IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 18TH DAY OF JUNE, 2024

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BEFORE

THE HON'BLE MR JUSTICE KRISHNA S DIXIT

CRIMINAL PETITION NO. 5125 OF 2024 (438)

BETWEEN:

SMT. BHAVANI REVANNA,
W/O REVANNA H D,
AGED ABOUT 55 YEARS,
R/AT CHENNAMBIKA NILAYA,
CHENNAMBIKA CIRCLE,
HOLENARASIPURA, HASSAN – 573 211.

…PETITIONER

(BY SRI. C V NAGESH., SENIOR COUNSEL A/W
SRI. SANDESH CHOUTA., SENIOR COUNSEL A/W
SRI. GIRISH KUMAR B M.,ADVOCATE)

AND:

STATE OF KARNATAKA,
BY K R NAGAR POLICE STATION,
MYSURU RURAL SUB-DIVISION,
MYSURU.
(NOW INVESTIGATED BY SPECIAL
INVESTIGATION TEAM, CID,
BENGALURU #1, CARLTON HOUSE,
PALACE ROAD, BENGALURU – 560 001.
REPRESENTED BY
SPECIAL PUBLIC PROSECUTOR
FOR SIT, HIGH COURT BUILDINGS,
BANGALORE – 01.

…RESPONDENT

(BY SRI. PROF. RAVIVARMA KUMAR., SPL. PP A/W
SRI. B N JAGADEESH., SPL PP)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 438 OF THE CODE OF CRIMINAL PROCEDURE, 1973, PRAYING TO ENLARGE THE PETITIONER ON BAIL IN THE EVENT OF HER ARREST IN THE CR.NO.149/2024 REGISTERED K.R.NAGAR POLICE STATION, MYSURU DISTRICT FOR THE OFFENCE P/U/S 364A, 365 AND 34 OF IPC, PENIDNG ON THE FILE OF THE XLII A.C.M.M BENGALURU AND ETC.,

THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED FOR ORDER, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

ORDER

Petitioner a married woman hailing from a family of undeniable political background, has moved this petition u/s.438 of the Code of Criminal Procedure, 1973 seeking an order for advance bail in relation to Crime No.149/2024 registered on 02.05.2024 by the K.R.Nagara Police Station, Mysore District for offences punishable u/s.364A & 365 r/w Sec.34 of IPC, 1860. Persons named as accused in the FIR are not before this court. Presently the case is pending before the learned XLII Addl. Chief Metropolitan Magistrate, Bengaluru.

II. After service of notice, the Respondent-State-Police have entered appearance through the learned Special Public Prosecutor. Matter was earlier heard for admission on 07.06.2024 and an interim anticipatory bail

was accorded, stipulating conditions. The State has filed the Objections. During the course of hearing this day, learned Special Public Prosecutor on his own, made available in sealed cover copies of police papers and pointed out certain paragraphs in opposing the petition.

III. BRIEF FACTS:

(i) One Mr.Raju.H.D. lodged the FIR on 02.05.2024 with the respondent-Police *inter alia* alleging that one Mr.Satish Babanna had forcibly taken away his mother to Holenarasipura on a bike on 29.04.2024 saying that the petitioner herein & her husband Mr.H.D.Revanna, an accused named in the FIR were calling her; on the very next day she was brought back and left at Mysore with the instruction that she should not tell anything about this to Police.

(ii) FIR also alleges that two persons namely, Mr.Danu & Mr.Yashu visited complainant's house on the noon of 01.05.2024 and told that in a mobile video his mother was seen with her legs tied and being sexually abused by petitioner's son Mr.Prajwal who is later accused

in another case and that a case has been registered in that regard. It further alleges that, he had phoned Mr.Satish Babanna and enquired about mother's whereabouts; Mr. Satish Babanna told him about Prajwal's tumult with others and that a photo depicting his mother holding a club in the company of others, has appeared; he also alerted saying in that connection, an FIR has been registered.

(iii) Mr.Satish Babanna told the complainant that a bail order has to be secured for his mother and that he should speak from others phone, keeping his unused. The complainant lastly alleges that his mother was forcibly taken to an unknown place and confined there; she runs risk to her life; therefore legal action should be taken against Satish Babanna & Revanna. Accordingly the Police have registered the subject case for the aforesaid offences.

(iv) In the above background, petitioner had moved the jurisdictional court for the grant of anticipatory bail in Crl.Misc.No.4229/2024. After hearing the parties, learned

Judge of the court below vide order dated 13.05.2024 rejected the petition. Therefore, the petition at hands for the same relief has been moved before this court.

