

Karnataka High Court

Mrs Dhanalakshmi vs State Of Karnataka on 16 June, 2021

Author: K.Natarajan

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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 16TH DAY OF JUNE, 2021

BEFORE

THE HON'BLE MR. JUSTICE K.NATARAJAN

CRIMINAL PETITION NO.2719 OF 2021

C/W

CRIMINAL PETITION NO.3967 OF 2021

IN CRL.P.No.2719/2021

BETWEEN

MRS. DHANALAKSHMI  
W/O. B.S. VASANTHAKUMAR,  
AGED ABOUT 48 YEARS,  
RESIDING AT No.972, 2ND CROSS,  
2ND MAIN, VIJAYANAGAR,  
BANGALORE - 40.

... PETITIONER

(BY SRI C.H. HANUMANTHARAYA, ADVOCATE)

AND

STATE OF KARNATAKA  
BY SHESHADRIPURAM POLICE STATION,  
BENGALURU,  
REPRESENTED BY STATE PUBLIC PROSECUTOR,  
HIGH COURT BUILDING COMPLEX,  
BENGALURU - 01.

... RESPONDENT

(BY SRI V.M. SHEELVANT, SPP-1 ALONGWITH  
SRI K. NAGESHWARAPPA, HCGP)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 438  
OF THE CODE OF CRIMINAL PROCEDURE, PRAYING TO  
ENLARGE THE PETITIONER ON BAIL IN THE EVENT OF HIS  
ARREST IN CRIME No.89/2020 (C.C.No.5017/2021) OF  
SESHADRIPURAM POLICE STATION, BENGALURU, FOR THE

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OFFENCES PUNISHABLE UNDER SECTIONS 120B, 406, 409,  
417, 420, 463, 465, 467, 471, 472, 473, 474, 475 AND 476

READ WITH SECTION 511 OF THE INDIAN PENAL CODE.

IN CRL.P.No.3967/2021

BETWEEN

MR. M. INDER KUMAR  
S/O. R.M. KANNAN,  
AGED ABOUT 36 YEARS,  
No.34, 'INDERILLAM', 1ST FLOOR,  
PIONEER DEFENCE HOUSING COLONY,  
ADARSHA NAGAR, R.T. NAGAR,  
BENGALURU - 560 032.

... PETITIONER

(BY SRI A.S. PONNANNA, SENIOR COUNSEL FOR  
SRI ARNAV A. BAGALWADI, ADVOCATE)

AND

THE STATE OF KARNATAKA  
BY SHESHADRIPURAM POLICE STATION,  
REPRESENTED BY SPP OFFICE,  
HIGH COURT OF KARNATAKA,  
BENGALURU - 560 001.

... RESPONDENT

(BY SRI V.M. SHEELVANT, SPP-1 AND  
SRI K. NAGESHWARAPPA, HCGP)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 439  
OF THE CODE OF CRIMINAL PROCEDURE, PRAYING TO  
ENLARGE THE PETITIONER ON BAIL IN CRIME No.89/2020  
(C.C.No.5017/2021) OF SESHADRIPURAM POLICE STATION,  
BENGALURU, FOR THE OFFENCES PUNISHABLE UNDER  
SECTIONS 120B, 406, 409, 417, 420, 463, 465, 467, 471, 472,  
473, 474, 475 AND 476 READ WITH SECTION 511 OF THE  
INDIAN PENAL CODE.

THESE CRIMINAL PETITIONS HAVING BEEN HEARD AND  
RESERVED FOR ORDERS ON 14.06.2021 AND COMING ON FOR  
PRONOUNCEMENT THIS DAY, THE COURT PRONOUNCED THE  
FOLLOWING:

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ORDER

Criminal Petition No.2719/2021 is filed by Dhanalakshmi, the petitioner-accused No.4 under Section 438 of Cr.P.C., seeking anticipatory bail and Criminal Petition No.3967/2021 is filed by Inder Kumar, the petitioner-accused No.2 under Section 439 of Cr.P.C.

seeking regular bail in Crime No.89/2020 (C.C.No.5017/2021) registered by Seshadripuram Police Station, Bengaluru, for the offences punishable under Sections 406, 409, 467, 470, 420,471, 473,

472, 474, 475, 476 of IPC and filed charge sheet for the additional offences under Sections 120(B) and 511 of IPC.

2. Heard the arguments of Sri C.H.Hanumantharaya, learned counsel for the petitioner-accused No.4 in CrI.P.No.2719/2021 and Sri A.S.Ponnanna, learned Senior counsel for Sri Arnava.Bagalwadi, learned counsel for the petitioner-accused No.2 in CrI.P.No.3967/2021 and Sri V.M.Sheelvant, learned SPP-I along with Sri K.Nageshwarappa, learned High Court Government Pleader for the respondent-State.

