

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28<sup>TH</sup> DAY OF DECEMBER, 2018

BEFORE

THE HON'BLE MR. JUSTICE H. P. SANDESH

CRIMINAL PETITION NO. 9575/2018

BETWEEN:

Mahesh,  
S/o Kamappa,  
Aged about 43 years,  
Occ: Junior Engineer (PWD),  
Bengaluru Sub Division,  
Bengaluru South, K.R. Circle,  
Permanent resident of  
Andanuru Village,  
B-Durga Hobli, Holalkere Taluk,  
Chitradurga District – 577 501.

...Petitioner

(By Sri. Chandrashekar K.A., Adv.)

AND:

The State of Karnataka,  
By Chitradurga Town P.S.,  
Chitradurga District – 577 501.  
Represented through:  
The State Public Prosecutor,  
High Court of Karnataka,  
Bengaluru – 560 001.

....Respondent

(By Sri. Divakar Maddur, HCGP)

This criminal petition is filed under Section 438 of Cr.P.C. praying to enlarge the petitioner on bail in the event of his arrest in Cr.No.285/2016 (C.C.No.277/2018)

Chitradurga Town P.S., Chitradurga District for the offence P/U/S 420, 464 and 465 R/W 34 of IPC.

This criminal petition coming on for Orders this day, the Court made the following:-

**ORDER**

This petition is filed by the petitioner/accused No.2 under Section 438 of Cr.P.C. seeking Anticipatory bail to direct the respondent – police to release the petitioner/accused No.2 on bail in the event of his arrest for the offences punishable under Sections 420, 464 and 465 read with Section 34 of the IPC, registered by the respondent – police station in Crime No.285/2016.

2. I have heard the learned counsel for the petitioner and also the learned HCGP for respondent.

3. On 11.05.2016, Smt. B. Umadevi W/o Rudranna of Chitradurga submitted a complaint before S.P., Chitradurga and in turn, the same was referred to the police of Chitradurga Town Police Station to register a complaint and investigate the same. Based on the

same, the police have registered a case in Crime No.285/2016 against Smt.Lalithamma for the offence punishable under Sections 420, 464 and 465 read with Section 34 of IPC. The present petitioner was shown as accused No.2. Though Smt. Lalithamma was arrayed as accused No.1 in the FIR, she was given up.

4. The contention of the petitioner is that he is innocent of offences alleged against him and in the first instance, no complaint was registered against the petitioner. The case was registered only against accused No.1-Smt. Lalithamma and now she has been given up in the final report and investigation is tainted with malafides and the allegations against the petitioner/accused No.2 is that he has fabricated the documents.

5. The contention of the petitioner is that a civil suit in O.S. No.102/2013 is pending before the 2<sup>nd</sup> Additional Civil Judge (Junior Division), Chitradurga and

the said suit was filed in the year 2013. The alleged offence has taken place in the year 2016 and the bail petition, which was filed by the petitioner before the 2<sup>nd</sup> Additional District and Sessions Judge, Chitradurga under Section 438 of Cr.P.C was rejected. The petitioner has also produced the copy of the plaint in O.S. No.102/2013 and written statement. The police have filed the charge sheet, after the investigation and shown the present petitioner in the absconding column. The petitioner is working as a Junior Engineer in the PWD Office, Bengaluru and the learned counsel submits that the petitioner is ready to abide by the conditions that may be imposed by this Court and the question of fleeing away from the proceedings does not arise since he is a government employee. Hence, he prays to grant bail under Section 438 of Cr.P.C.

6. Per contra, learned HCGP in his arguments contended that the incident has taken place in the year

2016 and till date, the petitioner is absconding and he is proclaimed offender and is not entitled for grant of bail.

7. After having heard the arguments of the petitioner's counsel and HCGP for the respondent, the point that arises for my consideration is:-

“Whether this Court can invoke Section 438 of Cr.P.C. to enlarge the petitioner for the offences alleged against him under Sections 420, 464 and 465 read with Section 34 of IPC?”

8. The main contention of the petitioner is that he is working as Junior Engineer in PWD Office, Bengaluru and when the petitioner came to know about the registration of the case, he immediately approached the Sessions Court for bail. The Sessions Court has rejected the bail petition and hence, petitioner is before this Court.

9. On perusal of the allegations made in the complaint, it is seen that the complainant has purchased the property i.e., a vacant site on 07.09.2000 and when the complainant started cleaning the site to do the pooja, at that time, one Smt. Lalithamma came and prevented her in doing pooja and hence, she lodged a complaint on 17.11.2015. Thereafter, in 2016 the police have given the endorsement and subsequently, she came to know that a gift deed was executed in favour of this petitioner in the year 2013, taking the advantage of his wife, who was working as Commissioner of Chitradurga Municipality. On perusal of the complaint averments, it is clear that there is a civil dispute between the parties. In support of the same, the petitioner has produced the certified copy of the plaint and written statement. These documents disclose that civil litigation is pending before the Civil Court.

10. Having considering the nature of allegation and gravity of the offence and fact that the petitioner is

working as a Junior Engineer in PWD Office, Bengaluru and charge sheet has already been filed against this petitioner, he is not required for any further investigation, this Court can exercise the power under Section 438 of Cr.P.C. by imposing certain conditions and hence, I pass the following:

**ORDER**

Accordingly, petition is allowed. Petitioner/accused No.2 is ordered to be released on bail in the event of his arrest for the offences punishable under Sections 420, 464 and 465 read with Section 34 of the IPC, registered by the respondent – police station in Crime No.285/2016, subject to following conditions:

- a. Petitioner shall execute a personal bond for a sum of Rs.50,000/- with two sureties for the likesum to the satisfaction of the Investigating Officer/Court in the event of his arrest.

- b. Petitioner is directed to assist the Investigation Officer, if required.
- c. The petitioner is directed not to indulge in tampering the prosecution witnesses.

**Sd/-  
JUDGE**

MBM