IV. Having heard the learned counsel appearing for the parties and having perused the petition papers along with police papers furnished in the sealed cover, I am inclined to grant anticipatory bail to the petitioner for the following reasons:

(A) Firstly, in the FIR the complainant who happens to be son of the abducted lady does not implicate the petitioner. He requests the Respondent-Police to take action only against two specified persons namely, Satish Babanna & Revanna, later being petitioner's husband. It is relevant to reproduce the last paragraph of the FIR:

> "ನನ್ನ ತಾಯಿಯು ಪೋಲೀಸಿನವರಿಗೆ ಸಿಗಬಾರದು ಅಂತ ಹೇಳಿ ಸತೀಶ್ ಬಾಬಣ್ಣ ರವರು ದಿನಾಂಕ:29/04/2024 ರಂದು ರಾತ್ರಿ 9.00 ಗಂಟೆಗೆ ನಮ್ಮ ಮನೆಗೆ ಬಂದು ನನಗೆ ಸುಳ್ಳು ಹೇಳಿ, ನಮ್ಮ ಮೇಲೆ ಪೋಲೀಸ್ ಕೇಸಾಗುತ್ತದೆ ಎಂದು ಹೆದರಿಸಿ ನನ್ನ ತಾಯಿಯನ್ನು ಒತ್ತಾಯದಿಂದ ಕರೆದುಕೊಂಡು ಹೋಗಿ ಯಾವುದೋ ಗೊತ್ತಿಲ್ಲದ ಜಾಗದಲ್ಲಿ ಕೂಡಿ ಹಾಕಿರುತ್ತಾರೆ. ಮತ್ತು ನನ್ನ ತಾಯಿಯ ಜೀವಕ್ಕೆ ತೊಂದರೆ ಇರುತ್ತದೆ. ಅದರಿಂದ ನನ್ನ ತಾಯಿಯನ್ನು ನಮ್ಮ ಮನೆಯಿಂದ ಒತ್ತಾಯಮಾಡಿ ಕರೆದುಕೊಂಡು ಹೋಗಿರುವ ಸತೀಶ್ ಬಾಬಣ್ಣ ಮತ್ತು ನನ್ನ ತಾಯಿಯನ್ನು ಕರೆದುಕೊಂಡು ಹೋಗಲು ಬಾಬಣ್ಣ ರವರಿಗೆ ಹೇಳಿರುವ ರೇವಣ್ಣ ಸಾಹೇಬರ ಮೇಲೆ ಕಾನೂನು ಕ್ರಮ ಜರುಗಿಸಿ ನನ್ನ ತಾಯಿಯನ್ನು ಪತ್ತೆ ಮಾಡಿಕೊಡಬೇಕಾಗಿ ಕೇಳಿಕೊಳ್ಳುತ್ತೇನೆ."

What is notable is that the complaint mentions about Satish Babanna having taken complainant's mother to Holenarasipura 3 – 4 days earlier to Lok Sabha Election and leaving her back at Mysore on the same night. It says that this was done at the instance of petitioner. All this is set as a prelude to the incident and that no allegations of abduction or the like is made against this petitioner. In all fairness learned Special Public Prosecutor not only did not dispute but conceded this position.

(B) Learned Special Public Prosecutor submits that a lot of material has been collected during the investigation and that the petitioner is the 'King Pin' of the entire episode; the offences alleged against the culprits are punishable with death or life imprisonment and therefore in such heinous offences no anticipatory bail can be granted as a matter of course. This is stoutly opposed by the learned Sr. Advocate appearing for the petitioner, contending that there is absolutely no allegation or material to implicate the petitioner in the offence punishable u/s.364A of IPC. He banks upon ***WILLIAM***

STEPHEN vs. STATE OF TAMIL NADU, 2024 SCC Online SC 196, to substantiate his contention. He further submitted that there is absolutely no implication of the petitioner in any offence. Let me examine the matter.

