

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 29<sup>TH</sup> DAY OF MAY, 2020

BEFORE

THE HON' BLE MR.JUSTICE R.DEVDAS

**CRIMINAL PETITION NO.2378 OF 2020**

BETWEEN

1 . SRI RIHAN  
S/O AYAZ MKADDE  
AGED ABOUT 19 YEARS,  
R/AT BHOPALE GALLI  
NIPPANI  
BELAGAVI DISTRICT-591237

2 . SRI SHAHBAZS  
S/O MUNNA SATARI  
AGED 20 YEARS,  
R/AT BAGWAL GALLI  
NIPPANI  
BELAGAVI DISRICT-591237

...PETITIONERS

(BY SRI PRAKASH M H, ADVOCATE)

AND

STATE OF KARNATAKA  
BY BASAWESHWAR CHOWK POLICE STATION,  
NIPPANI, BELAGAVI DISTRICT  
REP BY STATE PUBLIC PROSECUTOR  
HIGH COURT OF KARNATAKA  
BANGALORE-01

...RESPONDENT

(BY SRI MAHESH SHETTY, HCGP)

THIS CRIMINAL PETITION FILED UNDER SECTION 439  
CR.PC PRAYING TO ENLARGE THE PETITIONER ON BAIL IN  
CR.NO.21/2020 OF BASAWESHWAR CHOWK P.S., BELAGAVI  
FOR THE OFFENCE P/U/S 270,328 R/W 34 OF IPC.

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

**ORDER**

**R.DEVDAS J., (ORAL):**

This criminal petition is filed under Section 439 of the Code of Criminal Procedure seeking regular bail. The case registered against the petitioners by the respondent-Police is in the following background.

2. On 17.04.2020 at about 1.15 p.m, the Sub-Inspector attached to the respondent-Police had submitted a written report alleging that on that day, when he was on duty within the limits of Nippani Range, supervising the measures on account of the pandemic COVID-19 along with other staff near Gandhi Square, some persons approached the Sub-Inspector of Police and showed a video clipping in the mobile phone. In the video clipping it was found that two persons were picking up water melons from a drain. Following the visuals in the mobile phone, the Sub-Inspector of Police proceeded towards the place of incident which was found to be within the limits of Tawate Galli and on further enquiry, it was found that the petitioners herein are the two persons found

in the video picking up water melons from the drain. The incident is said to have occurred on 28.03.2020 at around 3.00 p.m. It is stated that the petitioners have admitted that they are the two persons found in the video clipping. However, they have denied that they have indulged in any offence or activity which would cause any danger either to themselves or to the public to whom the water melons were being sold by the petitioners.

3. A crime was registered against the petitioners for the offences punishable under Sections 270, 328 read with Section 34 of IPC. The petitioners made an application before the X Addl. Sessions Judge, at Belagavi in C.Cr1.Misc.No.52/2020 for enlargement on bail. The Sessions Court has rejected the bail application and therefore this petition is filed under Section 439 of Cr.P.C.

4. Learned Counsel for the petitioners submits that even assuming that the petitioners were picking up water melons from a drain and were selling the same to the general public, Section 328 of IPC is not

attracted. Learned Counsel submits that a plain reading of Section 328 of IPC would provide that if a person administers or causes another person to take any poison or any stupefying, intoxicating or unwholesome drug, with intent to cause hurt to such person or with intent to commit or to facilitate the commission of an offence or knowing it to be likely that he will thereby cause hurt, he or she is guilty of the offence. The learned Counsel further submits that Section 328 IPC has been invoked only because the term of imprisonment may extend to ten years, and the same is non-bailable.

5. Learned HCGP submits that Section 328 of IPC also contains the words "other things" and therefore it cannot be said that the invocation of the said provision under the circumstances could not be justified.

6. Having heard the learned Counsel for the petitioners and the learned HCGP, this Court finds that there is substance in the argument of the learned Counsel for the petitioners. This Court is not

oblivious of the circumstances under which the Police have sprung into action noticing the content of the video clipping. No doubt that the pandemic COVID-19 situation has set alarm bells ringing not only in our country but the entire world over. Nevertheless, this Court is of the opinion that the social media has created a panic situation where a social divide is being brought in the minds of the general public on the basis of the communal identification of a group of persons. In this case, though it is stated by the learned Counsel for the petitioners that the water melons had fallen off into the open drain where there was no stagnant water or running drainage water, an impression is created as if the petitioners have wantonly dipped the water melons in the drain water and put up the same for sale to the general public which would cause serious health issues to persons who consume such water melons.

7. This is not a stage where this Court could go into the details or test the veracity of the alleged intent of the petitioners. The matter requires a trial

and only at that stage, the truth of the allegation could be tested. While dealing with the bail application filed by the petitioners, this Court is required to find out as to whether on the basis of the information received by the Police, the provisions of IPC are attracted or made out. As rightly stated by the learned Counsel for the petitioners, Section 328 of IPC requires that a person knowing fully well that he is administering poison or any stupefying, intoxicating or unwholesome drug which would cause hurt to such person, would be guilty of offence punishable under Section 328 of IPC. On the face of the material available on record, it cannot be said that the provision of Section 328 could be attracted in the present facts and circumstances of this case. The other provision i.e., Section 270 which is pressed into service is punishable with imprisonment which could extend to two years or with fine or with both and the same is a bailable offence.

8. It is hereby made clear that the observations made hereinabove is for the consideration of the bail

application of the petitioners and the same shall not prejudice the case of the prosecution before the trial.

9. For the reasons stated above, the petition is **allowed**. It is directed that the petitioners be enlarged on bail with the following conditions, if not required in any other case:

- i) The petitioners shall furnish a personal bond for a sum of Rs.50,000/- (Rupees fifty thousand only) each with one surety for the likesum to the satisfaction of the Investigation Officer.
- ii) The petitioners shall not in any manner tamper with the prosecution witnesses.
- iii) The petitioners shall appear before the Investigation Officer as and when called for.
- iv) The petitioners shall mark their attendance before the jurisdictional police once every 15 days.

It is ordered accordingly.

JT/-

**sd/-  
JUDGE**

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