



CRL.P No. 102294 of 2022

IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 12TH DAY OF SEPTEMBER 2022

BEFORE

THE HON'BLE MR JUSTICE SHIVASHANKAR AMARANNAVAR

CRIMINAL PETITION NO. 102294 OF 2022

BETWEEN:

RAJKUMAR S/O DONDIBA TAKALE
AGE. 46 YEARS,
OCC. GOVERNMENT EMPLOYEE,
R/O. PLOT NO. 53,
VIDYA NAGAR, BELAGAVI 590001

...PETITIONER

(BY SRI. JAGADISH PATIL, ADVOCATE)

AND:

THE STATE OF KARNATAKA
THROUGH INSPECTOR,
APMC YARD POLICE STATION,
REPTD. BY STATE PUBLIC PROSECUTOR,
SPP OFFICE,
HIGH COURT OF KARNATAKA,
DHARWAD BENCH, DHARWAD.

...RESPONDENT

(BY SRI.V.M. BANAKAR, ADL. SPP
SRI. VIJAY S. CHINIWAR, ADV. FOR VICTIM)



THIS CRIMINAL PETITION IS FILED U/S 438 OF CR.P.C.,
SEEKING TO ALLOW THIS CRIMINAL PETITION AND PASS AN
ORDER TO RELEASE THE PETITIONER/ACCUSED ON BAIL IN
THE EVENT OF HIS ARREST IN CONNECTION WITH APMC YARD
POLICE STATION CR.NO.108/2022 ON THE FILE OF THE JMFC
IV COURT, BELAGAVI AT BELAGAVI, FOR THE OFFENCES
PUNISHABLE U/S 342, 354, 366, 376(2) (n), 312, 201, 420,
504, 506 AND 509 OF IPC AND SECTION 66(E), 67 AND 67(A)
OF INFORMATION TECHNOLOGY ACT, 2000.



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THIS CRIMINAL PETITION COMING ON FOR ORDERS
THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

This petition is filed by the accused under Section 438 of The Code of Criminal Procedure, 1973 (hereinafter referred to as the 'Cr.P.C.', for brevity) seeking anticipatory bail in APMC Yard Police Station Crime No.108/2022 registered for the offences punishable under Sections 342, 354, 366, 376(2)(n), 312, 201, 420, 504, 506 and 509 of the Indian Penal Code (hereinafter referred to as 'IPC', for brevity) and Sections 66(E), 67 and 67(A) of the Information Technology Act, 2000 (hereinafter referred to as 'IT Act', for brevity).

2. The case of the prosecution is that, the victim lady aged about 28 years, has filed the complaint against the petitioner. It is stated that, during December 2020, the petitioner while working at Bengaluru had become acquainted with the victim lady, who introduced herself as a software engineer



engaged in social activities and also running NGO by name NAVYA foundation and is a resident of Channapatna, Ramanagara district. The victim lady developed close relationship with the petitioner. Both used to share their emotions with each other and subsequently, the said victim lady met the petitioner on several occasions at various places and had also visited the petitioner's house at Belagavi. It is further stated that the petitioner married this victim lady suppressing his earlier marriage and having 3 children. It is alleged that the petitioner lead marital life with the victim lady and secured her to his residence at Belagavi to stay with him during December 2021. It is alleged that, the petitioner on 03.01.2022 snatched her mobile, assaulted and put her in a room and on 4th January he took her to the mango grove near Ganeshpur and forcibly recorded the video and uploaded the same in the social media and on January 4, 2022, by threatening her showing knife, he took her signature on the blank papers and



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she has complained the same before the APMC Yard Police where the police officials advised both of them not to file complaint against each other and to settle the matter. Thereafter also, the petitioner has assaulted her in front of SGP Engineering College and she went to Belagavi Government hospital and has registered a Medico Legal case. The petitioner did not respond to the phone calls of the victim and if she made a call from other mobile, he abused her in filthy language. He has suppressed his earlier marriage. He took her to his house, where her first wife Rajeshwari raised objections. Thereafter, he made her to stay in resorts, lodge and Government guest house. He had given her tali, ring and clothes as he has given them to his first wife. The neighbours have witnessed her stay, for a week, in the house of the petitioner. When she became pregnant and when she was staying in Sankam hotel, in December 2021, he got aborted with the help of the Doctor by giving tablets. He has recorded the



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video of their private acts and she has approached the Mahila Police, Belagavi, who secured him and he told that, he cannot continue the relationship with her. She has made a request to the police to get repayment of Rs.5,00,000/-, gold chain and gold bracelet given to the petitioner and he has given back in the presence of the police officials cash of Rs.3,00,000/- and D.D. of Rs.2,00,000/-. He has uploaded her nude photos and obscene videos in social media which affected her character. The said complaint came to be registered in Crime No.108/2022 by APMC Yard Police Station, Belagavi, for the offences under Sections 342, 354, 366, 376(2)(n), 312, 201, 420, 504, 506 and 509 of IPC and Sections 66(E), 67 and 67(A) of IT Act. The petitioner apprehending his arrest has filed Criminal Miscellaneous No.1074/2022 seeking anticipatory bail and the same came to be rejected by the learned VIII Additional Sessions Judge, Belagavi, by



order dated 04.08.2022. Therefore, the petitioner is before this Court seeking anticipatory bail.

