

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 16<sup>TH</sup> DAY OF SEPTEMBER, 2019

BEFORE

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

**CRIMINAL PETITION No. 6748/2019**

BETWEEN :

Sai Ramakrishna  
S/o. Surya Rao Karaturi  
Aged about 54 years  
Occ. Director of Karaturi  
R/a. No. 9/56, 1<sup>st</sup> Cross  
8<sup>th</sup> Main, Sadashivnagar  
Bengaluru - 560 001.

... PETITIONER

(By Sri. C.H. Jadhav, Sr. Counsel, for  
Smt. Rashmi Jadhav, Adv.)

AND :

1. State of Karnataka  
By Sadashivnagar Police  
Bengaluru. Rep. by the  
State Public Prosecutor  
High Court Building  
Bangalore - 560 001.
2. Sub Inspector of Police  
Thrissur City, Thrissur Town East  
Police Station  
Kerala - 680 003.

... RESPONDENTS

(By Sri. Honnappa, HCGP)

This Criminal Petition is filed under Section 439 Cr.P.C. with a prayer to release the accused on interim transit bail with a direction to appear before the jurisdictional C.J.M., Thrishur Court, for further pending proceedings in Cr.No. 764/2019 and etc.

This Criminal Petition coming on for Orders this day, the Court passed the following;

**ORDER**

The petitioner has approached this Court for grant of bail in connection with crime No. 764/2019 registered in Thrissur Police Station by Kerala Police for the offences punishable under Sections 406 and 420 IPC.

2. It is contended that the Kerala Police have arrested the accused within the jurisdiction of Sampige Halli Police and the intimation of arrest of the accused was served on the wife of the petitioner. The information was also given to the jurisdictional Magistrate - VII Additional Chief Metropolitan Magistrate, Bengaluru. The transit order was also sought by the Police. In the meantime, as the accused was suffering from illness, he was admitted to Jayadeva

Hospital, Bengaluru and presently he is in ICU. In this context the petitioner has made an application under Section 437 Cr.P.C. before the jurisdictional Magistrate. Though no order of the learned Magistrate is produced before the Court, learned counsel for petitioner with all responsibility submitted before the Court that the Magistrate has not passed any orders on the application on merits, but, simply he has disposed of the said application stating that he has no jurisdiction to pass any orders under Section 437 Cr.P.C. and refused to entertain the application filed by the accused on the ground that the accused was not actually produced before him.

3. Under the above said facts and circumstances this Court has to see whether, the Magistrate has got jurisdiction to pass orders under Section 437 Cr.P.C. or not, considering the merits of the petition.

4. This point is squarely covered by the decision rendered by this Court in W.P. No. 7845/2018 (GM-RES)

dated 17.02.2018. Similar set of facts and circumstances were also involved in the said case. This Court at paragraph Nos. 7 to 9 of the said order has categorically observed in the following manner :

*“7. On the other hand, the documents which were produced before the court below, relied upon by the learned Magistrate, also shows that, the said private complaint was referred to the police for investigation u/s.156(3) of Cr.P.C. Therefore, when once the Police registers a case on the basis of the complaint referred by the complainant - Police, it strictly falls u/s.154 of Cr.P.C. where the Police get jurisdiction to investigate the matter as if the said FIR registered by themselves. Therefore, all powers of arrest, seizure etc., that emanate from the statutory provision of Cr.P.C., would be available to the Police for the purpose of investigation and report to the court. Therefore, in all probabilities, the court can infer that on the basis of the registration of the FIR by the Central Crime Police Station, the Halsoor Police have arrested the accused in connection with the same, during the course of investigation and produced the said accused before the court. Therefore, whenever the accused is produced before the Magistrate, in*

*respect of any bailable offence, in such an eventuality, the Magistrate exercising power u/s.436 of Cr.P.C. can immediately release the accused on bail subject to furnishing of a bond. For all practical purposes, the Magistrate has got all the powers u/s.436 and 437 of Cr.P.C. If the offences are non-bailable and the accused is produced before the Magistrate, then he can also exercise power u/s.437 of Cr.P.C. How, he exercises that power is left to the discretion of the said Judge, depending upon the facts and circumstances of each case. Therefore, the Magistrate could not have said that he has no jurisdiction to deal with the matter on merits to consider the bail petition.*

