

IN THE HIGH COURT OF KARNATAKA

KALABURAGI BENCH

DATED THIS THE 22ND DAY OF APRIL 2015

BEFORE

THE HON'BLE MR. JUSTICE K.N.PHANEENDRA

CRIMINAL PETITION No.200374/2015

Between:

Sharanappa
S/o: Veeranna Sajjan,
Ag: 48 Years,
Occ: Senior Civil Judge & JMFC,
Basavakalyan,
Now under suspension,
R/o: Sindhanoor, Dist: Raichur.

... Petitioner

(By Sri Baburao Managane, Advocate)

And:

State of Karnataka
Through Police Sub-Inspector,
Town Police Station,
Basavakalyan,
Represented by
Learned Public Prosecutor,
Kalaburagi.

... Respondent

(By Sri P.S.Patil, HCGP)

This Criminal Petition is filed under Section 438 of Cr.P.C. praying to, direct the opponent police to release the petitioner/accused on bail, in the event of his arrest in Basavakalyan P.S. in Crime No.239/2014 for the offences punishable under Sections 7, 8, 12, 13(2), 13(1), 13(D) of Prevention of Corruption Act, 1988.

This petition coming on for Orders this day, the Court made the following:

ORDER

The Principal District and Sessions Judge, Bidar, lodged a complaint against the petitioner and others for the alleged offences punishable under Sections 7, 8, 12, 13(2), 13(1), 13(D) of Prevention of Corruption Act, 1988, making allegations that the petitioner was working as Senior Civil Judge and JMFC., Basavakalyan and it is alleged that while discharging his duty as a public servant as Senior Civil Judge and JMFC., demanded a sum of Rs.5,00,000/- Lakhs from one Sri Kirthiraj K.Poste, Advocate, in order to deliver the judgment in his favour in R.A.Nos.16, 17 and 18 of 2004, which are pending before his Court. After coming to know about the fact the Principal District

and Sessions Judge, Bidar, brought the matter to the notice of the Registrar Vigilance, High Court of Karnataka, Bengaluru over telephone. The Registrar Vigilance, High Court of Karnataka, Bengaluru along with his team attached to the Registrar Vigilance has laid a trap near Mini Vidhana Soudha, in the vicinity of Basveshwar Statue at Basavakalyan, headed by Sri Ramlingegowda, Police Inspector and in-charge Deputy Superintendent of Police and Sri Cheluvegowda, Police Inspector Vigilance, Bengaluru and the said officer was caught red handed while receiving bribe amount of Rs.1,00,000/- from Kirthiraj K.Poste, at the hands of the above said vigilance team. Afterwards, a complaint was lodged to the Superintendent of Police, Bidar, to take appropriate action by further investigating the matter. Looking to the above said circumstances, virtually the vigilance team of High Court of Karnataka, Bengaluru, have laid the trap and caught hold the judicial officer red handed while receiving Rs.1,00,000/- for the said purpose alleged in the complaint. The offences punishable under Sections 7, 8, 12,

13(2), 13(1), 13(D) of Prevention of Corruption Act, 1988, are severely punishable to the maximum extent of 7 years. He being the judicial officer instead of assisting the investigation, from the date of the commission of the offences he still at large absconding himself without assisting the investigating agency to complete the investigation.

2. Of course, I can understand, if an ordinary man does the same, the Court can consider that ignorance as excusable, but being a judicial officer such a long time knowing fully well the legal consequences and he being a legal man, he was supposed to voluntarily assisted the police to investigate the matter instead of running away from the spot and absconding himself for such a long time, waiting till the charge sheet to be filed. Looking to the above said circumstances, though the offences are not punishable either with death or imprisonment for life, but corruption is a cancerous decease which is spreading in the society like anything. If the Courts are releasing such persons, who know the law and particularly and deliberately avoid the law the discretionary

powers. Under such circumstances, in my opinion, cannot be exercised in favour of such persons, particularly under Section 438 of Cr.P.C.

