R

HC-KAR

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25TH DAY OF JULY, 2025

BEFORE

THE HON'BLE MR. JUSTICE S VISHWAJITH SHETTY

CRIMINAL PETITION NO. 8285 OF 2025

BETWEEN:

1. JEEVAN M
S/O MUTHANNA I.B
AGED ABOUT 30 YEARS
R/AT NO.21, DEVARAJU'S HOUSE
LAKSHMIPURA, DASANAPURA HOBLI
BENGALURU NORTH TALUK
BENGALURU - 562 123.

2. SMT. ASHA
W/O GANGADHAR H.S
AGED ABOUT 30 YEARS
R/AT SITE NO.21 DEVARAJU'S HOUSE
LAKSHMIPURA, DASANAPURA HOBLI
BENGALURU NORTH TALUK
BENGALURU - 562 123, PREMANENT RESIDENT
OF BEEJI KOPPALU UJJINI POST
HULIYURDURGA HOBLI, KUNIGAL
TALUK, TUMAKURU DISTRICT - 572 123.

...PETITIONERS

(BY SRI VIVEK S. REDDY, SR. COUNSEL FOR
SRI RAJAKUMAR H.K, ADV.)

AND:

STATE OF KARNATAKA
MADANAYAKAHALLI P.S
BENGALURU RURAL DISTRICT
REP. BY STATE PUBLIC PROSECUTOR
HIGH COURT COMPLEX, BENGALURU - 560 001.

...RESPONDENT

(BY SRI B.A. BELLIAPPA, SPP A/W
SMT. WAHEEDA M.M, HCGP)

THIS CRL.P IS FILED U/S.439 (FILED U/S.483 BNSS) CR.P.C PRAYING TO RELEASE THEM ON BAIL S.C.NO.9/2025 OF MADANAYAKANAHALLI P.S., REGISTERED FOR THE OFFENCE P/US/ 120-B,302,392,201 R/W SEC.34 OF IPC PENDING ON THE FILE OF THE VI ADDL. DISTRICT AND SESSIONS JUDGE, BENGALURU RURAL DISTRICT.

THIS PETITION, COMING ON FOR ORDERS, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE S VISHWAJITH SHETTY

ORAL ORDER

1. Accused nos.1 & 2 in S.C.No.9/2025 pending before the Court of VI Addl. District & Sessions Judge, Bengaluru Rural District, arising out of Crime No.129/2024 registered by Madanayakanahalli Police Station, Bengaluru, for the offences punishable under Sections 302, 392, 120B read with 34 of IPC, are before this Court under Section 483 of BNSS, 2023, seeking regular bail.

2. Heard the learned Counsel for the parties.

3. FIR in Crime No.129/2024 was registered by Madanayakanahalli Police Station, Bengaluru, initially for the offences punishable under Sections 302 & 201 of IPC against the petitioners based on the first information dated 13.02.2024 received from Devaraj S/o Kalappa.

4. It appears that petitioners who were in judicial custody in Crime No.248/2024 registered by Tavarekere Police Station, Bengaluru, for the offences punishable under Sections 309(6), 329(4), 126(2) & 311 of BNS, 2023, were produced under body warrant in Crime No.129/2024 before the jurisdictional Court of Magistrate on 12.11.2024 and at request, the petitioners were remanded to police custody in Crime No.129/2024 till 20.11.2024. On 16.11.2024, petitioners were produced before the Court of learned Magistrate in Crime No.129/2024 with a requisition to remand them to judicial custody. However, the learned Magistrate on the said date, rejected the requisition of the Investigating Officer and remanded the petitioners to judicial custody in Crime No.248/2024 registered by Tavarekere Police Station. After completing investigation in Crime No.129/2024, charge sheet was filed against the petitioners for the aforesaid offences, and thereafter, the case was committed to jurisdictional Sessions Court and numbered as S.C.No.9/2025 which is now pending before the Court of IV Addl. District & Sessions Judge, Bengaluru Rural District. In the said case, petitioners had filed bail application under Section

439 of Cr.PC seeking regular bail and the same was rejected on 03.05.2025. Therefore, they are before this Court.

