
(2018) 01 KAR CK 0045
In the Karnataka High Court
Case No : 8645 of 2017

Dinesh Karakala & anr.

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 10-01-2018

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 120B](#), [Section 420](#), [Section 438](#), [Section 409](#), [Section 34](#), [Section 406](#)

Citation : (2018) 01 KAR CK 0045

Hon'ble Judges : Budihal R.B.

Bench : Single Bench

Advocate : Bipin Hegde, Chetan Desai

Judgement

1. This petition is filed by the petitioners/accused Nos.5 and 6 under Section 438 of Cr.P.C. seeking Anticipatory bail to direct the respondent -

police to release the petitioners/accused Nos.5 and 6 on bail in the event of their arrest for the offences punishable under Sections 406, 409, 420

and 120-B read with Section 34 of the IPC and also under Section 9 of the Karnataka Protection of Interest of Depositors in Financial

Establishments Act, 2004.

2. The brief facts are that, a private complaint in P.C.No.72/2014 came to be filed by the complainant on the file of the II Additional Senior Civil

Judge and CJM, Mangaluru, wherein, the matter was referred to the police invoking Section 156 (3) of Cr.P.C. and after completing the

investigation, charge sheet came to be filed and as per the charge sheet, the present petitioners have been arrayed as accused Nos.5 and 6.

3. Heard the arguments of the learned counsel for the petitioners/accused Nos.5

and 6 and also the learned High Court Government Pleader for the respondent - State.

4. Learned counsel draw the attention of this Court to the contents of the private complaint and made the submission that at the instance of accused No.1, the Director of the Company, it is stated that the complainant deposited a sum of Rs.1,05,300/-. He made the submission that in the year 2009, these both petitioners being the members in the company resigned from the membership. In spite of that, false complaint is made as against them and falsely implicating them in the year 2014.

5. Learned counsel submitted that along with other accused persons, the petitioners approached this Court seeking anticipatory bail. This Court considered the batch of the petitions and passed the order dated 02.12.2015 in Criminal Petition No.6189/2015 along with other batch of the connected petitions.

6. Learned counsel submitted that though this Court rejected the anticipatory bail to the present petitioners, at that time, they were not able to produce the relevant documents before the Court to show that they have resigned from the said company much earlier from the filing of the said complaint. Learned counsel submitted that after they traced the said documents, again they have approached the Court below by filing the petition.

But the concerned Court without properly appreciating the materials of the case, wrongly rejected their bail petition. Hence, learned counsel

submitted that there is no prima facie case about their involvement in the alleged offences. Now, the investigation of the case is complete and

charge sheet is also filed. Learned counsel submitted that one of the accused challenged the criminal proceedings i.e., accused Nos.8 and 9 before

this Court in Criminal Petition No.7447/2016 and got the stay order as against them. Hence, in view of these materials, learned counsel submitted

that by imposing reasonable conditions, the petitioners may be admitted to anticipatory bail.

7. Learned High Court Government Pleader opposed the petition contending that the merits of the case were considered by this Court during the

crime stage and he draw the attention of this Court in common orders passed by the batch of petitions, wherein, these petitioners were also parties

in Criminal Petition seeking anticipatory bail. He also made the submission that

number of criminal cases are pending against the present petitioners.

They are habitual offenders. Therefore, at this stage, they are not entitled for anticipatory bail. He also made the submission that there is charge

sheet showing them absconding. Hence, he contends that petitioners are not entitled for anticipatory bail.

8. I have perused the grounds urged in the FIR, complaint and other materials so also the earlier orders passed in batch of petitions and also the

orders passed by the Court below rejecting the bail application of the present petitioners looking to the earlier orders of this Court, the Court has

considered the materials placed before it and rejected the petition filed by the present petitioners seeking Anticipatory bail. Now, it is the

contention of the petitioners herein that earlier they were not able to trace the documents pending from resignation to the membership in the year

2009 itself and immediately, after tracing the documents they approached the Court by filing petition. He also submitted that accused No.1 has

already been granted bail. Hence, he submitted that by imposing reasonable conditions, the petitioners may also be granted with anticipatory bail.

9. Learned counsel further submitted that it is accused Nos.1 and 2, who have undertaken before the Court that they will repay the amount. But,

now looking to the conduct of these two petitioners where their earlier petition for anticipatory bail came to be rejected, during the course of the

investigation, they were not at all available for the Investigating Officer for the interrogation and they remained absconding. The charge sheet has

been filed showing these two petitioners are absconding and concerned Court also issued the NBW against the present petitioners. Therefore,

looking to the conduct of these two petitioners during investigation, I am of the opinion that, it is not a fit case to exercise the discretion in favour of

the petitioners. Accordingly, petition is hereby rejected.

10. At this stage, learned counsel for the petitioners made the submission that petitioners are prepared to surrender before the concerned Court. In

case they have surrendered before the Court and file an application seeking bail, then the concerned Court have to consider the application on

priority and dispose of the same on merits and if possible on the same day.