

IN THE HIGH COURT OF KARNATAKA
DHARWAD BENCH



DATED THIS THE 21ST DAY OF DECEMBER 2018

BEFORE

THE HON'BLE MR. JUSTICE MOHAMMAD NAWAZ

CRIMINAL PETITION NO.100489 OF 2018

BETWEEN:

1. RAJSHEKHAR S/O. SANGAPPA NOOLVI,
AGED ABOUT 40 YEARS,
OCC: AGRICULTURE & BUSINESS,
R/O. APMC YARD, HUBBALLI.
2. MANJUNATH S/O.SANGAPPA NOOLVI,
AGED ABOUT 35 YEARS,
OCC:AGRICULTURE & BUSINESS,
R/O. APMC YARD, HUBBALLI.

... PETITIONERS

(BY SRI.SANTOSH B. MANE, ADVOCATE)

AND

THE STATE OF KARNATAKA
THROUGH,
APMC NAVANAGAR P.S,
HUBBALLI,
REPRESENTED BY
STATE PUBLIC PROSECUTOR,
HIGH COURT OF KARNATAKA,
BENCH AT DHARWAD.

... RESPONDENT

(BY SRI.RAJA RAGHAVENDRA NAIK, HCGP)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 439(1)(b) OF CR.P.C., SEEKING TO ALLOW THE PETITION AND SET ASIDE THE ORDER DATED 27.01.2018 PASSED BY THE V ADDL DISTRICT AND SESSIONS JUDGE, DHARWAD SITTING AT HUBBALLI IN CRL.MISC.NO.16 OF 2018.

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

ORDER

This petition is filed by the petitioners praying to set aside the condition No.2 imposed in the order dated 27.01.2018 passed by the V Additional District and Sessions Judge, Dharwad sitting at Hubballi, in Criminal Miscellaneous No.16 of 2018, while the petitioners were enlarged on bail in Crime No.174 of 2017 of APMC Navanagar Police Station, Hubballi registered for the offences punishable under Sections 506, 420 read with Section 34 of IPC.

2. I have heard Sri.Santosh B.Mane, the learned counsel appearing for the petitioners and

Sri.Raja Raghavendra Naik, the learned HCGP appearing for the respondent-State.

3. The learned counsel appearing for the petitioners submits that the learned Sessions Judge while releasing the petitioners on anticipatory bail has directed them to offer cash security of Rs.1,00,000/- each and he submits that virtually it amounts to denial of bail to the petitioners. He submits that the petitioners are ready and willing to comply with all other conditions. Hence prays that the condition No.2 imposed by the learned Sessions Judge may kindly be relaxed.

4. The learned HCGP submits that, considering the nature of allegations made against the petitioners herein, the learned Sessions Judge has rightly imposed condition No.2, directing the petitioners to offer cash security and therefore submits that the petition may be dismissed.

5. The Hon'ble Supreme Court in **Keshab Narayan Banerjee v. State of Bihar** reported in **AIR 1985 SC 1666**, in an identical situation has observed that, furnishing cash security virtually amounts to denial of bail itself.

6. This Court in a decision reported in **ILR 2002 KAR 4609** in the case of **Kaleem Alias Kaleem Pasha v. State By Central Police Station, Bangalore**, after relying on a decision of the Hon'ble Supreme Court in the case of **Moti Ram v. State of Madhya Pradesh** reported in **AIR 1978 SC 1594** and the decision in **Keshab Narayan Banerjee's** case (supra) has observed that, order granting bail should not be an illusory order. Insistence of heavy cash security or deposit would amount to discrimination and Court should consider prudently as to the conditions to be imposed.

7. Paragraph Nos.5 and 6 of the order passed by this Court in the aforesaid decision is as under:

"5. In the present case, it is to be considered whether the wording 'any conditions' gives unfettering power to the Court to impose any conditions literally it deems fit. As long back as in the year 1978, the Apex Court in the case of Moti Ram v. State of Madhya Pradesh reported in AIR 1978 SC 1594 : (1978 Cri LJ 1703) noted that while granting bail it should not be an illusory order. The accused to be released on bail must be able to comply with the conditions and if the conditions are like insistence of heavy cash security or deposit, it would amount to discrimination, inasmuch as moneyed accused may be able to come out on bail by depositing heavy amount, whereas the persons belonging to poor strata, only because he is poor will not be able to get the benefit of the bail granted. As such, the Apex Court directed that the Court should consider prudently to the conditions to be imposed against the

accused who is to be released on bail keeping in view certain aspects.

6. Even in a later case in the case of Keshab Narayan Banerjee v. The State of Bihar reported in AIR 1985 SC 1666 : (1985 Cri LJ 1857) the Hon'ble Supreme Court held that "insistence of heavy cash security would virtually amount to denial of bail and as such imposition of such conditions are illegal and erroneous". This aspect has again been considered by this Court also in the case of Afsar Khan's case referred to supra."

8. Hence, in the facts and circumstances of the present case, insistence of cash security would virtually amount to denial of the bail. Accordingly, I deem it fit to set aside the condition No.2 imposed while releasing the accused Nos.1 and 2/petitioners on bail. Accordingly, I pass the following :

ORDER

Petition is allowed. The Condition No.2 imposed in Criminal Miscellaneous No.16 of 2018 dated 27.01.2018 by

the V Additional District and Sessions Judge, Dharwad sitting at Hubballi is set aside.

However, the petitioners shall voluntarily appear before the jurisdictional Magistrate as directed therein and shall comply with the other conditions imposed by the learned Sessions Judge while releasing them on bail.

sd/-
JUDGE

ckk