

Mutappa S/O Mailarappa Bedavati vs The State Of Karnataka on 29 January, 2025

Author: Ravi V.Hosmani

Bench: Ravi V.Hosmani

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NC: 2025:KHC-D:1764
CRL.P No. 100004 of 2025

IN THE HIGH COURT OF KARNATAKA,
DHARWAD BENCH

DATED THIS THE 29TH DAY OF JANUARY, 2025

BEFORE

THE HON'BLE MR. JUSTICE RAVI V.HOSMANI

CRIMINAL PETITION NO.100004 OF 2025
[439(CR.PC)/483(BNSS)]

BETWEEN:

MUTAPPA S/O. MAILARAPPA BEDAVATI,
AGE: 25 YEARS, OCC. DRIVER,
R/O. KALTAVARGERI VILLAGE,
TQ. KOPPAL, DIST. KOPPAL-583279.

... PETITIONER

(BY SRI H.N.GULARADDI, ADVOCATE)

AND:

1. THE STATE OF KARNATAKA
THROUGH MUNRABAD POLICE STATION,
REPRESENTED BY STATE PUBLIC PROSECUTOR,
HIGH COURT OF KARNATAKA,
DHARWAD BENCH, AT DHARWAD-580011.

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2. GOVINDAPPA S/O. YAMNAPPA KURI,

+0530

AGE: 48 YEARS, OCC. AGRICULTURE,
R/O. KALTAVARGERI VILLAGE, TQ. KOPPAL,
DIST. KOPPAL-583279.

... RESPONDENTS

(BY SMT. GIRIJA S.HIREMATH, HCGP FOR R1;
R2-NOTICE SERVED)

THIS CRIMINAL PETITION IS FILED U/S 439 OF CR.P.C. (483 OF BNSS), SEEKING TO ALLOW THE PETITIONER AND GRANT REGULAR BAIL AND ENLARGE THE PETITIONER ON REGULAR BAIL IN MUNIRABAD P.S. CRIME NO.125/2024 FOR THE OFFENCES PUNISHABLE U/S. 137(2) OF BNSS 376(2)(N) OF I.P.C AND SECTION 6 OF POCSO ACT, PENDING ON THE FILE OF ADDL.DISTRICT AND SESSIONS JUDGE FTSC-I, KOPPAL IN SPL.S.C. POCSO NO.54/2024.

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

ORAL ORDER

(PER: THE HON'BLE MR. JUSTICE RAVI V.HOSMANI) This petition is filed under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023 (for short, 'BNSS') for grant of regular bail in Crime no.125/2024 by Munirabad Police Station for offences punishable under Sections 137(2), 376 (2) (n) of Bharatiya Nyaya Sanhita, 2023 (for short, 'BNS') and Section 5(l) read with Section 6 of Protection of Children from Sexual Offences Act, 2012 ('POCSO Act' for short) by accused (petitioner).

2. Sri H.N.Gularaddi, learned counsel for petitioner submitted, petitioner was 25 year old agricultural coolie and permanent resident of Kaltavargeri village, Koppal Taluk having deep roots in society and without any criminal antecedents, who was falsely implicated in complaint. It was submitted, case of prosecution even as per complaint was that father of victim, Sri Govindappa Kuri alleged that he along with his wife and children were residing at Kaltavargeri village surviving by doing coolie work. Since both complainant as well as his wife were NC: 2025:KHC-D:1764 going for MGNREGA coolie work, they had asked their daughter to bring lunch for them. That on 13.07.2024 when they did not receive lunch, and were returning home, their younger daughter came to them crying stating that petitioner had forcibly got her elder sister (victim) to board his motorcycle and took her away. When she could not be traced even after search, complaint was filed and registered as Crime no.125/2024 for offence under Section 137 (2) of BNS.

3. It was further stated, after tracing of victim on 14.07.2024 at Kappatagudda, her statement was recorded by police, wherein she stated that petitioner was her elder brother's friend, whom she knew and later they fell in love with each other. And after completion of her SSLC, she was staying at

home doing household work. On 15.12.2023 at 1:30 p.m. and thereafter 2-3 times, when she was alone at home, petitioner had come there and sought to be intimate with her by stating he would marry her, get her educated etc., she had refused as she was still minor. But, he forced her to have sexual intercourse. Thereafter on 13.07.2024, when she along with her younger sister were carrying food to her parents, at 12:00 p.m., petitioner met them at Bolabandi and despite her NC: 2025:KHC-D:1764 opposition, forcibly got her to board motorcycle and took her to Kappatagudda, where they slept in a temple. At about 1:00 a.m. in night, he had sexual intercourse with her forcibly in a nearby field.

4. It was further submitted in her statement recorded under Section 183 (5) of BNS, victim had reiterated that petitioner and victim were in love with each other apart from repeating contents of her statement. It was submitted, fact that victim had never complained about alleged physical relationship prior to filing of complaint herein would indicate that same was with her consent. In view of same, petitioner could not be alleged to have committed offences as alleged. It was submitted, respondent no.1 had completed investigation and filed charge-sheet on 02.09.2024, whereas petitioner was in custody since date of his arrest on 14.07.2024. As he would not be necessary for custodial interrogation, and as prosecution was seeking to examine 36 witnesses in support of charges, conclusion of trial was likely to be delayed. On above grounds sought for regular bail.