(C) Section 364A of IPC which is brought on the statute book vide Act 42 of 1993 w.e.f. 22.05.1993 has the following text:

> ***"Section 364A kidnapping for ransom, etc.*** *Whoever kidnaps or abducts any person or keeps a person in detention after such kidnapping or abduction, and threatens to cause death or hurt to such person, or by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt, or causes hurt or death to such person in order to compel the Government or any foreign State or international inter-governmental organisation or any other person to do or abstain from doing any act or to pay a ransom, shall be punishable with death or imprisonment for life, and shall also be liable to fine."*

The Apex Court in para 10 of STEPHEN *supra* has analysed the intent & content of this provision by observing as under:

> *"10. The first ingredient of Section 364A is that there should be a kidnapping or abduction of any person or a person should be kept in detention after such kidnapping or abduction. If*

> *the said act is coupled with a threat to cause death or hurt to such person, an offence under Section 364A is attracted. If the first act of kidnapping or abduction of a person or keeping him in detention after such kidnapping is coupled with such conduct of the person kidnapping which gives rise to a reasonable apprehension that the kidnapped or abducted person may be put to death or hurt, still Section 364A will be attracted. In the light of this legal position, now we refer to the evidence of the child-PW-2."*

Further, what is observed at para 15 shows the practical application of this provision and therefore a relevant part thereof is reproduced below:

> *"15……The call records could have been the best possible evidence for the prosecution to prove the threats allegedly administered by the accused and the demand of ransom. Even taking the evidence of PW-1 and PW-3 as correct, all that is proved is that they received a phone call from someone for demanding ransom and the person threatened to kill their son in case ransom is not paid. However, the prosecution is not able to connect the alleged demand and the threat with both the accused. Therefore, the ingredients of Section 364A of IPC were not proved by the prosecution inasmuch as the prosecution failed to lead cogent evidence to establish the second part of Section 364A about the threats given by the accused to cause death or hurt to such person. In a given case, if the threats given to the parents or the close relatives of the kidnapped person by the accused are established, then a case can be made out that there was a reasonable apprehension that the person*

> *kidnapped may be put to death or hurt may be caused to him. However, in this case, the demand and threat by the accused have not been established by the prosecution."*

(D) There is force in the submission of Mr.C.V.Nagesh that the provisions of Sec.364A of IPC do not appear to be invokable in the case at its present stage, although new facts that may arguably emerge during the progressive investigation may warrant its attraction. There is not even a whisper that the argued risk to abductee's life is at the instance of petitioner. Even otherwise, no assumption of the kind can be made against the petitioner who is not named by the complainant or by his mother in her sections 161 & 164 statements that are furnished in a sealed cover. Much discussion in this regard is avoided, lest the ongoing investigation should be affected. If the said provision is found to be *prima facie* not invokable, then the remaining offences alleged against the Accused, obviously do not attract the capital punishment, life imprisonment or imprisonment for ten years also. Companion Sec.365 is also a species of the offence of abduction/kidnapping and it prescribes a maximum punishment of only seven years.

Therefore, it cannot be gainfully argued that in matter like this, no bail, anticipatory or regular can ever be granted, as a Thumb Rule. The off quoted slogan of Krishna Iyer in ***STATE OF RAJASTHAN vs. BALCHAND ALIAS BALIAY, AIR 1997 SC 2447*** that 'Bail is rule and jail is an exception' has not yet been rendered "much ado signifying nothing". It still animates our Criminal Jurisprudence subject to all just exceptions, such as cases of terrorism, PMLA, treason, attack on Defence/Police Personnel, etc. Of course, there are exceptions to these exceptions, is also true. However, such a case has not been made out by respondent here. That being the position, the contention that the case involves heinous offences that should abhor the request for bail, regular or anticipatory, does not merit acceptance.

(E) Learned Special Public Prosecutor contends that the Police need the petitioner for custodial interrogation and this version of Police has to be accepted at face value, no discretion availing to the court to examine its veracity. In support of this he presses into service the decision in

***CBI vs. VIKAS MISHRA, (2023) 6 SCC 49*.** Para 17 which was specifically read out by him is as under:

> *"17. No accused can be permitted to play with the investigation and/or the court's process. No accused can be permitted to frustrate the judicial process by his conduct. It cannot be disputed that the right of custodial interrogation/investigation is also a very important right in favour of the investigating agency to unearth the truth, which the accused has purposely and successfully tried to frustrate. Therefore, by not permitting CBI to have the police custody interrogation for the remainder period of seven days, it will be given a premium to an accused who has been successful in frustrating the judicial process."*

A perusal of the above paragraph does not reveal the proposition passionately canvassed by him. A decision is an authority for the proposition that it lays down in a given fact matrix of a case and not for all that which logically follows from what has been so laid down, said Lord Halsbury more than a century ago in ***QUINN vs. LEATHEM, (1901) AC 495*.** Further, it is not the case of the State that the petitioner had frustrated the judicial process, which is a predominant factor in the said ruling.

