

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 12TH DAY OF MAY, 2022

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

CRIMINAL PETITION No.4045/2022

BETWEEN

INJAMAM SHARIFF

... PETITIONER

[BY SRI. BOPANNA.B., ADVOCATE]

AND

STATE BY KENGERI POLICE
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KARNATAKA
PIN CODE-560 001.

... RESPONDENT

[BY SRI. SHANKAR H.S., HCGP]

THIS CRIMINAL PETITION IS FILED UNDER SECTION 439 OF
CR.P.C PRAYING TO ENLARGE THE PETITIONER ON BAIL IN
CR.NO.67/2022 OF KENGERI P.S., BENGALURU CITY FOR THE

OFFENCE P/U/S.397 R/W SEC.34 OF IPC PENDING ON THE FILE OF THE 32th ADDITIONAL CHIEF METROPOLITAN MAGISTRATE BENGALURU CITY.

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

ORDER

The petitioner is before this Court seeking enlargement on bail pertaining to Crime No.67 of 2022 registered for offences punishable under Sections 397 and 34 of the IPC, it having been turned down by the LVIII Additional City Civil and Sessions Judge, Bengaluru in Criminal Miscellaneous No.3200 of 2022 on 18.04.2022.

2. Heard Shri B.Bopanna, learned counsel appearing for the petitioner and Sri H.S.Shankar, learned High Court Government Pleader appearing for the respondent.

3. Facts in brief are as follows:

A complaint is registered by one Sri T.S.Manoj/complainant on 25.02.2022 alleging that at about 5.30 a.m. he came near the Bangalore Bus Stand from Shimoga

along with his wife, later boarded the metro rail to Pattanagere Metro Station, gets down for booking the vehicle from his I-phone and at that time two unknown persons came on a motorcycle, caught hold the collar of the complainant and hurt the complainant with a knife. At the same time, the other person snatched away the I-phone-11, a mobile phone. A complaint was so registered against unknown persons but describing the assailants could have been between 24 and 26 years of age. The complaint becomes an FIR in Crime No.67 of 2022 for offences punishable under Section 397 read with Section 34 of the IPC. After about a week of registration of the complaint, the Police arrested the petitioner on 02-03-2022 and since then, the petitioner is in judicial custody. After his arrest, the petitioner moved the learned Sessions Judge in Criminal Miscellaneous No.3200 of 2022 seeking enlargement on bail under Section 439 of the Cr.P.C. The learned Sessions Judge considering the objections of the State to the bail petition on the ground that the petitioner was a habitual offender having criminal antecedents and is likely to commit similar offence if he is released on bail,

rejects the same which drove the petitioner to this Court in the subject petition.

4. The learned counsel appearing for the petitioner submits that the allegations against the petitioner are bald and there is no recovery of the phone made from the hands of the petitioner. The FIR was registered against unknown persons and the petitioner along with another is apprehended after a week. Therefore, the petitioner on the ground that he is alleged to be habitual offender was arrested. No recovery of the instrument is made from the petitioner and therefore, seeks his enlargement on bail.

5. On the other hand, the learned High Court Government Pleader would refute the submissions to contend that the matter is under investigation and when the investigation was on, the petitioner was apprehended on the ground that he has criminal antecedents and is a habitual offender. If he is released on bail he is likely to commit very same offence that he has committed.

6. I have given my anxious consideration to the submissions made by the respective learned counsel and perused the material on record.

7. It is not in dispute that on theft of phone, a complaint is registered against unknown persons with an allegation that a mobile phone was snatched from the hands of the complainant. The petitioner is arrested along with one another after a week and sent to judicial custody on the ground that he is a habitual offender and having criminal antecedents. The learned Sessions Judge accepts the plea of the prosecution that if the petitioner is granted bail he is likely to commit the alleged offence again and would tamper evidence and hamper investigation. The reasoning rendered by the learned Sessions Judge is fundamentally flawed. There is no recovery of the phone made from the hands of the petitioner. Though the matter is still under investigation FIR being filed against unknown persons, merely because the petitioner and another are alleged to be habitual offenders or have criminal antecedents, the petitioner remaining in jail for

the offence which is yet to be investigated is unjust. There is not even a *prima facie* material against the petitioner.

8. The offence is alleged under Section 397 of the IPC, which is not punishable neither with death nor life imprisonment. Therefore, I deem it appropriate to enlarge the petitioner on bail under Section 439 of the Cr.P.C. imposing certain conditions viz.,

- (i) The petitioner shall furnish a personal bond for a sum of Rs.50,000/- (Rupees fifty thousand only) with one solvent surety for the like sum to the satisfaction of the trial Court;
- (ii) The petitioner shall be regular in appearing before the Court on every date of hearing as also when called upon to do so by the trial Court;
- (iii) The petitioner shall not tamper with evidence or cause any threat to any of the prosecution witness/s in any manner.
- (iv) The petitioner shall appear before the Investigating Officer as and when called and submit all documents

and details as may be called upon by the Investigating Officer.

- (v) The petitioner shall not leave the jurisdiction of this Court without prior permission.
- (vi) In the event of violation of any of the above terms, the above bail shall stand automatically cancelled.

The observations made above are only for the purpose of consideration of the application for bail and the same shall not in any manner influence the trial. The trial Court shall consider the case on its merits and without being influenced by this order.

**Sd/-
JUDGE**