5. Learned Senior Counsel appearing for the petitioners having reiterated the grounds urged in the petition, submits that petitioners were not remanded to judicial custody in Crime No.129/2024 registered by Madanayakanahalli Police Station, and therefore, their custody in the said case was illegal. The learned Sessions Judge has erred in rejecting their bail application. Petitioners have been enlarged on bail in S.C.No.33/2025 arising out of Crime No.248/2024 registered by Tavarekere Police Station. Therefore, they are entitled for bail.

6. Per contra, learned SPP submits that as on the date of rejection of petitioners bail application in S.C.No.9/2025 arising out of Crime No.129/2024, petitioners were not at all in custody. They were released from jail in S.C.No.33/2025 arising out of Crime No.248/2024 much prior to rejection of their bail application in the present case on 03.05.2025. Subsequently, they have been now arrested by executing non-bailable warrant issued by the Trial Court in S.C.No.9/2025.

After they were arrested and remanded to judicial custody in S.C.No.9/2025, they have not approached the Trial Court seeking regular bail, and therefore, this petition cannot be entertained. He submits that after charge sheet was filed in Crime No.129/2024, the committal court without appreciating that accused in the said case were neither arrested and remanded to custody nor were granted anticipatory bail in the said case, had committed the case to the Court of jurisdictional Sessions Judge and it appears that therefore, a confusion arose before the court of learned Sessions Judge. Accordingly, he prays to dismiss the petition.

7. The records in the present case reveal that the petitioners who were arrested in Crime No.248/2024 registered by Tavarekere Police Station, for the offences punishable under Sections 309(6), 329(4), 126(2) & 311 of BNS, 2023, were subsequently produced under body warrant in the present case i.e., Crime No.129/2024 registered by Madanayakanahalli Police Station, on 12.11.2024, and on the said date, at the request of the Public Prosecutor, petitioners were remanded to police custody for a period of eight days. Petitioners were,

thereafter, produced before the learned Magistrate on 16.11.2024 with a requisition by the police to remand them to judicial custody in the present case. However, the learned Magistrate had rejected the said requisition of the police and remanded the petitioners to judicial custody in the original case i.e., Crime No.248/2024.

8. After completing investigation in Crime No.248/2024, charge sheet was filed and the case was committed to the jurisdictional Sessions Court and numbered as S.C.No.33/2025. In Crime No.129/2024, after the charge sheet was filed, the case was committed to the jurisdictional Sessions Court and numbered as S.C.No.9/2025. Petitioners had filed regular bail application before the learned Sessions Judge in S.C.No.33/2025 and also in S.C.No.9/2025. In S.C.No.33/2025 arising out Crime No.248/2024 registered by Tavarekere Police Station, petitioners were granted bail and on complying the bail conditions, they were directed to be released from jail, and accordingly, accused no.2 was released on 25.04.2025 and accused no.1 was released on 29.04.2025.

9. The bail application filed by the petitioners in S.C.No.9/2025 arising out of Crime No.129/2024 registered by Madanayakanahalli Police Station was rejected on 03.05.2025. As on the said date, petitioners who were in judicial custody in S.C.No.33/2025 were already released from jail. In other words, as on the date of rejection of the bail application of petitioners in S.C.No.9/2025, they were not in custody. After realizing the same, at the request of the police, on the same day non-bailable warrant was issued against the petitioners by the learned Sessions Judge in S.C.No.9/2025 returnable by 04.06.2025. The said non-bailable warrant issued against the petitioners was executed and the petitioners were produced before the learned Sessions Judge in S.C.No.9/2025 on 24.05.2025 and on the said date, they were remanded to judicial custody. The bail application filed by them subsequently before the learned Sessions Judge was dismissed as withdrawn.

10. Chapter-XXIV of BNSS, 2023, provides for attendance of persons confined or detained in prisons. Section 302 of BNSS, 2023, which is parimateria to Section 267 of Cr.PC., provides for power to require attendance of prisoners.

