

Karnataka High Court Hanamant S/O Sangappa Pujari vs The State Of Karnataka R/By Addl ... on 13 January, 2016 Author: Aravind Kumar 1

IN THE HIGH COURT OF KARNATAKA

KALABURAGI BENCH

DATED THIS THE 13TH DAY OF JANUARY 2016

BEFORE

THE HON'BLE MR.JUSTICE ARAVIND KUMAR

CRIMINAL PETITION No.201069/2015

Between:

Hanamant S/o Sangappa Pujari Age: 20 years, Occ: Driver R/o Abbihal Village Tq.Muddebihal, Dist.Vijayapur ... Petitioner

(By Sri Shivanand V. Pattanashetti, Advocate)

And:

The State of Karnataka R/by Addl. SPP Kalaburagi Bench (Through Muddebihal P.S. Vijayapur) ... Respondent

(By Sri Prakash Yeli, Addl. SPP)

This Criminal Petition is filed under Section 439 of

Cr.P.C. praying to grant the regular bail to the petitioner in Spl. POCSO Case No.17/2015 (Muddebihal Police Station Crime (FIR) No.93/2015) pending on the file of II Addl. Sessions Judge, Vijayapur, which is registered for the offence P/U/S 376(2) (N) of IPC & 3(A) r/w 6 POCSO Act. 2

This Criminal Petition coming on for Orders this day,

the Court made the following:

ORDER

Heard Sri Shivanand Pattanshetti, learned counsel appearing for petitioner and learned Addl. SPP for respondent and perused the records. 2. The victim girl Ms.Sunanda lodged a compliant on 30.04.2015 before Muddebihal Police Station alleging that on 30.04.2015 while she was sleeping in her house at about 3:00

a.m. accused person came to her house by opening the door and forcibly caught hold of her, closed her mouth and committed rape on her. She has stated that her grandmother who sleeping in the ground floor, woke up on account of sound of cot and commotion and saw accused person having sexual intercourse with her granddaughter aged 14 years and she tried to catch him, but was unable to do so since he ran away from the spot and as such she has lodged complaint against accused person for alleged rape. 3. It is contention of Sri Shivanand Pattan-shetti, learned counsel appearing for petitioner that opinion in the FSL report is negative and petitioner has been falsely implicated and there being no report to indicate that victim girl has had any sexual intercourse in the recent past is a strong factor to disbelieve theory of the prosecution and as such prays for petitioner be enlarged on bail. 4. Per contra, learned Addl. SPP would draw the attention of the Court to the statement of eyewitness namely the grandmother of victim girl who is said to have seen the accused-petitioner having sexual intercourse with her granddaughter in early hours on 30.04.2015 and victim girl being aged about 14 years Section 6 of the POCSO Act is attracted and alleged offence under the said Act is punishable with 10 years rigorous imprisonment. Hence, he contends petitioner is not entitled for bail and seeks for rejection of the petition. 5. Having heard learned counsel appearing for parties and on perusal of the records, which has been made available by learned Addl. SPP, tenor of the complaint would indicate that complaint had been lodged on 30.04.2015 at about 12:30 hours. Alleged incident of rape on the victim girl is said to have taken place at 3:00 a.m. on 29/30.04.2015. It has been alleged in the complaint by the victim girl that she was sleeping in the Atta (upstairs) of her house and her grandmother and brother were sleeping in the ground floor and at about 3:00 a.m. petitioner-accused entered their house and after gagging her mouth, he is said to have raped the victim girl. On account of the commotion or sound of the cot that was emanating from the upstairs, grandmother who was sleeping in the ground floor is said to have woken up and found that accused- petitioner was having sexual intercourse with her granddaughter. However, the statement made by the victim girl under Section 164 of Cr.P.C. before the Jurisdictional Magistrate is contrary to what has been stated in the complaint. A perusal of the said statement would indicate that to the extent of the accused- petitioner entering the house of the victim girl at 3:00 a.m. and forcefully having sexual intercourse with her is in consonance with the allegation made in the complaint. However, she has also further stated that her grandmother who woke up had come up with a battery(torch) to find out as to what was the commotion or sound that was taking place and at that point of time accused person ran away and hid himself in Muthya temple and thereafter he was identified by her grandmother and tied in the temple premises. She has also stated in her statement made before the Magistrate that in the morning her father who came to know about the incident had come to the temple and had slapped the accused and thereafter victim girl is said to have accompanied the petitioner to his house since he had assured and promised her to marry but was turned down by other family members of petitioner and thrown out from their house. However, these aspects have not been stated by the victim girl in the complaint and this has

to be explained by the prosecution during the course of trial. 6. Yet another factor which sways in favour of the petitioner for being enlarged on bail is that the FSL report does not depict of any recent sexual intercourse having been had by the victim girl. In other words the FSL report is in the negative and as such this Court is of the considered view that petitioner is entitled for being granted bail. Hence, I proceed to pass the following: ORDER a) Criminal Petition is hereby allowed. b) Petitioner is ordered to be enlarged on bail in Spl. POCSO Case No.17/2015 on the file of II Addl. Sessions Judge, Vijayapura on executing a personal bond for a sum of Rs.1,00,000/- (Rupees One Lakh Only) with one surety for the likesum and subject to following conditions: i) Petitioner shall appear before the jurisdictional Court on all the dates of hearing without fail unless there are any exceptional circumstances; ii) Petitioner shall not terrorize or tamper with the prosecution witnesses in any manner whatsoever; iii) Petitioner shall not leave jurisdiction of Court without express permission; In the event any of the conditions herein being violated, the prosecution would be at liberty to seek for cancellation of bail. Sd/- JUDGE sdu