

(2014) 12 KAR CK 0135

In the Karnataka High Court

Case No : Criminal Petition No. 7943/2014

Achapanda Mahesh Ganapathy

APPELLANT

Vs

The State of Karnataka

RESPONDENT

Date of Decision : 26-12-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 438
Penal Code, 1860 (IPC) — Section 307, 323, 34, 448, 504

Citation : (2014) 12 KAR CK 0135

Hon'ble Judges : B. Manohar, J

Bench : Single Bench

Advocate : R.K. Mahadeva, Advocate for the Appellant; K. Nageshwarappa, HCGP, Advocate for the Respondent

Judgement

B. Manohar, J.—The petitioner has filed this petition under Section 438 of Cr.P.C. seeking for his release on bail in the event of his arrest for the offences punishable under Sections 448, 504, 506, 323, 307 read with Section 34 of IPC and Sections 3 & 25 of Indian Arms Act, 1969 in Crime No. 155/2014.

2. The prosecution registered a case against the petitioner in view of the complaint lodged by Sri. N.Raju alleging that on 18.11.2014, when the petitioner along with his associates were removing the unauthorized sand from the river, he lodged a complaint with jurisdictional police. In view of that, on 19.11.2014 at about 10.30 p.m., the petitioner along with his associates came to the house of the complainant, holding the revolver and threatened to kill him and his family members and he fired from the said gun in the house. However, nobody was hurt due to firing.

3. Learned Counsel for the petitioner contended that the petitioner was not involved in any of the activities as alleged against him. The employees working in the petitioner's coffee estate have lodged a complaint against the complainant's son on 18.11.2014. As a counter blast, the complaint has been lodged against the petitioner and his employees on 19.11.2014. The police investigated the

matter however they could not find any bullet marking inside the house. In spite of that, an attempt was made to arrest the petitioner and sought for anticipatory bail.

4. On a petition filed under Section 438 for seeking anticipatory bail, the II Additional Sessions Judge, Virajpet granted anticipatory bail in respect of all other accused persons except the petitioner. The order passed by the court below is contrary to law and the petitioner is also entitled to be released on bail.

5. On the other hand, learned Government pleader appearing for the respondent argued in support of the order passed by the Trial Court and contended that the petitioner along with his employees entered the house of the complainant on 19.11.2014 showing the revolver and threatened the complainant and his family members and tried to attack the son of the complainant. He has not only committed the offence under Section 307 of IPC, but also committed an offence under Sections 3 & 25 of Indian Arms Act, 1969. Hence, he is not entitled for grant of anticipatory bail and sought for dismissal of the petition.

6. I have carefully considered the arguments addressed by the learned counsel for the parties and perused the order passed by the 2nd Additional Sessions Judge, Virajpet and other relevant records.

7. The records clearly disclose that there is a case and counter case against the petitioner and the complainant. The employees working under the petitioner lodged a complainant against the son of the complainant on 18.11.2014. As a counter blast, the complainant lodged a complaint on 19.11.2014 alleging that the petitioner along with his employees entered the house of the complainant holding a revolver in his hand and threatened to kill them and he also fired inside the house, fortunately, it has not hurt any body. Except the said allegations, no material has been produced to show that any body is injured and medical certificates are also not produced. The allegation made in the complaint does not fall within the ambit of Section 307 of IPC. The 2nd Additional Sessions Judge, Virajpet had granted anticipatory bail in respect of Accused Nos. 2 to 4. However, refused to grant anticipatory bail for Accused No. 1 on the ground that he was holding the revolver in his hand. It was the specific case of the petitioner that he is having necessary license from the competent authorities to possess a revolver and the same is used to protect himself from the wild animals. The act of holding revolver cannot be said that he has violated the Indian Arms Act, 1969.

8. Taking into consideration all these aspects of the matter, I find that the petitioner is also entitled for grant of anticipatory bail with similar conditions which were imposed by the Trial Court. Accordingly, I pass the following order;

ORDER

The criminal petition is allowed. The respondent-police is directed to release the petitioner on bail in the event of his arrest in connection with Crime No. 155/2014 with the following conditions;

"i) The Petitioner shall be released on bail in the event of his arrest on executing a personal bond for a sum of Rs. 50,000/- with two sureties for the likesum to the satisfaction of the concerned IO.

ii) Petitioner shall not tamper or threaten any of the prosecution witnesses.

iii) The petitioner shall co-operate with the concerned IO in conducting further investigation.

iv) The petitioner shall not directly or indirectly make inducing threat or promise to any persons acquainted with the facts of the case, so as to dissuade them from disclosing such facts to the Court or to any Police Officer."