

Karnataka High Court Prasanna K vs State By K R Puram on 10 March, 2014
Author: Budihal R.B. 1

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 10TH DAY OF MARCH 2014

BEFORE

THE HON'BLE MR. JUSTICE BUDIHAL R.B.

CRIMINAL PETITION No.378/2014

BETWEEN:

Prasanna. K, S/o. Kalegowda, Aged about 23 years, No.586/55/1, Kuyampu Road, Udayanagara Tin Factory, Bangalore-560 036. .. PETITIONER

(By Sri. Sandeep Katti, Adv.)

AND:

State by K.R. Puram Police Station, Bangalore Rep. by SPP, High Court of Karnataka, Bangalore-560 001. .. RESPONDENT

(By Sri. K. Nageshwarappa, HCGP)

This criminal petition is filed under Section 439 of the

Cr.P.C. praying to enlarge the petitioner on bail in C.C.No.53052/2013 pending before the X.A.C.M.M., Bangalore and in Cr. No.421/2013 of K.R. Puram P.S., Bangalore for the offences punishable under Sections 363 of IPC. 2

This petition coming on for Orders this day, the Court

made the following :

ORDER

This petition is filed by the petitioner-accused under Section 439 of Cr.P.C. seeking his release on bail of the offences punishable under Sections 363 of IPC registered in respondent Police Station Crime No.421/2013. 2. Brief facts as per the averments in the complaint are that the petitioner/accused was in love with the alleged victim Kumari Tasnima Taj @ Hina. It is further alleged by the prosecution that on 08.08.2013, at around 10.30 p.m., when the above said victim was standing outside her house after having fought with her mother, the petitioner is said to have come near the house of the victim and requested her to

come with him, as he wanted to talk to her personally. It is further alleged that the petitioner is said to have threatened the victim that he would commit suicide if she does not accompany him. Thus, under the said circumstances, the victim is alleged to have accompanied the petitioner to his room at Udayanagar. It is further alleged by the prosecution that the petitioner forcefully committed rape on the victim against her wish and threatened to kill her, if she would disclose the same to anyone and continued to commit threat of rape against her wish till 19.08.2013. Thereafter, from 19.08.2013 till 28.08.2013, the petitioner and above said victim have been touring around Beluru, Dharmastala, Chikamagalur and other places. On 28.08.2013, the petitioner and victim had returned to Bangalore and they were waiting near Basaveshwara Circle, Bangalore. The Constables of the respondent police is said to have nabbed the petitioner and the alleged victim and produced them before the investigating officer. On the basis of the said complaint, the case was registered by the respondent police. 3. I have heard the learned Counsel appearing for the petitioner-accused and the learned High Court Government Pleader appearing for the respondent-State. 4. Learned Counsel for the petitioner, during the course of the arguments, submitted that so far as the correct date of birth of the victim girl is concerned, no authenticated document has been produced by the prosecution. The learned Counsel submitted that the date of birth certificate issued by the person has not been cited as a charge sheet witness, where as the other person has been cited as charge sheet witness. The learned Counsel submitted that looking to the materials on record, they will not go to show that the present petitioner had kidnapped the victim girl and had committed the sexual intercourse against her wish and will. The learned Counsel further submitted that the materials collected during investigation also go to show that the victim girl is above the age of 18 years and she voluntarily accompanied the petitioner and they were about to marry each other. Because of the reasons that the petitioner and victim girl belong to different community, it was not possible for them to get married. The learned Counsel further submitted that even the medical report is not supporting the case of the prosecution. Looking to the medical opinion, the Doctor has opined that the victim was subjected to sexual intercourse four days or one week prior to the examination. The learned counsel further submitted that it is not the case of prosecution that within four days or within a week, the victim was subjected to such intercourse by the petitioner. The learned Counsel further submitted that as the victim girl belongs to Muslim community, even according to the Mohammadan Personal Law, after attaining puberty, a girl is entitled to have marriage with a bridegroom of her choice. In this connection, the learned Counsel relied upon the materials Articles 250, 251 and 259 and submitted that even looking to these legal aspect also, there cannot be the offence of rape against the petitioner. It is submitted that even if the certificate issued by the school authority and the date mentioned is taken for the purpose of appreciation and arguments, in that connection, benefit of margin is also to be given to the petitioner and he is to be granted bail. Investigation of the case is completed and the charge sheet is also filed. Since the from the date of arrest, the petitioner is in custody and hence, submitted to allow the petition.

5. As against this, learned High Court Government Pleader appearing for the respondent-State, during the course of the arguments, submitted that looking to the statement of the victim girl, there is a clear allegation about the kidnapping and commission of alleged rape on her by the petitioner. The learned HCGP submitted that as on the date of the alleged incident, the victim girl was minor, below the age of 18 years and hence, her statement goes to show that the offence has been committed against her. Hence, the learned HCGP submitted that at this stage, the petitioner is not entitled to be released on bail. 6. I have perused the averments made in the bail petition, FIR, complaint and the other materials on record. I have also perused the order passed by the lower Court and the statement of witnesses produced along with the petition by the learned Counsel for the petitioner. It is no doubt true that at the first instance the complaint was given by the father of the victim girl to the police informing the police that his daughter aged about 16 years is missing and he raised suspicion that she has gone with some person. Subsequently, when the victim girl as well as the petitioner were caught hold by the police and produced before the investigating officer, the statement of victim girl was recorded, wherein she has clearly stated that on 8.8.2013, when she came out of her house, the petitioner came there and asked her to accompany him and she refused to accompany him. It is further stated in her statement that petitioner threatened her to accompany him and if she do not accompany him, he is going to commit suicide. Because of that reason, the victim girl accompanied the present petitioner. Under the provisions of IPC, to commit an offence of kidnapping, it is not only kidnapping a minor girl, but a word 'enticing' is also included in the provision. Looking to the statement of the victim girl, it clearly goes to show that the petitioner has induced the victim girl to accompany him to the places he has taken her. The statement further goes to show that it was from 8.8.2013 to 19.8.2013, the petitioner committed forcible sexual intercourse on her. The medical report issued by the Ambedkar Medical College produced as per Annexure-D10 goes to show that spermatozoa are seen in the smears. Looking to the medical report and local examination of the victim girl as well as the petitioner, there is a clear mention by the Doctor that there are signs to show that they were involved in the sexual intercourse. Regarding contention of the learned Counsel for the petitioner that victim was subjected to sexual intercourse four days or one week prior to her examination as well as the petitioner, but such mathematical calculation cannot be done. At this stage, the Court has to see the materials prima facie as to whether the medical report clearly goes to show that there are signs after local examination of both the petitioner as well as the victim girl that they are involved in the sexual act. 7. Regarding contention of the learned Counsel the petitioner that in so far as the Mohammedan law is concerned, a girl after attaining puberty is having option to have marriage of her choice, that may be so but in this case. The allegation is that the petitioner has kidnapped the victim girl and against her wish and will he has committed the rape on her. Looking to the allegations, there are prima facie materials placed by the prosecution. 8. Looking to the date of birth certificate issued by the school authorities, the birth date of the victim girl is confirmed as 16.11.1996. This clearly goes to show that on the date

of alleged incident, she was minor and below the age of 18 years. Looking to the materials at this stage, they go to show prima facie materials about involvement of the petitioner in the commission of the alleged offence. The offence under Section 376 of IPC is a serious offence having vast consequence on the society at large. Therefore, it is not a fit case to exercise discretion in favour of the petitioner. The petition is accordingly rejected. Sd/- JUDGE Cs/-