3. Heard the arguments of the learned counsel appearing for the petitioner and the learned Additional SPP for the respondent-State.

4. Learned counsel for the petitioner would contend that, the petitioner/accused has given complaint against the victim lady on 18.07.2022 which came to be registered in APMC Yard PS Crime No.105/2022 for offence under Sections 384, 448, 504 and 506 of IPC. Thereafter, the victim lady filed complaint against the petitioner on 20.07.2022. In that complaint, there are no allegations of any forcible intercourse. Earlier, the victim lady had filed complaint on 28.01.2022 only alleging that the petitioner has not visited her and he is not responding to her phone calls. It is his further submission, that on looking to the entire complaint allegations, the physical relationship between the



petitioner and the victim lady is consensual and the said act does not amount to any forcible sexual intercourse attracting an offence under Section 376 of IPC. The petitioner is a Government employee and if he is arrested, he will lose his job. There is no question of tampering the evidence since already the uploaded photos are in the social media. The victim is an educated lady and once she has contested the election and she is not a layman. As the petitioner has rejected her claim for money, she has filed false complaint against the petitioner. He placed reliance on the decision of the Hon'ble Apex Court in the case between **Ansaar Mohammad v. State of Rajasthan and another** dated 14.07.2022 contending that, the complainant has been staying willingly with the appellant and had the relationship. Therefore, now if the relationship is not working out, the same cannot be a ground for lodging an FIR for the offence under Section 376(2)(n) of IPC. With this, he prayed to allow the petition.



5. *Per contra*, learned Additional SPP would contend that the petitioner is a public servant having wife and 3 children. The allegations against him is that, he married the victim lady and had relationship with her and has taken her nude photos and uploaded and circulated them in social media. Investigation is still in progress, presence of the petitioner is required for custodial interrogation for recovery of his mobile etc. The neighbours of the petitioner are witnesses for the stay of the victim lady in his house and if he is granted anticipatory bail, he will threaten the prosecution witnesses. The petitioner is a Gazetted Officer working as an Assistant Director of Horticulture. If he is granted anticipatory bail he will hamper the investigation. One of the offences alleged is Section 376(2)(n) of IPC and punishment provided for the same is imprisonment for life or imprisonment for not less than 20 years. With this, he prayed to reject the petition.



6. On perusal of the entire averments of the complaint, it is clear that there are allegations of this petitioner assaulting the victim lady and having sexual relationship with her. The victim lady is of the age of 28 years. The victim has been staying willfully with the petitioner and had the relationship. Therefore, now, if the relationship is not working out, the same cannot be a ground for lodging FIR for offence under Section 376(2)(n) of IPC as held by the Hon'ble Apex Court in **Ansaar Mohammad's** case (supra). The other offences alleged against the petitioner under Sections 66(E), 67 and 67(A) of IT Act and other offences under IPC are not punishable with death or imprisonment for life. The petitioner is a Government servant working as the Assistant Director of Horticulture. Therefore, he can be easily secured for investigation and trial. If the petitioner is arrested and remanded to judicial custody, he will lose his job.



7. The apprehension of the prosecution is that if the petitioner is granted anticipatory bail, he will hamper the investigation and tamper the prosecution witnesses can be met with by imposing stringent conditions.

8. In the facts and circumstances of the case and submission of the counsel, this Court is of the view that there are valid grounds for granting anticipatory bail subject to certain terms and conditions. Hence, I proceed to pass the following:

ORDER

The petition filed under Section 438 of Cr.P.C. is allowed. Consequently, the petitioner/accused is ordered to be released on bail in the event of his arrest in APMC Yard PS Crime No.108/2022 subject to the following conditions:

- i. The petitioner/accused shall execute a personal bond for a sum of Rs.1,00,000/- (Rupees One Lakh Only) with one surety for



the likesum to the satisfaction of the Investigating Officer.

- ii. The petitioner/accused shall voluntarily appear before the Investigating Officer within fifteen days from today and execute bail bond and furnish surety.
- iii. The petitioner/accused shall co-operate in the investigation and make himself available for interrogation whenever required.
- iv. The petitioner/accused shall not directly or indirectly make any inducement, threat or promise to any witness acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any Police Officer.
- v. The petitioner/accused shall not obstruct or hamper the police investigation and not to play mischief with the evidence collected or yet to be collected by the police.

**Sd/-
JUDGE**

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