11. Section 303 of BNSS, 2023, provides for power of State Government or Central Government to exclude certain persons from operation of Section 302, and Section 304 of BNSS, 2023, provides for officer in charge of prison to abstain from carrying out order in certain contingencies. Section 305 of BNSS, 2023, provides for prisoner to be brought to court in custody. Sections 302, 303, 304 & 305 of BNSS, 2023, reads as under:

> "**302. Power to require attendance of prisoners**
>
> (1) Whenever, in the course of an inquiry, trial or proceeding under this Sanhita, it appears to a Criminal Court,—
>
> (a) that a person confined or detained in a prison should be brought before the Court for answering to a charge of an offence, or for the purpose of any proceedings against him; or
>
> (b) that it is necessary for the ends of justice to examine such person as a witness,
>
> the Court may make an order requiring the officer in charge of the prison to produce such person before the Court answering to the charge or for the purpose of such proceeding or for giving evidence.

(2) Where an order under sub-section (1) is made by a Magistrate of the second class, it shall not be forwarded to, or acted upon by, the officer in charge of the prison unless it is countersigned by the Chief Judicial Magistrate, to whom such Magistrate is subordinate.

(3) Every order submitted for countersigning under sub-section (2) shall be accompanied by a statement of the facts which, in the opinion of the Magistrate, render the order necessary, and the Chief Judicial Magistrate to whom it is submitted may, after considering such statement, decline to countersign the order.

303. Power of State Government or Central Government to exclude certain persons from operation of Section 302

(1) The State Government or the Central Government, as the case may be, may, at any time, having regard to the matters specified in sub-section (2), by general or special order, direct that any person or class of persons shall not be removed from the prison in which he or they may be confined or detained, and thereupon, so long as the order remains in force, no order made under section 302, whether before or after the order of the State Government, shall have effect in respect of such person or class of persons.

(2) Before making an order under sub-section (1), the State Government or the Central Government in the

cases instituted by its central agency, as the case may be, shall have regard to the following matters, namely:—

(a) the nature of the offence for which, or the grounds on which, the person or class of persons has been ordered to be confined or detained in prison;

(b) the likelihood of the disturbance of public order if the person or class of persons is allowed to be removed from the prison;

(c) the public interest, generally.

304. Officer in charge of prison to abstain from carrying out order in certain contingencies

Where the person in respect of whom an order is made under section 302 —

(a) is by reason of sickness or infirmity unfit to be removed from the prison; or

(b) is under committal for trial or under remand pending trial or pending a preliminary investigation; or

(c) is in custody for a period which would expire before the expiration of the time required for complying with the order and for taking him back to the prison in which he is confined or detained; or

(d) is a person to whom an order made by the State Government under section 303 applies,

the officer in charge of the prison shall abstain from carrying out the Court's order and shall send to the Court a statement of reasons for so abstaining:

Provided that where the attendance of such person is required for giving evidence at a place not more than twenty-five kilometres distance from the prison, the officer in charge of the prison shall not so abstain for the reason mentioned in clause (b).

305. Prisoner to be brought to Court in custody

Subject to the provisions of section 304, the officer in charge of the prison shall, upon delivery of an order made under sub-section (1) of section 302 and duly countersigned, where necessary, under sub-section (2) thereof, cause the person named in the order to be taken to the Court in which his attendance is required, so as to be present there at the time mentioned in the order, and shall cause him to be kept in custody in or near the Court until he has been examined or until the Court authorises him to be taken back

> to the prison in which he was confined or detained."

12. Section 187(2) of BNSS, 2023, which provides for dealing with the accused who is produced before the Magistrate by the police, reads as under:

> "187(2) The Judicial Magistrate to whom an accused person is forwarded under this section may, irrespective of whether he has or has no jurisdiction to try the case, after taking into consideration the status of the accused person as to whether he is not released on bail or his bail has not been cancelled, authorise, from time to time, the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole, or in parts, at any time during the initial forty days or sixty days out of detention period of sixty days or ninety days, as the case may be, as provided in sub-section (3), and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Judicial Magistrate having such jurisdiction."