(F) Mr.C.V.Nagesh is right in telling that the version of the Police as to the requirement of custodial investigation is liable to be examined by the court, personal liberty of individual being constitutionally sacrosanct. This view gains support from a latest decision in ***ASHOK KUMAR vs. STATE OF UNION TERRITORY OF CHANDIGARH, 2024 SCC OnLine SC 274***, wherein at para 12 the Apex Court has observed as under:

> *"12. There is no gainsaying that custodial interrogation is one of the effective modes of investigating into the alleged crime. It is equally true that just because custodial interrogation is not required that by itself may also not be a ground to release an accused on anticipatory bail if the offences are of a serious nature. However, a mere assertion on the part of the State while opposing the plea for anticipatory bail that custodial interrogation is required would not be sufficient. The State would have to show or indicate more than prima facie why the custodial interrogation of the accused is required for the purpose of investigation."*

If the proposition canvassed by the learned Special Public Prosecutor that the courts under no circumstance can examine the tenability of the police claim for custodial interrogation is accepted, that would strike the death knell of sacrosanct guarantees of freedom & liberty gloriously

enacted in the Constitution, they have been progressively construed by the courts. In our evolved system, the freedom has been broadened from precedent to precerdent. Makers of Constitution have founded a Welfare State for us in the light of lessons drawn from the experience during the Colonial Regime. Our Constitution does not enact *Idi Amin* Jurisprudence, nor does our Criminal Justice System. Despite vociferous submissions, why the police want custodial interrogation has not been even nearly substantiated and therefore, it cannot be granted, law having heavily loaded against such a claim.

(G) Learned Special Public Prosecutor on his own having produced the police papers in sealed covers submitted that the abductee was manhandled; that she was made to spend days without food; further that all through she remained in the same clothes, is not supported by the evidentiary material, on record and nor from the perusal of the sealed cover material. In the Statement of Objections at para 34 it is written as under:

> *"34. It is submitted that during the victim's confinement, the Petitioner was in touch with*

Accused No.7 through her driver's phone. The Accused No.7 enquired about the supply of clothing to the victim, and the Petitioner made the arrangements for the clothes through her driver and Accused No.6 – Keerthi. "

The victim herself in her Sec.164(5) Statement that was recorded on 08.05.2024 has specifically stated that she was given food. However, from this paradoxical version, one cannot hastily jump to a view that the victim was in the custody/confinement of the petitioner/accused, matter being in bail jurisdiction. She has not uttered anything about the so called manhandling during confinement. Even in her Sec.161 Statement recorded on 18.05.2024 there is nothing of the kind. The fact remains that the abductee is back home.

(H) The next contention of learned Special Public Prosecutor that the Petitioner despite intimation refused to come for investigation and therefore she should not be granted advance bail, appears to be too far fetched. Learned counsel for the Petitioner submitted that there was every reason to believe that she would be arrested at once, if she appeared before police. This version is

plausible since it is the specific and emphatic case of Police that they require her for custodial interrogation and court cannot say 'no' to it. When the police sends notice in terms of Sec.41A of Cr.P.C., the citizen should comply with the same, hardly needs to be stated, compulsive elements of law being what they are. However, matter will not be as simple as it purports to be. This court takes judicial notice of cases wherein police had effected arrest & detention despite noticee in due compliance appearing before them for interrogation/investigation. Unless such notices assure citizens of 'no arrest/detention', one cannot falter their knocking at the doors of court for redressal of their grievance. Citizens have a feel of distrust in the governmental functionaries in general and police personnel in particular. A section of the society sees the State as the first opponent, if not as the enemy. It was Rudyard Kipling (1865-1936) who poetically said "*Believe all, but none too much"* applies *qua* Police too.

(I) The contention that the petitioner despite grant of interim anticipatory bail which stipulates condition of

co-operation, has not co-operated in investigation, is difficult to agree with. The interim order dated 07.06.2024 directed the petitioner to go before the Investigating Officer on the same day, and admittedly she did it. On that day she was asked 21 questions and she answered all of them. Similarly, as instructed, again she appeared before them on 08.06.2024. She was given a bank of 34 questions and she has not left even one of them unanswered. Once again, as instructed, she appeared before the police on 12.06.2024 and answered all the 25 questions. In all, thus she answered 80 questions. The police cannot insist that an accused should give answers in the way as the police desire. After all in our evolved Criminal Jurisprudence, an accused is presumed to be innocent and that she has a constitutional guarantee against compulsive self incrimination vide Article 20(3) as widely interpreted by the Apex Court in ***NANDINI SATPATHY vs. P.L.DANI, AIR 1978 SC 1025***. Even now the petitioner is ready & willing to further participate in the ongoing investigation whenever & wherever the police want her. The number of appearance

and duration of interrogation are not to be taken as restricted by this court since investigation pertains to the domain of Investigating Agency and the Agency controls it.

