SOFTWARE  
RICHMOND ROAD  
BENGALURU-560 025.

... PETITIONER

(BY SRI ARAVINDA BABU B.S., ADVOCATE)

AND:

1. THE STATE OF KARNATAKA  
BY SHO, UDAYAGIRI POLICE STATION  
MYSURU-570 019.
2. THE STATE OF KARNATAKA  
BY SHO, ASHOKNAGAR POLICE STATION  
BENGALURU-560 025  
REPRESENTED BY STATE PUBLIC PROSECUTOR  
HIGH COURT OF KARNATAKA  
BENGALURU-560 001.
3. SRI SUHAIL AHMED  
S/O LATE BASHEER AHAMMED  
AGED ABOUT 40 YEARS  
R/AT NO.1462, 1ST FLOOR,  
2ND CROSS, 1ST STAGE

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RAJIV NAGAR, MYSURU CITY,  
MANAGING DIRECTOR  
M/S. VEHICART INFOTECH PVT. LTD.,

(AMENDED VIDE COURT  
ORDER DATED 10.01.2021)

... RESPONDENTS

[BY SRI VINAYAKA V.S., HCGP FOR R1 AND R2;  
SRI HARSIT V. RAJ, ADVOCATE FOR R3 (THROUGH V.C.)]

THIS CRIMINAL PETITION IS FILED UNDER SECTION 438 OF CR.P.C PRAYING TO ENLARGE THE PETITIONER ON BAIL IN THE EVENT OF HIS ARREST IN CR.NO.237/2021, DIRECT THE INVESTIGATING OFFICER, UDAYAGIRI POLICE STATION, MYSURU OR SHO ASHOK NAGAR POLICE STATION, BENGALURU, FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 419, 420 AND 406 OF IPC.

THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 09.02.2022 THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

ORDER

This petition is filed under Section 438 of Cr.P.C. praying to enlarge the petitioner/accused on bail, in the event of his arrest in respect of Crime No.237/2021 registered by Udayagiri Police Station, Devaraja Sub-Division, Mysuru City, for the offences punishable under Sections 419, 420 and 406 of IPC.

2. Heard the learned counsel for the petitioner, learned High Court Government Pleader appearing for the respondent Nos.1 and 2-State and learned counsel for respondent No.3. Having heard the respective counsel, the matter is reserved for orders.

3. The factual matrix of the case of the prosecution is that the respondent No.3 herein has filed a private complaint before the Trial Court in P.C.R.No.34/2021 and the Trial Court, looking into the contents of the complaint, referred the matter under Section 156(3) of Cr.P.C. for investigation. As a result, a case is registered under Crime No.237/2021. The allegation made in the complaint is that the complainant entered into an agreement with the Government of State of Karnataka in the year 2019 for computerization and for issuance of smart card based licence to drivers and in this regard, for registration, approached M/s.Rosmerta Technologies Ltd. ('M/s. RTL' for short). In pursuance of the said agreement, the investors have invested money with M/s.Calcue and complainant is one of the investors and the said M/s. Calcue company appointed the complainant as Service Provider on 09.08.2016 and in between 18.07.2016 to 03.05.2017, the complainant invested money of Rs.1,12,78,000/-. That on 27.10.2017, the said company entered into a fresh agreement with M/s. RTL and all powers and responsibilities were given to the complainant-company. In this regard, complainant-company, transacted with M/s. RTL company and ultimately for Rs.10.5 Crores in

total, there was an agreement to pay the amount and in this connection, an agreement of settlement was entered into on 11.09.2021. In terms of the settlement, M/s. RTL company made the payment of Rs.3,19,51,920/- in favour of M/s. Calcue and the said amount was collected in terms of the agreement dated 27.10.2017 on behalf of the complainant-company and when the demand was made by the complainant from M/s.Calcue, the owner of the said M/s. Calcue, the present petitioner herein did not repay the amount and committed an offence of fraud and cheating.

4. Learned counsel for the petitioner would vehemently contend before this Court that the petitioner is a Founder Director of the company and has got lot of statutory obligations and he is innocent and with a vindictive mind, private complaint is filed. The petitioner has been falsely implicated in the case with a view to blackmail him and extract money. The counsel would submit that if the complainant has any grievance, he has to get the same redressed by filing an appropriate civil suit for alleged breach of term of the memorandum of settlement and not to invoke criminal jurisdiction. It is also contended that the petitioner would co-operate fully with the Investigating Officer and hence, he may be enlarged on bail.

5. Learned counsel for the petitioner also vehemently contend that the civil dispute is given criminal colour and there is an arbitration clause if there is any violation and the same has to be redressed in accordance with law and not by filing any private complaint.

6. Per contra, learned counsel for the respondent No.3 has also filed statement of objections along with the documents as Exs.R1 to R4 and brought to the notice of this Court the contents of documents Exs.R1 to R4 and would vehemently contend that there is a prima facie case against the petitioner and petitioner is not entitled for anticipatory bail. The counsel would contend that the material discloses that the petitioner has received the money and played fraud on the complainant. The counsel also brought to the notice of this Court the order passed by the Trial Court rejecting the bail application.

