

IN THE HIGH COURT OF KARNATAKA
KALABURAGI BENCH

DATED THIS THE 6TH DAY OF SEPTEMBER, 2022

BEFORE

THE HON'BLE MR. JUSTICE P.N.DESAI

CRIMINAL PETITION No.201025/2022

BETWEEN

CHANNABASAVA S/O SHEKAPPA
AGE. 22 YEARS,
OCC, ELECTRICIAN AND AGRICULTURE,
R/O NEELAHALLI VILLAGE,
TQ AND DIST YADGIR

...PETITIONER

(BY SRI. RAJESH DODDAMANI, ADVOCATE)

AND

- 1 . THE STATE OF KARNATAKA
THROUGH SAIDAPUR POLICE STATION,
NOW REPRESENTED BY THE
ADDITIONAL STATE PUBLIC PROSECUTOR,
HIGH COURT OF KARNATAKA
KALABURAGI BENCH 585102
- 2 . BHEEMARAYA S/O VENKATARAYA GOUDAPPANOR
AGE. 50 YEARS, OCC. AGRICULTURE,
R/O NEELAHALLI, TQ AND DIST YADGIR

...RESPONDENTS

(BY SRI.VEERANAGOUDA MALIPATIL, HCGP)

THIS CRL.P. FILED U/S. 439 OF CR.P.C PRAYING TO
RELEASE THE PETITIONER ON BAIL IN CRIME NO. 49/2022 OF
SAIDAPUR POLICE STATION DISTRICT -YADGIRI FOR THE
OFFENCES PUNISHABLE U/SEC.376(2)(N) OF INDIAN PENAL

CODE, U/S.6 OF POCSO ACT AND U/S.67 OF INFORMATION TECHNOLOGY ACT PENDING BEFORE THE DISTRICT AND SESSIONS JUDGE, YADGIRI.

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

ORDER

This petition is filed under Section 439 of Code of Criminal Procedure (hereinafter referred to as 'Cr.P.C.' for short) seeking to enlarge the petitioner on bail in Crime No.49/2022 of Saidapur Police Station, registered for the offence punishable under Section 376(2)(n) of the Indian Penal Code (hereinafter referred to as 'IPC' for short), under Section 6 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as 'POCSO Act' for short) and under Section 7 of the Information Technology Act.

2. It is alleged by the complainant-victim that the petitioner is known to her and he was following her and staring at her. Two years prior to this incident, he had sexual intercourse with her and he also promised that he would marry her. Then after some months when a marriage proposal came, she informed her parents that petitioner has promised her to marry her, but petitioner refused to marry

her. Thereafter, her marriage was performed with another person on 06.04.2022. It is further alleged on the date of marriage she had gone to attend nature call at night with one Thanu, at that time, accused came there and caught hold her, though she tried to push him but he forcibly committed sexual intercourse on her. She informed to her parents. Thereafter she was sent to her husband's house. That on 13.04.2022, petitioner has sent whatsapp message to her husband and in turn her husband sent those whatsapp photos of the petitioner and the complainant to her parents and sent the complainant to her parents house. In this regard, the complainant gave a complaint on 16.04.2022. The petitioner was arrested on 08.06.2022. His bail petition came to be rejected by the learned Sessions Court. Hence, he has filed this petition.

3. Heard Sri.Rajesh Doddamani, Learned counsel for the petitioner and Sri.Veeranagouda Malipatil, learned High Court Government Pleader for the respondent-State and Sri.B.C.Jaka, learned counsel for respondent No.2-complainant.

4. Learned counsel for the petitioner argued that the age of the victim as evident from the complaint is '19' years. Even Doctor was also opined that she is major. Therefore, POCSO Act is not applicable. There is no basis for allegation about having sexual intercourse prior to two years back and no such complaint was lodged. Even there is delay in lodging this complaint. There is no material to show that she is minor when the alleged incident took place. The phone of the petitioner is not recovered. The petitioner was arrested on 08.06.2022 and charge sheet is filed on 09.06.2022. As this petitioner is not ready to marry the complainant, a false case has been filed against him. He is no more required for further investigation and he is ready and willing to abide by any conditions that may be imposed by this Court. Hence, he prayed to allow the petition.