13. The Hon'ble Supreme Court in the case of **DHANRAJ ASWANI VS AMAR S.MULCHANDANI & OTHERS - 2024 INSC 669**, has considered the question of maintainability of an

anticipatory bail application under Section 438 of Cr.PC by an accused who is in custody in a case and apprehends arrest in a different case registered against him, and in the said case, the Hon'ble Supreme Court has held that in the event the accused is not formally arrested and remanded to custody in the second case, even if he is in custody in the first case, he can maintain an application under Section 438 of Cr.PC seeking anticipatory bail. Therefore, it is apparent that if an accused is in custody in one case who is not formally arrested and remanded to custody in the second case, it has to be considered that he is not in custody in the second case and in the event of he being released on bail in the first case, he cannot be detained in jail merely for the reason that a second case is registered against him, but he has to be released from jail in the event he complies the conditions of bail granted to him in the first case.

14. In the case of **M.SHASHIDHARA @ SHASHI & ANOTHER VS STATE OF KARNATAKA - Crl.P.No.1396/2022** disposed of on 11.03.2022, the coordinate bench of this Court has held that custody of an accused who was produced under a body warrant before a court, but not remanded to custody in the said case

and has been granted bail in the original case in which he was remanded to judicial custody, would be illegal and he cannot be detained in custody after he was released on bail in the original case in the event he complies with the bail conditions.

15. The Hon'ble Supreme Court in Dhanraj Aswani's case supra, has considered the two ways of arrest in respect of an accused who is already in custody. In paragraph 41 of the said judgment, the Hon'ble Supreme Court has observed as under:

> "41. It was submitted on behalf of the appellant that a person already in judicial custody in relation to an offence, cannot have a "reason to believe" that he may be arrested on the accusation of having committed a different offence. However, we do not find any merit in the aforesaid submission. There are two ways by which a person, who is already in custody, may be arrested –
>
> a. First, no sooner than he is released from custody in connection with the first case, the police officer can arrest and take him into custody in relation to a different case; and
>
> b. Secondly, even before he is set free from the custody in the first case, the police officer investigating the other offence can formally arrest him and thereafter obtain a

Prisoner Transit Warrant ("P.T. Warrant") under Section 267 of the CrPC from the jurisdictional magistrate for the other offence, and thereafter, on production before the magistrate, pray for remand;

OR

Instead of effecting formal arrest, the investigating officer can make an application before the jurisdictional magistrate seeking a P.T. Warrant for the production of the accused from prison. If the conditions required under 267 of the CrPC are satisfied, the jurisdictional magistrate shall issue a P.T. Warrant for the production of the accused in court. When the accused is so produced before the court in pursuance of the P.T. Warrant, the investigating officer will be at liberty to make a request for remanding the accused, either to police custody or judicial custody, as provided in Section 167(1) of the CrPC. At that time, the jurisdictional magistrate shall consider the request of the investigating officer, peruse the case diary and the representation of the accused and then, pass an appropriate order, either remanding the accused or declining to remand the accused. [See: State v. K.N.

Nehru reported in 2011 SCC OnLine Mad 1984]"

16. In Dhanraj Aswani's case supra, the Hon'ble Supreme Court has observed that a lawful arrest can be made even without actually seizing or touching the body. Actions or words which successfully bring to the notice of the accused that he is under a compulsion and thereafter cause him to submit to such compulsion will also be sufficient to constitute arrest. In paragraphs 51 & 52 of the said judgment, the Hon'ble Supreme Court has observed as under:

"51. The aforesaid decision fortifies the view that the actual seizing or touching of the body of the person to be arrested is not necessary in a case where the arrester by word brings to the notice of the accused that he is under compulsion and thereafter the accused submits to that compulsion. This is in conformity with the modality of the arrest contemplated under Section 46 of the CrPC wherein also it is provided that the submission of a person to be arrested to the custody of the arrester by word or action can amount to an arrest. The essence of the decision in Alderson (supra) is that there must be an actual seizing or touching, and in the absence of that, it must be brought to the notice of the person to be arrested that he is under compulsion, and as a result of such notice, the said person should submit

to that compulsion, and then only the arrest is consummated.