3. The case of the prosecution is that on the complaint of one Ravikumar, Police Inspector, BDA Vigilance branch, alleging that the Commissioner of BDA said to have received a Pen Drive that some officials of the BDA have joined with one Inder Kumar-accused No.2 and carried the allotment letters and official seals of BDA to the private office of accused No.2 at Cunningham Road, Bengaluru and they have created fake allotment letters in the name of the BDA for the sites situated at HBR and HRBR Layouts and also at Banashankari near Hosakerehalli Village. Based upon the complaint, the Police have registered a case and arrested accused No.2 on 04.12.2020 and remanded him to judicial custody. The Police also raided the office of accused No.2 at Cunningham road, Bengaluru. They have seized BDA allotment letters, seals and other materials under the panchanama. The Police also arrested accused No.1, who is the Deputy Secretary-3 working in the BDA and remanded him to judicial custody. Subsequently, both accused Nos.1, 2 and 4 approached this Court by filing regular bail application, which came to be dismissed by this Court vide order dated 17.03.2021 with liberty to approach the Trial Court in view of filing of the charge sheet. Subsequently, accused No.2 approached the Trial Court as well as the Sessions Court for bail, which came to be rejected. Hence, he is before this Court by way of successive bail petition.

4. The Police, during the investigation, shown the name of Dhanalakshmi as accused No.4 in crime stage and the Police after completion of the investigation shown the said Dhanalakshmi-accused No.4 as absconding and filed the charge sheet. Therefore, accused No.4 approached the Sessions Judge for anticipatory bail which came to be rejected. Hence, she is before this Court seeking anticipatory bail.

5. Learned counsel for the petitioner-accused No.4 seriously contended that the name of the petitioner was not at all arraigned as accused in the FIR or in almost seven remand applications, but all of a sudden, in eighth remand application dated 10.02.2021, her name was shown as accused No.14 and while filing the charge sheet, they have shown her as accused No.4 alleging that she has conducted some survey of the land in survey Nos.89, 90 and 91 of Hosakerehalli village, Bengaluru and the report was not directly given to the BDA office, but the same was given to accused No.2. Except that allegation, there is no other allegation against her and those documents were already seized by the Police in the office of accused No.2. Therefore, the learned counsel contended that her presence may not be required for the purpose of any enquiry or custodial interrogation and she is ready to abide by the conditions that may be imposed by this Court. Moreover, accused No.4 is a woman and the offence is triable by the Magistrate and the Police have filed the charge sheet under Section 511 of IPC for attempting to commit offences. Out of the total accused persons shown in the charge sheet, there were 13 officials of BDA and 12 non-officials of BDA. Out of the officials, 9

persons were granted bail and out of 12 non-officials, two were granted anticipatory bail and 9 were granted regular bail by the Trial Court and Sessions Judges and the remaining officials were granted regular bail and most of them were granted anticipatory bail. One of the accused is shown as accused No.5-Pavithra has been deleted from the charge sheet. She was also not shown as witness. The alleged mahazars said to be prepared by the petitioner are available in the office of the BDA and the Revenue Inspector. The Revenue Inspector who prepared the mahazar Nos.45 to 123 were neither made as witnesses nor as accused. Though the alleged offence is non-bailable, but not punishable with death or life imprisonment. Hence, prayed for granting anticipatory bail to accused No.4.

6. Learned Senior counsel appeared for the petitioner- accused No.2 also reiterated the arguments addressed by the counsel for the petitioner-accused No.4. He further contended that at the time of rejecting the earlier bail application, though the charge sheet was filed, the same was not considered by this Court and liberty was granted to this petitioner for approaching the Trial Court for filing fresh bail petition based upon the charge sheet and this Court categorically held that the Trial Court shall not be influenced by the observations made in the order. He further contended that the investigation is already completed and the charge sheet has been filed. The petitioner is in custody for almost more than six months. Most of the co-accused persons were granted regular bail and anticipatory bail by the Trial Court and the Sessions Judge. During the investigation, the Police did not add Section 511 of IPC, but in the charge sheet, they have added Section 511 of IPC showing that they attempted to commit the offence and cheat the public and the BDA but the offence was not committed. There is no loss caused to the BDA and no wrongful gain to this accused-petitioner. Once Section 511 of IPC is added, the punishment is reduced to half of the punishment mentioned in the penal provisions. The documents actually seized from accused Nos.8 and 9 were already granted bail by the Trial court. Accused No.2 has allowed his office for the BDA to discharge their duties. That itself cannot be considered as he is involved in the commission of the offence. He further contended that the presence of this accused may not be required for the purpose of investigation. The petitioner- accused No.2 is the permanent resident of Bengaluru and he is ready to abide by the conditions that may be imposed by this Court. Hence, prayed for granting of bail.