7. The learned counsel for the respondent No.3, in support of the argument also brought to notice of this Court the judgment of the Apex Court in the case of SUPREME BHIWANDI WADA MANOR INFRASTRUCTURE PRIVATE LIMITED VS. STATE OF MAHARASHTRA AND ANOTHER reported in 2021 (8) SCC 753, wherein the Apex Court has observed that relevant considerations for grant of anticipatory bail had not been considered by the High Court, particularly the serious nature of alleged offences. Hence, set aside the order of granting anticipatory bail in favour of the respondent in the particular case. It is further observed that, High Court has to consider the nature of offence, role of the person, likelihood of his influencing the course of investigation or tampering with evidence, likelihood of fleeing justice such as leaving the Country

8. The counsel also relied upon the judgment of the Apex Court in the case of CENTRAL BUREAU OF INVESTIGATION VS. V.VIJAY SAI REDDY reported in (2013) 7 SCC 452, wherein also the Apex Court discussed the scope of Section 439 and also 437 and if there is specific allegation of criminal conspiracy, Courts should not grant bail. Apart from that, the Apex Court also observed that, taking note of nature of accusation and evidence, severity of punishment which conviction will entail, character and circumstances which are peculiar to accused, reasonable possibility of securing

presence of accused at trial, reasonable apprehension of witnesses being tampered with and larger interests of public/State and other similar considerations.

9. The counsel also relied upon the judgment of Apex Court in the case of P. CHIDAMBARAM VS. DIRECTORATE OF ENFORCEMENT reported in (2019) 9 SCC 24, wherein the Apex Court observed with regard to the relevant considerations while exercising that power, particularly in cases of economic offences and refusal to grant anticipatory bail, does not amount to denial of rights conferred upon applicant under Article 21 of the Constitution.

10. The counsel referring these judgments would vehemently contend that the principles laid down in the judgments referred (supra) are applicable to the facts of the case on hand and contend that, in the case on hand also, the petitioner has received the amount and not paid the same in favour of the complainant.

11. Having heard the learned counsel for the petitioner, learned counsel for the respondent No.3 and also looking into the contents of the private complaint filed against this petitioner in P.C.R.No.34/2021, the Trial Judge referred the matter under Section 156(3) for investigation. On looking into the contents of the complaint, particularly, paragraph Nos.13, 15 and 16, there was an settlement agreement between the parties dated 11.09.2021 with regard to the total settlement amount of Rs.10.5 Crores, a sum of Rs.3,19,51,920/- was to be paid to M/s. Calcue and M/s. Calcue has received a sum of Rs.1.65 Crores in accordance with the terms of the settlement. The company has expropriated the entire amount to itself and a select few of its investors, and has not returned even a single rupee from the sum of Rs.1,12,78,000/- invested by the complainant into M/s. Calcue prior to the assignment agreement dated 27.10.2017, and has not given the complainant or M/s. Vehicart any account of how it has disbursed the settlement amount received by it on behalf of M/s. Vehicart. When an attempt was made to contact the petitioner, he gave evasive response and not properly responded. Hence, the complaint is given.

12. Having considered the material on record, particularly, the averments of the complaint, it is very clear that the petitioner has received the amount on behalf of the complainant and not disbursed the same and the amounts are also in Crores. The document of memorandum of settlement dated 11.09.2021 is also clear that the petitioner is also a party to the said agreement as second party and complainant is also a party. In terms of the settlement arrived between the parties, it is specifically mentioned regarding indemnification and liabilities and so also mode and methodology of payment and declarations are also made. When such being the factual aspects of the case, the Apex Court also in the judgment referred (supra) i.e., in Supreme Bhiwandi's case, while exercising the powers under Sections 438 of Cr.P.C., held that the Court has to consider the nature of offence, role of the person, likelihood of his influencing the course of investigation or tampering with evidence, likelihood of fleeing justice.

13. When such aspects are considered by the Apex Court and set aside the anticipatory bail granted by High Court, in this case also, the Court has taken note of the nature of offence and in terms of the memorandum of settlement, amount is received by the petitioner and the same has not been disbursed in favour of the complainant and the complainant was forced to file a private complaint

and the matter is under investigation. When such being the factual aspects, I am of the opinion that it is not a fit case to grant anticipatory bail, taking note of the nature of offence and allegations made in the complaint as well as seriousness of allegation made against the petitioner. The allegation is also specific that this petitioner cheated the investors of the company. When such being the factual aspects found on record, the very ingredients of the offence under Sections 419, 420 and 406 of Cr.P.C. prima facie attracts. Hence, it is not a fit case to exercise the discretion invoking Section 438 of Cr.P.C in favour of the petitioner for the relief of anticipatory bail.

14. In view of the discussions made above, I pass the following:

ORDER The Criminal Petition is rejected.

Sd/-

JUDGE ST