*8. More over, the learned Magistrate has rejected the application on the ground that no medical certificate is produced to show that accused is a Asthama patient and cannot travel from Bengaluru, to Hyderabad etc., Those considerations would only arises if the Magistrate is of the opinion that on considering the factual aspects of the case, the accused is not entitled for bail on merits, when the court is considering the case on medical grounds, then only he could have passed such orders.*

9. *Looking to the above said facts and circumstances of the case when the Magistrate decided to exercise the power u/s.437 of Cr.P.C. the contents of Section 437 of Cr.P.C. with all force applicable and it empowers the Magistrate to exercise the discretion in a judicious manner after hearing the counsel and also considering all the materials available at that particular point of time to consider whether the accused is entitled to be released on bail or any interim arrangement can be made by the Magistrate if circumstances warrants."*

5. In view of the above said observation already made by this Court under Section 78 to 81 of Cr.P.C., the learned Magistrate has got absolute jurisdiction to entertain an application under Section 437 Cr.P.C.

6. The second point on which the learned Magistrate has refused to entertain the petition under Section 437 Cr.P.C. is also not proper and correct for the simple reason that there is no need of actual production of the accused before the jurisdictional Court seeking bail under Section

437 Cr.P.C. If we properly read the provisions under Section 437 of Cr.P.C. which reads thus:

**“437. When bail may be taken in case of non-bailable offence.-** (1) when any person accused of, or suspected of, the commission of any offence is arrested or detained without warrant by an officer-in-charge of a police station or appears or is brought before a Court other than the High Court or Court of Session, he may be released on bail, but.-

- a. such person shall not be released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life;
- b. such person shall not be so released if such offence is a cognizable offence and he had been previously convicted of an offence punishable with death, imprisonment for life or imprisonment for seven years or

*more, or he had been previously convicted on two or more occasions of [a cognizable offence punishable with imprisonment for three years or more but not less than seven years]:*

*Provided that the Court may direct that a person referred to in clause (i) or clause (ii) be released on bail if such person is under the age of sixteen years or is a woman or is sick or infirm:*

*Provided further that the Court may also direct that a person referred to in clause (ii) be released on bail if it is satisfied that it is just and proper so to do for any other special reason:*

*Provided also that the mere fact that an accused person may be required for being identified by witnesses during investigation shall not be sufficient ground for refusing to grant bail if he is otherwise entitled to be released on bail and gives an undertaking that he shall comply with such directions as may be given by the Court].*



*Provided also that no person shall, if the offence alleged to have been committed by him is punishable with death, imprisonment for life, or imprisonment for seven years or more, be released on bail by the Court under this sub-section without giving an opportunity of hearing to the Public Prosecutor.]*

*(2) xxx xxx xxx*

On plain reading and meaningful understanding of the provision of Section 437 Cr.P.C. it discloses that whenever a person accused of, or suspected of the commission of any non-bailable offence, is arrested or detained without warrant by an officer-in-charge of a police station or appears or is brought before a Court other than the High Court or Court of Session, he may be released on bail. Therefore, it goes without saying that if a person is arrested and not produced before the jurisdictional Court, he is entitled to maintain a petition under Section 437 Cr.P.C. before the Magistrate. Therefore, under the above circumstances, non-passing of orders on the merits of the

application filed under Section 437 Cr.P.C. by the learned Magistrate is erroneous. Hence, the following;

**ORDER**

- a. Petition filed under Section 439 Cr.P.C. is hereby disposed of.
- b. However, instead of deviating the petitioner to some other proceedings I feel it just and necessary to refer the petitioner to the jurisdictional Magistrate, that is, VII Additional Chief Metropolitan Magistrate, Bengaluru with a direction to the learned Magistrate to entertain the bail petition filed under Section 437 Cr.P.C. on 12.09.2019 and in view of the above said guidelines and decision, to pass appropriate orders in accordance with law and dispose of the petition filed under Section 437 Cr.P.C. by considering the same on merits. Preferably, the said application is ordered to be disposed of on the very same day.

LRS.

Sd/-  
JUDGE