5. Against this, learned High Court Government Pleader argued that first act of sexual intercourse took place two years prior to this incident. Admittedly, victim may be '17' years, so POCSO Act is attracted. There are photos which show that the petitioner played with life of a married woman and just to destroy the life of the complainant, he has sent

photos to the husband of the complainant. The alleged offences are heinous one. There is *prima facie* material against the accused to show that he has committed the offence. Learned High Court Government Pleader further argued that if petitioner is enlarged on bail, he may threaten or tamper the prosecution witnesses; he may abscond; he may not appear before the Court. Hence, he prayed to reject the petition.

6. Learned counsel for respondent No.2-complainant also reiterated the same argument by assisting the learned High Court Government Pleader and argued on the similar lines and prayed to reject the petition.

7. I have perused the complaint averments and other materials. The victim in her complaint itself stated that she is aged about 19 years. The entire material alleged shows that first alleged act of sexual intercourse took place for two years prior to this incident. The complainant's mother also stated that this complainant intend to marry the petitioner. The Medical examination report of the victim shows that complainant herself stated that she had an affair

with the petitioner, since two years and on 06.04.2022 there was her marriage on the same day she had sexual intercourse with her old boy friend. There are no injuries found on her. The statement of witness-Thanu who accompanied victim does not disclose anything as stated by this complainant or victim does not say anything. There is abnormality in the appearance of this victim. The mobile phone of petitioner is also not seized. It is stated that petitioner sent the photos to her husband's phone. The alleged offences under 376(2)(n) of IPC are not attracted.

8. It is settled principle of law that bail is a rule and rejection is an exception. While granting or rejecting the bail application, the Court will have to take into consideration,

- (1) the nature and seriousness of the offence;
- (2) character of the accused;
- (3) circumstances which are peculiar to accused;
- (4) reasonable probabilities of presence of the accused not being secured at trial;
- (5) reasonable apprehension of witnesses being tampered with; and
- (6) larger interest of public or the state and similar other considerations, which arise when a court is asked to admit the accused to bail in a non-bailable offence.

9. In the light of the these principles and in view of the complaint averments, as the investigation is already completed, accused is no more required for further investigation. In view of the statement of complainant and other witnesses and Doctor report, in my considered view, the petitioner has made out sufficient grounds to allow the petition.

10. The apprehension of the prosecution can be meted out by imposing reasonable conditions on the petitioner, as he has undertaken to co-operate with the investigation and furnish sureties. Accordingly, I proceed to pass the following:

ORDER

The criminal petition filed under Section 439 of Cr.P.C. is allowed.

The petitioner/accused-Channabasava S/o Shekappa shall be enlarged on regular bail, in Crime No.49/2022 of Saidapur Police Station, Dist.Yadgir, registered for the offences punishable under Section 376(2)(n) of IPC, under Section 6 of the POCSO Act and under Section 67 of the Information Technology Act, subject to the following conditions:

- i) The petitioner shall execute a self-bond for a sum of Rs.1,00,000/- (Rupees One Lakh only) with a surety for the like sum, to the satisfaction of the Special Court, Yadgir, in Spl.C.No.63/2022;
- ii) The petitioner shall not tamper and threaten the prosecution witnesses directly or indirectly;
- iii) The petitioner shall furnish proof of his residential correct address along with his photo and furnish his mobile number to the Trial Court/Investigating Officer if there is any change in the address;
- iv) The petitioner shall not involve himself in commission of any criminal activities;
- v) The petitioner shall appear before the Trial Court on all the dates of hearing without fail unless his presence is exempted by the Trial Court on any day;
- vi) The petitioner shall not leave the jurisdictional Court without its prior permission.

In case if any of the above conditions are violated, the prosecution is at liberty to move application for cancellation of bail.

**Sd/-
JUDGE**

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