7. Learned Senior counsel Sri A.S.Ponnanna further contended that the petitioner is presently admitted in Epidemic hospital at Bengaluru for treatment of Covid-19. His condition is very serious. The mother of the petitioner is also suffering from Cancer. The father of the petitioner is aged old. He is an Ex-service man unable to take care of the family. The presence of the petitioner is required for the family members and to take proper treatment in any private hospital for saving his life. There is threat of severe post Covid complications. Therefore, on the ground of medical ground also, he prayed for granting of bail.

8. Per contra, Sri V.M.Sheelvant, learned SPP-I opposed the bail petition contending that accused No.4 is an official working in the BDA. She was deputed for preparing panchanama and survey and identifying the sites for the purpose of giving sites to the persons as per the directions of this Court for 123 beneficiaries. The petitioner-accused No.4 prepared fake documents and false mahazars which are not corresponding with the actual sites available in the survey numbers and they are trying to allot to fake beneficiaries by taking the allotment letters to accused No.2 and accused No.4

is absconding from the beginning and her custody is necessary for the purpose of custodial interrogation and yet to recover some more documents from her. Though the Police filed the charge sheet but reserved the right of filing additional charge sheet under Section 173(8) of Cr.P.C. The investigation is not fully completed except those persons who are arrested by the Police. Therefore, he contended that the first remand application, the name of accused No.4 was mentioned and her role was also mentioned in the remand application. Merely her name was not shown as accused in the remand application that itself is not the ground for granting bail. The Police are still collecting the materials for filing additional charge sheet. Therefore, prayed for rejecting the anticipatory bail petition of accused No.4.

9. Learned SPP-I further contended in respect of bail petition of accused No.2 that there are no changed circumstances and while rejecting the bail petition by this Court on 17.03.2021, the charge sheet was already filed by the Police before the Trial Court and he is the main accused in this case. The documents created were seized from the office of accused No.2. Therefore, he prayed for rejecting the bail petition of accused No.2. However, not seriously objected in respect of the medical ground addressed by the learned counsel for accused No.2 in respect of he being infected with Covid-19 virus and his mother is suffering from Cancer. Further, he has also not disputed that the co-accused were all granted bail by the Trial Court as well as by the Sessions Judge.

10. Upon hearing the arguments and on perusal of the records, it reveals that accused No.1, the Deputy Secretary working in the BDA has prepared the fake allotment letters in the office of accused in the names of false beneficiaries. There were 55 copies of allotment letters seized by the Police in the office of accused No.2. Accused Nos.1 and 3 and presence of accused No.4 in the FIR were seen in the office of accused No.2. The BDA seals and documents were seized in the office of accused No.2. The BDA officials in collusion with accused No.2 created fake allotment letters and kept it in the office, which were signed by accused No.1 for the purpose of distribution which was unearthed by the Police after the complaint. The Police papers reveal that there are no fake allotment letters created but the allotment letters which were in the custody of one Kamamma were taken by accused No.1 and given to the office of accused No.2 where they created false beneficiaries in order to allot sites at HBR, HRBR and Hosakerehalli layouts. The investigation is completed and charge sheet has been filed by the Police in March 2021. While rejecting the bail application, though the Police filed the charge sheet within 60 days, prior to the expiry of prescribed statutory period for filing the charge sheet, but this court has not considered the charge sheet materials while reject the bail application. It has considered only at the crime stage or investigation stage. Most of the accused persons were granted bail by the Trial Court and Sessions Judge under Sections 437 ad 438 of Cr.P.C. and even some of the accused were granted bail under Section 439 of Cr.P.C. Learned counsel for accused No.4 contended that there were 13 BDA officials, out of them, except one or two accused, all other accused were granted regular and anticipatory bail. The non-officials mainly accused Nos.8 and 9 who are said to be the henchmen of accused No.2 in whose custody the documents and seals were seized have been granted by the Trial Court. This argument is not disputed by the learned SPP. Even the State has not prepared any appeal against the granting of appeal or for cancellation of the bail granted by the Trial Court and the Sessions Judge.