(J) The submission of learned Special Public Prosecutor that petitioner has not prevented her son from sexually abusing several women & from fleeing the country and therefore, she should not be granted bail, again is too farfetched, to say the least. Control of the patriarch of the family that obtained in Roman Law does not appear as a justiciable norm in our set up. Petitioner's son is facing criminal cases and after his return from abroad, he has been taken into custody by the police for investigation, is not in dispute. But, what duty a mother owes in law to prevent her major children from committing offences, has not been shown by turning the pages of statute book or by citing rulings. History & epics bear testimony to the fact that children of noble parents may commit delinquencies. Vice versa may also be true. Nothing is placed on record to show that in the cases of sexual abuse of women registered against her son,

petitioner happened to be an abettor. The said abuses allegedly happened in the property belonging to the petitioner, can only be a poor factor. The facts of those cases cannot be much read into the case registered against the petitioner while deciding her advance bail petition.

(K) The next contention of the learned Special Public Prosecutor that the petitioner hails from political background cannot be disputed. Her father-in-law is a former Prime Minister of this country; her husband was a Cabinet Minister in the State Government and now is a sitting MLA; her husband's brother is a Cabinet Minister in the Union Government. Her son is an Ex.MP. Also, there are some other relatives holding significant political positions. However, all that cannot be a sole consideration for denying bail in a matter like this, especially when petitioner is a married woman having a settled family and roots in the society. There are umpteen decisions of Apex Court and of this Court wherein, bail/anticipatory bail has been accorded to women accused of even heinous offences

punishable with death or life imprisonment. They hardly need to be enlisted. Therefore, there is no Thumb Rule that arguably in serious matters like this, invocation of bail jurisdiction should never be permitted.

(L) PREFERENTIAL TREATMENT OF WOMEN IN BAIL JURISDICTIONS:

(a) In our social structure, women are the epicenters of family life; their displacement, even for a short period, ordinarily disturbs the dependents. Added, they are emotionally attached to the family. Therefore, investigating agencies should be very cautious while seeking their custodial interrogation. Women by their very nature deserve preferential treatment *inter alia* in matters relating to bail, regular or anticipatory. The text of Proviso to Section 437 of the 1973 Code supports this view. The Apex Court in ***SATENDER KUMAR ANTIL vs. CBI, (2022) 10 SCC 51,*** at para 51 observes:

> "…*Proviso to Section 437 of the Code mandates that when the accused is under the age of sixteen years, sick or infirm or being a woman, is something which is required to be taken note of... In a case pertaining to women, the court is expected to show some sensitivity…*"

(b) It is profitable to refer to United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules) which read as under:

> *"6. Avoidance of pretrial detention*
> *6.1 Pretrial detention shall be used as a means of last resort in criminal proceedings, with due regard for the investigation of the alleged offence and for the protection of society and the victim.*
> *6.2 Alternatives to pretrial detention shall be employed at as early a stage as possible. Pretrial detention shall last no longer than necessary to achieve the objectives stated under rule 5.1 and shall be administered humanely and with respect for the inherent dignity of human beings."*

The above rules of International Law partake the character of domestic law, there being nothing repugnant thereto in our System because of Article 51 of the Constitution as construed by the Apex Court in a catena of decisions. In Durga Das Basu's 'Shorter Constitution of India' 15th Edition at page 644, succinctly summarizes the legal position in this regard as under:

> *"…In the absence of contrary legislation, municipal Courts in India would respect rules of International law… in interpreting a statute, the Court would so construe it, if possible, as will not violate any established principle of International Law…International covenants*

> *which have been ratified by India are binding to the extent that they are not inconsistent with the provisions of the domestic law. The provisions of international conventions/ covenants which elucidate and effectuate the Fundamental Rights, can be relied upon by the Courts in India as their facets and be enforced as such…"*

Even the arguable misuse of political influence for desired exculpation from the case also can be taken care of by the State machinery having enormous authority. Further, it is open to the Respondent-Police to seek cancellation of bail if any breach of conditions or abuse of propriety/privilege happens.

In the above circumstances, this petition succeeds and petitioner is granted anticipatory bail; the conditions stipulated in the interim order dated 07.06.2024 would continue to apply. The usual conditions of bail also would apply to the petitioner. It is clarified that petitioner shall not enter the districts of Mysore & Hassan in any circumstance except for the purpose of investigation.

Sd/-
JUDGE

Snb/