3. Though the learned counsel tried to persuade the Court by submitting that no sanction has been taken for the purpose of prosecuting the accused, even for the purpose of lodging the First Information Report, that, the sanction is an absolute requirement, but, in my opinion, for the purpose of lodging a report before the police under Section 154 of Cr.P.C sanction is not required. However, for the purpose of lodging a private complaint under Section 200 of Cr.P.C. the sanction is an absolute requirement as per the decision of the Hon'ble Apex Court reported in **2014 CRI. L. J., 1** in the case of **Anil Kumar and others Vs. M.K.Aiyappa and another**. The FIR is still under investigation and the police are at liberty to investigate the matter, for the purpose of investigation under Section 154 of Cr.P.C no sanction is required. The distinction has already made in several decisions that if the complaint before the Court under

Section 200 of Cr.P.C and the Court to refer the matter under Section 156(3) of Cr.P.C. altogether different compared to a report under Section 154 of Cr.P.C. before the police. It is already clarified that for the purpose of taking of cognizance under Section 200 of Cr.P.C. by exercising the powers under Section 190 of Cr.P.C. the Magistrate has to go through the contents of the complaint. Therefore, either to refer the matter under Section 156(3) of Cr.P.C or to taking cognizance under Section 200 of Cr.P.C. the Magistrate has to go through the contents of the complaint where an offence is made out. Therefore, in that context, the Hon'ble Apex Court has held that sanction is a mandatory requirement for the purpose of filing the complaint under Section 200 of Cr.P.C. because Section 156(3) of Cr.P.C. gives power to the Court to refer the case under Section 156(3) of Cr.P.C. subsequent to filing of the complaint under Section 200 of Cr.P.C. Therefore, such principle cannot be applied where a report is submitted to the police for investigation.

4. The second point that has been raised by the learned counsel is that, the charge sheet is not yet filed in this case and another accused was released on bail by the Principal Sessions Judge who also holding concurrent charge of I Addl. Sessions Judge Bidar, who lodged the complaint against the petitioner, exercising the powers under Section 167 of Cr.P.C. It is to be noted here for releasing the accused on bail under Section 167 of Cr.P.C. the Court has power to exercise discretion, but not under Section 438 of Cr.P.C. The petition under Section 438 of Cr.P.C. was filed before the same Judge, who has filed the report before the police. Learned Judge has observed that he cannot decide the said matter because he himself was the complainant before the police. The learned counsel tried to make a distinction that when he released another accused under Section 167(3) of Cr.P.C., he could have passed the order under Section 438 of Cr.P.C. also. But I am at loss to accept the said arguments of the learned counsel because of the simple reason Section 167 (3) of Cr.P.C. provides absolutely no discretion to the Judge and he is not

suppose to look in to the merits or demerits of the case and exercise any discretion either in favour of the prosecution or in favour of the accused, it is virtually called a statutory bail. The Judge is bound to grant bail if the accused is ready to offer the surety. However, while exercising the powers under Section 438 of Cr.P.C. it is purely the discretion of the Judge who has to look into the materials on record and come to the conclusion, whether the accused is entitled to be enlarged on bail. Therefore, such ground as argued by the learned counsel is also in any manner comes to his help in this case. I do not want to venture upon to remand or transfer this matter to some other District Judge for dealing with the matter because Section 438 of Cr.P.C. provides concurrent jurisdiction to the Sessions Judge as well as the High Court. The charge sheet is not yet filed and the investigation is still in progress and looking to the contents and also the nature of allegations and facts of the case, I am not inclined to grant anticipatory bail so far as petitioner is concerned.

5. The learned counsel also contended that the vigilance department of High Court has collected the evidence before lodging the complaint before the jurisdictional police. I do not venture upon to deal with this aspect because it is outside the purview of the 438 of Cr.P.C. Hence, I am reluctant to give any findings so far as this aspect is concerned. For the above said reasons the petitioner, at this stage, is not entitled to be enlarged on anticipatory bail. Hence, the petition deserves to be dismissed.

Accordingly, the petition is dismissed.

**Sd/-
JUDGE**

MSR*