52. As pointed out in the preceding paragraphs, a police officer can formally arrest a person in relation to an offence while he is already in custody in a different offence. However, such formal arrest doesn't bring the accused in the custody of the police officer as the accused continues to remain in the custody of the Magistrate who remanded him to judicial custody in the first offence. Once such formal arrest has been made, the police officer has to make an application under Section 267 of the CrPC before the Jurisdictional Magistrate for the issuance of a P.T. Warrant without delay. If, based on the requirements prescribed under Section 267 of the CrPC, a P.T. Warrant is issued by the jurisdictional Magistrate, then the accused has to be produced before such Magistrate on the date and time mentioned in the warrant, subject to Sections 268 and 269 respectively of the CrPC. Upon production before the jurisdictional Magistrate, the accused can be remanded to police or judicial custody or be enlarged on bail, if applied for and allowed. The only reason why we have delineated the procedure followed in cases where a person already in custody is required to be arrested in relation to a different offence is to negate the reasoning of the Rajasthan, Delhi and Allahabad High Courts that once in custody, it is not possible to re-arrest a person in relation to a different offence. When a person in custody is confronted with a P.T. Warrant obtained in

relation to a different offence, such a person has no choice but to submit to the custody of the police officer who has obtained the P.T. Warrant. Thus, in such a scenario, although there is no confinement to custody by touch, yet there is submission to the custody by the accused based on the action of the police officer in showing the P.T. Warrant to the accused. Thereafter, on production of the accused before the jurisdictional Magistrate, like in the case of arrest of a free person who is not in custody, the accused can either be remanded to police or judicial custody, or he may be enlarged on bail and sent back to the custody in the first offence. A number of decisions have held that although Section 267 of the CrPC cannot be invoked to enable production of the accused before the investigating agency, yet it can undoubtedly be invoked to require production of the accused before the jurisdictional Magistrate, who can thereafter remand him to the custody of the investigating agency. Such an interpretation of the provision would give true effect to the words "other proceedings" as they appear in the text of Section 267 of the CrPC, which cannot be construed to exclude proceedings at the stage of investigation. [See: C. Natesan v. State of Tamil Nadu and Others, 1998 SCC OnLine Mad 931; Ranjeet Singh v. State of Uttar Pradesh, 1995 Cri LJ 3505; State of Maharashtra v. Yadav Kohachade, 2000 Cri LJ 959]."

17. In the case of **CENTRAL BUREAU OF INVESTIGATION, SPECIAL INVESTIGATION CELL-I, NEW DELHI VS ANUPAM J.KULKARNI - (1992)3 SCC 141**, the Hon'ble Supreme Court has observed that even if accused is in judicial custody in connection with the investigation of the earlier case he can formally be arrested regarding his involvement in the different case and associate him with the investigation of that other case and the Magistrate can act as provided under Section 167(2) and the proviso and can remand him to such custody as mentioned therein during the first period of fifteen days and thereafter in accordance with the proviso.

18. In Dhanraj Aswani's case supra, the Hon'ble Supreme Court having referred to Anupam J.Kulkarni's case supra, in paragraph 40, has observed as under:

> "40. The second fallacy in the reasoning of the High Court is that there can be no arrest of an accused in relation to a different offence while he is already in custody in relation to some offence. Although there is no specific provision in the CrPC which provides for the arrest of an accused in relation to an offence while he is already in judicial custody in a different offence, yet this Court explained in Central Bureau of Investigation, Special Investigation Cell-I, New Delhi v. Anupam J.

Kulkarni reported in (1992) 3 SCC 141 that even if an accused is in judicial custody in connection with the investigation of an earlier case, the investigating agency can formally arrest him in connection with his involvement in a different case and associate him with the investigation of that other case. In other words, this Court clarified that even when a person is in judicial custody, he can be shown as arrested in respect of any number of other crimes registered elsewhere in the country. Reliance was placed by this Court on the decision of Punjab & Haryana High Court in S. Harsimran Singh v. State of Punjab reported in 1984 Cri LJ 253 wherein it was held that there is no inflexible bar under the law against the re-arrest of a person who is already in judicial custody in relation to a different offence. The High Court held that judicial custody could be converted into police custody by an order of the Magistrate under Section 167(2) of the CrPC for the purpose of investigating the other offence. The relevant paragraphs of Anupam J. Kulkarni (supra) are extracted hereinbelow:

