

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 8TH DAY OF APRIL 2022

BEFORE

THE HON'BLE MR.JUSTICE S. SUNIL DUTT YADAV

CRIMINAL PETITION No.2912/2022

BETWEEN:

1) SRIKANTH L GHOTNEKAR

2) ANIL CHAWHAN

3) SHRINIVAS SRIKANTH GHOTNEKAR

4) YASHAWANT PATTEKAR

5) YALLAPPA MALAVANKAR

PETITIONERS

(BY SRI. SRINIVAS B. NAIK, ADVOCATE)

AND:

STATE OF KARNATAKA
REP. BY STATE PUBLIC PROSECUTOR,
HIGH COURT OF KARNATAKA
DHARWAD BENCH,
THROUGH HALIYAL POLICE STATION,
DISTRICT: KARWAR- 580 011. ... RESPONDENT

(BY SRI. RENUKARADHYA R.D.,HCGP)

THIS CRL.P IS FILED UNDER SECTION 438 OF CR.P.C.,
PRAYING TO GRANT ANTICIPATORY BAIL TO THE
PETITIONERS/ACCUSED IN THE EVENT OF THEIR ARREST IN
CRIME No.30/2022 OF HALIYAL POLICE STATION FOR THE
OFFENCES PUNISHABLE UNDER SECTIONS 506, 384, 363
R/W 149 OF IPC.

THIS CRL.P. COMING ON FOR ORDERS , THIS DAY, THE
COURT MADE THE FOLLOWING:

ORDER

The present petition has been filed by petitioner nos.1
to 5/ accused nos.1, 2, 3, 5 and 6 who have been arrayed
pursuant to the FIR registered in Crime No.30/2022 by the
Haliyal Police.

2. The complaint made to the PSI, Haliyal makes out
a case that the complainant is a contractor and in the year
2021 work order was granted to the complainant by Malanad
Development Authority to carry out certain civil works and in

specific, to lay the slabs at Kshatriya Maratha Bhavan, Haliyal Taluk.

3. It is further narrated that accused no.1 being the President of Kshatriya Maratha Bhavan, by collecting donations from the public had put up the slabs at Kshatriya Maratha Bhavan. Subsequently, an amount of Rs.3.71 Lakhs is stated to have been remitted to the account of the complainant. It is narrated in the complaint that accused no.1 had called upon the complainant on 2-3 occasions to pay the said amount and the complainant had refused to hand over the money stating that work was not yet completed. It is further made out that finally on 18.02.2022 at about 2.00 p.m., the complainant was called to the Maratha Bhavan at Haliyal and he was threatened and at that point of time, along with the complainant there were 5 persons. It is alleged that the complainant was forcibly taken into the car belonging to the first accused by the other accused and was taken to Laxman Palace Lodge. It is further narrated that he was surrounded and forcibly made to make a cheque in the name of accused no.2 for a sum of Rs.3,33,900/- in his own handwriting. This cheque was kept with the second petitioner

who is accused no.2 and all the accused have threatened the complainant. Subsequently, the complaint was filed and FIR has been registered in Crime No.30/2022 for the offences punishable under Sections 506, 384, 363 r/w 149 of IPC. Anticipatory Bail petition filed by the petitioner no.1 came to be rejected.

4. Learned counsel for petitioners would submit that there are inconsistencies in the version of the complainant and in fact, work was done by the other contractors and the petitioners were only seeking for remittance of money as work was already completed though the tender was allotted to the complainant. It is submitted that if at all the version is to be accepted, it was only legal demand for the amount and the remaining story is made up by the complainant in order to make unlawful gain.

5. Insofar as accused nos.2, 3 and 5 are concerned, all the three persons are permanent residents of Uttara Kannada District and it is submitted that they would cooperate with investigation and the allegations made against petitioners 3, 4 and 5 who are accused nos.3, 5 and 6 do not

warrant subsection to custodial interrogation. Insofar as accused nos.1 and 2 are concerned, it is submitted that there is absolutely no apprehension of non-cooperation as they are the prominent citizens and the first petitioner is a former MLC, while second petitioner is the President of CMC.

6. On the other hand, the learned HCGP appearing on behalf of the prosecution would contend that the allegations made against petitioner nos.1 and 2 are serious in nature and custodial interrogation is required insofar as cheque is stated to have been made out in the name of second petitioner, who has taken the cheque and for the purpose of recovery as well, their custodial interrogation is required.

7. Insofar as accused no.1 is concerned, it is pointed out that petitioner no.1 who is accused no.1 was also arrayed as accused no.1 in Crime No.81/2019 for the offences punishable under Sections 504 and 506 of IPC r/w 3 (1) (r) and 3 (1) (s) of the SC/ST (Prevention of Atrocities) Act and that anticipatory bail application insofar as accused no.1 came to be rejected by order dated 15.03.2022 in

Crl.A No.100429/2021 filed seeking enlargement on Anticipatory Bail.

8. It is the further contention of the learned counsel for petitioners that an offence under Section 363 IPC is bailable and punishment prescribed for other offences as well is not one punishable with death or life imprisonment and accordingly taking into account the nature of punishment prescribed, accused nos.1 and 2 are also to be enlarged on bail.

