

: 1 :

**IN THE HIGH COURT OF KARNATAKA  
DHARWAD BENCH**

DATED THIS THE 28<sup>TH</sup> DAY OF APRIL 2017

BEFORE

**THE HON'BLE MR. JUSTICE BUDIHAL R.B.**

CRIMINAL PETITION NO.100799/2017

BETWEEN

MOHAMMED RAFIQ  
S/O ABDUL REHMAN CHOUDHARY  
AGE: 22 YEARS  
OCC: EMBROIDER  
R/O: PATIL GALLI  
BANKAPUR CHOWK  
HUBBALLI, TQ: HUBBALLI  
DIST: DHARWAD

... PETITIONER

(BY SRI VIDYASHANKAR G DALWAI, ADVOCATE)

AND

THE STATE OF KARNATAKA BY  
ITS P.S.I KESHWAWPUR POLICE STATION  
HUBBALLI, REP.BY STATE PUBLIC PROSECUTOR  
HIGH COURT BUILDING  
DHARWAD

... RESPONDENT

(BY SRI PRAVEEN K.UPPAR, HCGP)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 439 OF CR.P.C., SEEKING TO ALLOW THE PETITION FILED UNDER SECTION 439 OF CR.P.C. AND ENLARGE THE PETITIONER ON REGULAR BAIL IN CRIME NO.166/2016 OF KESHAVAPUR POLICE STATION, HUBBALLI (C.C.NO.714 OF 2017 ON THE FILE OF JMFC-II COURT, HUBBALLI) FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 395, 397, 201 OF IPC WITH SUCH CONDITIONS WHICH THIS HON'BLE COURT DEEMS FIT TO BE IMPOSED IN THE CIRCUMSTANCES OF THE CASE.

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

### **ORDER**

This is the petition filed by petitioner-accused No.2 under Section 439 of the Cr.P.C., seeking his release on bail of the alleged offences punishable under Section 395 of I.P.C. registered in Crime No.166/2016 and during investigation and while filing charge sheet offences under Sections 397 and 201 of I.P.C. were also included in the case.

2. Brief facts of the prosecution case that one Mr.Vinod Aravind Fulle filed the complaint before police stating that he is a Medical Representative at Astrajaneke Company. On behalf of the said company on 19.10.2016

he was at Hubballi and was stayed at Samrat Ashok Hotel, Lamington Road, Hubballi. After the work at 10.30 p.m. along with luggage he came out and was walking down towards railway station, at that time behind him an auto, in which two persons had already seated, came to him and the driver of the auto asked him to get into the auto, to which he refused. Then, the auto driver offered him that, he would drop him to the railway Station for Rs.10/- as fare. After some time, he took the auto under bridge which was not the way and complainant started to alarm. At that time the other persons sitting next to him pointed out a knife at him, took him to isolated place, threatened him and tried to take his bag. The complainant was beaten and the accused forcibly took golden ring weighing 10 gms and 30 gms golden chain and NOKIA windows software mobile phone, and also took ATM card of ICICI Bank and forced him to give the pin code, which he disclosed it as 0225. Thereafter two persons came on the motor cycle, the ATM card was given to them, and after some time they called driver and informed that they had received the

money. After that the auto driver left him behind the railway station. It was about 11.20 p.m., the complainant boarded the train and went to Bengaluru. He blocked his ATM Card, and later he came to know that the accused persons had already withdrawn an amount of Rs.40,000/- from his account. On the basis of the said complaint case came to be registered.

3. Heard the arguments of learned counsel appearing for the petitioner-accused No.4 and also learned High Court Govt. Pleader for the respondent-state.

4. Learned counsel for the petitioner-accused No.4 made the submission that so far as present petitioner is concerned, there is no prima facie material to show his involvement in committing the alleged offences. He made the submission that there is no recovery of any incriminating articles as against the present petitioner. It is also his submission that there is a delay of six days in lodging the complaint. Hence, by imposing reasonable conditions, petitioner may be admitted to regular bail.

5. Per contra, learned High Court Govt. Pleader made the submission that apart from this case, there are 3-4 cases as against the present petitioner and he is a habitual offender. He also made the submission that there is a prima facie case against the present petitioner and hence submitted to reject the petition.

6. I have perused the grounds urged in the bail petition, FIR, complaint and other materials so also the order passed by the learned Sessions Judge rejecting the bail application of the present petitioner.

7. This Court had an occasion to consider the bail applications of accused Nos.1, 2 and 5 and this Court considered the entire merits of the case and ultimately Court held that there is a prima facie material against the said accused persons and the bail application came to be rejected. Looking to the materials as against the present petitioner also it is submitted that he has involved in other 3-4 cases of similar in nature and even the prosecution taken the C.C. camera footage materials which also goes

: 6 :

to show withdrawal of money from the ATM and distribution of the said amount between all the accused persons. Looking to the gravity of the offences, it is not fit case to exercise the discretion in favour of the petitioner/accused No.4. Hence, the petition is hereby rejected.

**Sd/-  
JUDGE**

CLK