> "11. A question may then arise whether a person arrested in respect of an offence alleged to have been committed by him during an occurrence can be detained again in police custody in respect of another offence committed by him in the same case and which fact comes to light after the expiry of the period of first fifteen days of his arrest. The learned Additional Solicitor-General submitted that as a result of the

investigation carried on and the evidence collected by the police the arrested accused may be found to be involved in more serious offences than the one for which he was originally arrested and that in such a case there is no reason as to why the accused who is in magisterial custody should not be turned over to police custody at a subsequent stage of investigation when the information discloses his complicity in more serious offences. We are unable to agree. In one occurrence it may so happen that the accused might have committed several offences and the police may arrest him in connection with one or two offences on the basis of the available information and obtain police custody. If during the investigation his complicity in more serious offences during the same occurrence is disclosed that does not authorise the police to ask for police custody for a further period after the expiry of the first fifteen days. If that is permitted then the police can go on adding some offence or the other of a serious nature at various stages and seek further detention in police custody repeatedly, this would defeat the very object underlying Section 167. However, we must clarify that this limitation shall not apply to a different occurrence in which complicity of the arrested accused is disclosed. That would be a different transaction and if an accused is in judicial custody in connection with one case and to enable the police

to complete their investigation of the other case they can require his detention in police custody for the purpose of associating him with the investigation of the other case. In such a situation he must be formally arrested in connection with other case and then obtain the order of the Magistrate for detention in police custody. The learned Additional Solicitor-General however strongly relied on some of the observations made by Hardy, J. in Mehar Chand case [(1969) 5 DLT 179] extracted above in support of his contention namely that an arrested accused who is in judicial custody can be turned over to police custody even after the expiry of first fifteen days at a subsequent stage of the investigation in the same case if the information discloses his complicity in more serious offences. We are unable to agree that the mere fact that some more offences alleged to have been committed by the arrested accused in the same case are discovered in the same case would by itself render it to be a different case. All these offences including the so-called serious offences discovered at a later stage arise out of the same transaction in connection with which the accused was arrested. Therefore there is a marked difference between the two situations. The occurrences constituting two different transactions give rise to two different cases and the exercise of power under Sections 167(1) and (2) should be in consonance with the

object underlying the said provision in respect of each of those occurrences which constitute two different cases. Investigation in one specific case cannot be the same as in the other. Arrest and detention in custody in the context of Sections 167(1) and (2) of the Code has to be truly viewed with regard to the investigation of that specific case in which the accused person has been taken into custody. In S. Harsimran Singh v. State of Punjab [1984 Cri LJ 253 : ILR (1984) 2 P&H 139] a Division Bench of the Punjab and Haryana High Court considered the question whether the limit of police custody exceeding fifteen days as prescribed by Section 167(2) is applicable only to a single case or is attracted to a series of different cases requiring investigation against the same accused and held thus: (p. 257, para 10-A)

> "We see no inflexible bar against a person in custody with regard to the investigation of a particular offence being either re-arrested for the purpose of the investigation of an altogether different offence. To put it in other words, there is no insurmountable hurdle in the conversion of judicial custody into police custody by an order of the Magistrate under Section 167(2) of the Code for investigating another offence. Therefore, a rearrest or

second arrest in a different case is not necessarily beyond the ken of law."

This view of the Division Bench of the Punjab and Haryana High Court appears to be practicable and also conforms to Section 167. We may, however, like to make it explicit that such re-arrest or second arrest and seeking police custody after the expiry of the period of first fifteen days should be with regard to the investigation of a different case other than the specific one in respect of which the accused is already in custody. A literal construction of Section 167(2) to the effect that a fresh remand for police custody of a person already in judicial custody during investigation of a specific case cannot under any circumstances be issued, would seriously hamper the very investigation of the other case the importance of which needs no special emphasis. The procedural law is meant to further the ends of justice and not to frustrate the same. It is an accepted rule that an interpretation which furthers the ends of justice should be preferred. It is true that the police custody is not the be-all and end-all of the whole investigation but yet it is one of its primary requisites particularly in the investigation of serious and heinous crimes. The legislature also noticed this and permitted limited police custody. The period of first fifteen days should naturally apply in respect of the investigation of that specific case for which the accused is held in

custody. But such custody cannot further held to be a bar for invoking a fresh remand to such custody like police custody in respect of an altogether different case involving the same accused.