11. As regards the investigation in respect of accused No.2 has been completed long back and he is in custody for more than six months and his presence may not be required for the purpose of further investigation. That apart, the petitioner-accused No.2 is the permanent resident and the entire case is based upon the documentary evidence. Therefore, the question of again tampering or destroying the evidence does not arise. The documents were said to be seized already from his office at Cunningham road and even for the last six months, the Police have not sought for further custody of this petitioner for any further investigation. Therefore, the presence of accused No.2 may not be required for the Police for any further investigation.

12. That apart, he is suffering from Covid-19 infection and he is admitted in the Epidemic Hospital at Old Madras road. His mother is said to be suffering from Cancer and there is no one to take care. He requires higher medical care for curing Covid-19, SARS Corona virus. Apart from that there is every chance of getting complications of post Covid complication treatments like Black or White Fungus etc. The petitioner-accused No.2 has also produced the medical records of his mother suffering from Cancer and he is suffering from Corona virus. Thereby, accused No.2 has made out a fresh and additional ground for granting bail. Therefore, looking to the entire facts and circumstances of case and the release of other accused persons by the Trial Court, if this petitioner is granted bail by imposing certain conditions, no prejudice would be caused to the case of the prosecution.

13. As regards the anticipatory bail petition of accused No.4 Dhanalakshmi, though her name was not shown in the remand application upto 10.02.2021, her name first appeared as accused No.14 in the eighth remand application. However, learned SPP brought to the notice of this Court that in the first remand application itself, her role has been mentioned and they are trying to arrest the petitioner, but she was absconding. Sri C.H. Hanumantharaya, learned counsel for the petitioner-accused No.4 contended that accused No.4 has been transferred in October 2019 from the BDA office. She was not at all working in the same office. She was working in the KREDL Department. After 1½ years, they are making such allegation. All the 44 mahazars available before the BDA were obtained by this petitioner through RTI. Those documents were already seized from the custody of accused No.2. Therefore, her presence may not be required for custodial interrogation. In the charge sheet, the allegation made against her is that she was deputed for identifying the sites for the beneficiaries in the Sy.Nos.89, 90 and 91 of Hosakerehalli village and she has prepared the mahazars and instead of giving it to the Deputy Secretary-3, she has given it to accused No.2 and it was seized from accused No.8. By looking to the charges made against accused No.4, it is available in the charge sheet that the mahazars were prepared by her were said to be seized from the custody of accused No.8 who is said to be working with accused No.2. Therefore, once the documents were prepared by accused No.4 through some Revenue Inspectors, which were already seized by the Police, except for the enquiry, her presence may not be required for custodial interrogation and that apart, she is a woman and the offence is not punishable with death or life imprisonment and triable by Magistrate. Therefore, the contention of learned SPP cannot be accepted that she is not required for custodial interrogation. Even otherwise, condition may be imposed for the purpose of any recovery or for recording her statement as per the evidence. Therefore, I am of the view that petitioner-accused No.4 is also entitled for grant of anticipatory bail.

14. In view of the above reasons, both the criminal petitions deserve to be allowed. Hence, the following;

Order Criminal Petition No.2719/2021 filed by the petitioner-accused No.4 under Section 438 of Cr.P.C. is allowed and the respondent-Police is directed to release the petitioner-accused No.4 on bail in the event of her arrest and Criminal Petition No.3967/2021 filed by the petitioner-accused No.2 under Section 439 of Cr.P.C. is allowed and the Trial Court is directed to release the petitioner-accused No.2 on bail in Crime No.89/2020 (C.C.No.5017/2021) registered by Seshadripuram Police Station, Bengaluru, for the offences punishable under Sections 406, 409, 467, 470, 420, 471, 473, 472, 474, 475, 476, 120(B) and 511 of IPC, subject to the following conditions;

i) Petitioners-accused Nos.4 and 2 shall execute a personal bond for a sum of Rs.2,00,000/-

(Rupees Two Lakhs only) each with two sureties for the likesum to the satisfaction of the Investigating Officer/Magistrate as the case may be.

ii) Petitioner-accused No.4 and 2 shall not indulge in similar offences.

iii) Petitioner-accused No.4 and 2 shall not tamper with the prosecution witnesses directly or indirectly.

iv) Petitioner-accused No.4 shall surrender before the Investigating Officer within 15 days from the date of this order.

v) Petitioner-accused No.4 shall be deemed to be in custody for the purpose of recovery under Section 27 of the Indian Evidence Act.

vi) Petitioner-accused No.4 shall appear before the Investigating Officer for the purpose of further investigation and the Investigating Officer is at liberty to file additional charge sheet as against accused No.4, if any material is collected during further investigation.

vii) Petitioners-accused No.4 and 2 shall take up the trial and shall not leave the jurisdiction of this Court without prior permission.

Sd/-

JUDGE mv