9. Heard both sides.

10. What needs to be noted at the first instance is that insofar as accused no.1 is concerned, the allegation made out in the complaint is that the said accused had called the complainant to Maratha Bhavan on 18.02.2022 and on previous occasions as well, on two to three occasions he had asked the complainant to give money that he had received from Malanad Development Authority. It is the specific version as is made out in the complaint that the complainant was taken in the car belonging to accused no.1 and taken to

Laxman Palace Lodge where he was made to sign the cheque forcibly.

11. The learned HCGP would further point out that the car was seized during investigation process and the car was released by accused no.1 and this by itself would indicate the involvement of vehicle belonging to accused no.1 and prima-facie, the allegations made against accused no.1 are serious. The said submission requires acceptance.

12. It is further submitted by the learned HCGP that 161 statements of Nagendra Jeevoji, Subhash Korvekar, Shankar Belgaokar, B.D.Chougale and Chowdappa Bobaati, all of whom were accompanying the complainant, have had their statements recorded on the very next day which version tallies with the version made out in the complaint. It is also to be noted that accused no.1 was involved in another case viz., Crime No.81/2009 registered for the offences punishable under Sections 504, 506 of IPC and Section 3(1)(r) and 3(1)(s) of SC/ST (Prevention of Atrocities) Amendment Act, 2015 and that Anticipatory Bail in Crl.Misc.No.402/2021 came to be rejected and the criminal appeal filed before this court in

Crl.A No.100429/2021 has also been rejected by order dated 15.03.2022. It is also pertinent to note that even in the present case the first petitioner is accused of an offence under Section 506 of IPC.

13. It must be noted that though an offence under Section 506 IPC and 363 IPC are bailable, the allegation of extortion is serious. The accused no.1 is also a former Member of Legislative Council. His application for anticipatory bail in another case involving other offences including an offence under Section 506 of IPC has been rejected. His conduct does not inspire confidence. The allegations are serious in nature as compared to the other accused. The stand of the police authorities that they require him for custodial interrogation cannot be brushed aside.

14. Accordingly, this court is of the view that petitioner no.1 cannot seek extension of discretionary order of anticipatory bail.

15. Insofar as accused no.2 is concerned, the contention of learned HCGP is that cheque has been drawn in the name of accused no.2 and accused no.2 has taken the

cheque as is made out in the version of the complainant and accordingly, for the purpose of recovery and also in light of allegations made in the complaint regarding accused no.2, the contention that custodial interrogation is necessary cannot be said to be without basis.

16. The custodial interrogation is qualitatively different from interrogation and in light of the stand of the prosecution that custodial interrogation is required for petitioner nos.1 and 2 and in light of the discussion as made above, petition insofar as it relates to petitioner nos.1 and 2 (accused nos.1 and 2) is rejected. Insofar other accused are concerned, general allegations are made out in the complaint as regards their involvement. They could be enlarged on anticipatory bail subject to their participation in the investigation by putting them on terms. When compared to the other accused, allegations against them are not of grievous in nature. Accordingly, case is made out to enlarge petitioner nos.3, 4 and 5 (accused nos.3, 5 and 6) on bail.

17. The learned counsel for petitioners submit that mere rejection of anticipatory bail petition ought not to result in petitioner nos.1 and 2 being arrested.

18. All that this court would like to express is, it is for the police authorities upon accused nos.1 and 2 presenting themselves for interrogation to take an appropriate decision keeping in mind the directions in the case of **Arnesh Kumar v. State of Bihar and Another** reported in **(2014) 8 SCC 273** as may be applicable in the present matter.

19. In the result, I proceed to pass the following:

ORDER

The petition is allowed in part.

The petition insofar as petitioner No.1-Srikanth L Ghotnekar (accused no.1) and petitioner no.2-Anil Chawhan (accused no.2) is concerned, is rejected.

The petition insofar as petitioner No.3-Shrinivas Srikanth Ghotnekar (accused no.3), petitioner no.4-Yashawant Pattekar (accused no.5) and petitioner no.5-Yallappa Malavankar (accused no.6) is concerned, is allowed and they are enlarged on bail in the event of their arrest in

Crime No.30/2022 of Haliyal Police Station for the offences punishable under Sections 506, 384, 363 r/w 149 of IPC, subject to the following conditions:

- (i) The petitioner No.3-Shrinivas Srikanth Ghotnekar (accused no.3), petitioner no.4-Yashawant Pattekar (accused no.5) and petitioner no.5-Yallappa Malavankar (accused no.6) shall appear in person before the Investigating Officer in connection with Crime No.30/2022 of Haliyal Police Station within 15 days from the date of this order and they shall execute personal bonds for a sum of `1,00,000/- (Rupees One Lakh only) each with a surety for the likesum to the satisfaction of the Investigating Officer.
- (ii) They shall not tamper with evidence, influence in any way, any witness.
- (iii) They shall physically present themselves and mark their attendance before the concerned Station House Officer once in a week between 10.00 a.m. and 5.00 p.m., till filing of the final report.
- (iv) In the event of change of address, they shall inform the same to the concerned SHO.

- (v) Any violation of the aforementioned conditions by them shall result in cancellation of bail.

Any observation made herein shall not be taken as an expression of opinion on the merits of the case.

**Sd/-
JUDGE**

Np/-