xxx xxx xxx

13. … There cannot be any detention in the police custody after the expiry of first fifteen days even in a case where some more offences either serious or otherwise committed by him in the same transaction come to light at a later stage. But this bar does not apply if the same arrested accused is involved in a different case arising out of a different transaction. Even if he is in judicial custody in connection with the investigation of the earlier case he can formally be arrested regarding his involvement in the different case and associate him with the investigation of that other case and the Magistrate can act as provided under Section 167(2) and the proviso and can remand him to such custody as mentioned therein during the first period of fifteen days and thereafter in accordance with the proviso as discussed above. …"

(Emphasis supplied)

19. From the aforesaid, this Court has arrived at the following conclusions:-

1. An accused who is in custody in earlier case can be arrested formally by police in a different case and orders can be sought from the jurisdictional court to issue body warrant/PT warrant under Section 302 of BNSS, 2023.

2. When body warrant is issued by the jurisdictional court, the accused has to be produced before the said court on the date and time mentioned in the warrant, subject to Sections 303 & 304 of BNSS, 2023.

3. The court before which accused is produced, acting under Section 187(2) of BNSS, 2023, can either remand the said accused to police custody or judicial custody. The said court also can release him on bail if applied for and allowed.

4. After expiry of the police custody, when such an accused is produced before the jurisdictional court with a requisition to remand him to judicial custody in the said case, the court if satisfied can formally remand such accused to judicial custody in the said case before returning the said accused to custody in the original case from which he is produced under body warrant before the

said court. If an accused who is produced under body warrant in the second case is remanded to custody in the said case, the only remedy available to him is to seek regular bail.

5. If the court before which an accused is produced under body warrant refuses to remand him to judicial custody, and on the other hand remands him to judicial custody in the original case and in the event he is enlarged on bail in the original case, after compliance of conditions of bail order, he has to be released from jail and he cannot be detained merely for the reason that body warrant was issued against him in the second case.

6. If the accused who is produced under body warrant in the second case is remanded to judicial custody in the said case, even if the said accused is enlarged on bail in the original case, the jail authorities cannot release him from jail without any release order in the second case from the competent court.

20. In the present case, petitioners have been enlarged on bail in S.C.No.33/2025 which arises from Crime No.248/2024 registered by Tavarekere Police Station. In S.C.No.9/2025 arising from Crime No.129/2024, at any stage petitioners were not arrested and remanded to judicial custody. Therefore, their regular bail application in S.C.No.9/2025 was not at all

maintainable. As on the date of their rejection of regular bail application by the jurisdictional Sessions Court in S.C.No.9/2025 arising from Crime No.129/2024 registered by Madanayakanahalli Police Station, the petitioners who were granted bail in S.C.No.33/2025 were already released from jail. However, the same was not brought to the notice of the learned Sessions Judge in S.C.No.9/2025 and it appears that under the said circumstances, regular bail application filed by the petitioners in S.C.No.9/2025 was rejected on merits though it was actually not maintainable. Having realized the mistake committed, the learned Sessions Judge thereafter on the very same date, issued non-bailable warrant to the accused in S.C.No.9/2025 and subsequently the presence of accused nos.1 & 2 was secured and they were produced before the court on 24.05.2025 and on the said date, they were remanded to judicial custody.

21. Since the petitioners are now in custody in S.C.No.9/2025 pursuant to the execution of non-bailable warrant issued against them by the jurisdictional court, it cannot be said that their custody is illegal. The regular bail application filed on

behalf of the petitioners after they were remanded to judicial custody in S.C.No.9/2025 has been dismissed as withdrawn. Therefore, without approaching the Trial Court, the petitioners could not have approached this Court under Section 439 of Cr.PC. Accordingly, this petition is dismissed reserving liberty to the petitioners to file fresh bail application before the Trial Court in S.C.No.9/2025. If such bail application is filed, the same shall be considered on merits and disposed of, as expeditiously as possible.

22. The Registry is directed to take necessary steps to circulate this order to all the judicial officers in the District Judiciary, and also to the judicial academy.

Sd/-
(S VISHWAJITH SHETTY)
JUDGE

KK