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5. Smt.Girija S. Hiremath, learned High Court Government Pleader on other hand sought to oppose petition. It was submitted, offences alleged against petitioner were under Section 376 (2) (n) and Section 6 of POCSO Act which were punishable with punishment of imprisonment upto 20 years. Victim had implicated petitioner both in her statement recorded under Section 161 as well as under Section 164 of CrPC. As per SSLC marks card her date of birth was 15.08.2007 and as on date of first incident i.e. on 15.12.2023, she would be 16 years and 4 months old and as on 13.07.2024, she would be 16 years 10 months. It was submitted, Hon'ble Supreme Court in case of Independent Thought Vs. Union of India and another reported in (2017) 10 SCC 800, had held consent would not be a defence available in case of offences alleged under POCSO Act, where victim was below 18 years of age. It was submitted, since petitioner and victim were from same village, there was every likelihood of petitioner seeking to contact victim and influence her and other prosecution witnesses and therefore sought for rejection of bail petition.

6. Heard learned counsel.

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7. Though notice was issued to complainant - respondent no.2, he has remained served without being represented.

8. Only point that would arise for consideration is:

"Whether petitioner is entitled for regular bail on conditions?"

9. As stated above, petitioner is alleged to have committed offences under Section 376 (2) (n) of BNS and Section 6 of POCSO Act, which carry maximum sentence of imprisonment of upto 20 years. Contents of statement of victim recorded under Section 161 as well as under Section 164 of CrPC would indicate that petitioner had sexual intercourse with victim repeatedly despite her opposition by promising marriage. However victim had also stated that petitioner and victim were in love with each other. While considering bail application in case of offences under POCSO Act, High Court of Delhi in case of Dharmander Singh v. State (Government of NCT of Delhi), reported in 2020 SCC OnLine Del 1267, identified various factors which could be taken for consideration while examining claim for bail in case of offences under POCSO, which are as follows:

NC: 2025:KHC-D:1764 "77. Though the heinousness of the offence alleged will beget the length of sentence after trial, in order to give due weightage to the intent and purpose of the Legislature in engrafting section 29 in this special statute to protect children from sexual offences, while deciding a bail plea at the post-charge stage, in addition to the nature and quality of the evidence before it, the court would also factor in certain real life considerations, illustrated below, which would tilt the balance against or in favour of the accused :

a. the age of the minor victim : the younger the victim, the more heinous the offence alleged;

b. the age of the accused : the older the accused, the more heinous the offence alleged;

c. the comparative age of the victim and the accused : the more their age difference, the more the element of perversion in the offence alleged;

d. the familial relationship, if any, between the victim and the accused : the closer such relationship, the more odious the offence alleged;

e. whether the offence alleged involved threat, intimidation, violence and/or brutality;

f. the conduct of the accused after the offence, as alleged;

g. whether the offence was repeated against the victim; or whether the accused is a repeat offender under the POCSO Act or otherwise;

h. whether the victim and the accused are so placed that the accused would have easy access to the victim, if enlarged on bail : the more the access, greater the reservation in granting bail;

- i. the comparative social standing of the victim and the accused : this would give insight into NC: 2025:KHC-D:1764 whether the accused is in a dominating position to subvert the trial;
- j. whether the offence alleged was perpetrated when the victim and the accused were at an age of innocence : an innocent, though unholy, physical alliance may be looked at with less severity;
- k. whether it appears there was tacit approval-in- fact, though not consent-in-law, for the offence alleged;
- l. whether the offence alleged was committed alone or along with other persons, acting in a group or otherwise;
- m. other similar real-life considerations."

10. Applying said ratio to facts of case, it is seen petitioner was aged 25 years whereas age of victim is 16 years 4 months. As per victim's statement, petitioner was her elder brother's friend who used to often visit their home. Difference of age between petitioner and victim would be around 9 years and does not indicate any element of grave perversion. However, incident did not occur during age of innocence either. Medical Examination Report does not indicate any injury which would be indicative of use of physical violence or brutality. Petitioner's submission that there were no criminal antecedents has not been denied or disputed. Merely on ground that petitioner was friend of victim's elder brother would not imply NC: 2025:KHC-D:1764 easy excess to victim. There is also no material to indicate that petitioner would be of such social standing vis-à-vis victim so as to be in a dominating position as would subvert trial. And except petitioner, no other person is involved and this is not case of rape by a group.

11. On an overall consideration of above factors and taking note of fact that investigation is completed and charge- sheet is filed and accused has been in custody for nearly six months as undertrial, it would be appropriate to grant bail by imposing stringent conditions as would mitigate concerns of prosecution. Point for consideration is therefore answered in affirmative. Hence following;

ORDER

| | | | | |
|-------------|----|-----------|--------------------|----|
| Petition | is | allowed. | Petitioner/accused | is |
| ordered to | be | enlarged | on bail in Crime | |
| no.125/2024 | of | Munirabad | Police Station for | |

offences punishable under Sections 137 (2), 376 (2) (n) of BNS and Section 5(l) read with Section 6 of POCSO Act, subject to following conditions:

a) He shall execute a personal bond in a sum of Rs.1,00,000/- with two sureties for likesum to satisfaction of trial Court.

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b) He shall not attempt to contact directly or indirectly personally or through any instrument either victim or any other prosecution witnesses.

c) He shall make himself available for purpose of investigation as and when required and he shall co-operate with investigation.

d) He shall not threaten, tamper with or influence prosecution witnesses, either directly or indirectly.

e) He shall not indulge in any criminal activities.

f) He shall be regular in attending Court proceedings.

g) He shall not leave jurisdiction of Koppal District without prior permission.

h) Violation of any of conditions would entitle cancellation of bail.

i) It is clarified that views expressed are prima facie and shall not influence final outcome after trial.

SD/-

(RAVI V.HOSMANI) JUDGE CLK CT:PA