

**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

DATED THIS THE 27<sup>TH</sup> DAY OF JANUARY, 2023

BEFORE

THE HON'BLE MRS.JUSTICE M.G. UMA

**CRIMINAL PETITION NO.3492/2022**

**BETWEEN:**

ABEL BOAZ  
S/O SATHISH KUMAR GOKULAM,  
AGED ABOUT 26 YEARS,  
RESIDING AT MYSURU - 562 120  
(NOW IN JUDICIAL CUSTODY)

... PETITIONER

(BY SRI: ADITYA SONDHAI, SR. COUNSEL, FOR  
SRI: PARASHURAM A.L., ADVOCATE)

**AND:**

1. STATE OF KARNATAKA  
BY LAKSHMIPURAM POLICE STATION,  
MYSURU - 562 120  
REPRESENTED BY  
STATE PUBLIC PROSECUTOR  
HIGH COURT BUILDING  
BENGALURU - 560 001.

2. AMY MEHTA  
D/O. AUDREY MABEN  
AGED ABOUT 23 YEARS  
R/A., 308, SANKALP VISHNU  
CHAMARAJAPURAM  
MYSURU - 570 005.

... RESPONDENTS

(BY SRI: K. RAHUL RAI, HCGP  
SMT: JAYNA KATHARI, SR. COUNSEL FOR  
SRI: ROHAN KATHARI, ADVOCATE FOR IMPEADING R2)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 439 OF  
CR.P.C. PRAYING TO ENLARGE THE PETITIONER ON BAIL IN  
CR.NO. 8/2022 OF LAXMIPURA P.S., MYSURU CITY FOR THE  
OFFENCE PUNISHABLE UNDER SECTIONS 376, 354, 328, 120-B OF

IPC ON THE FILE OF THE 8<sup>TH</sup> ADDITIONAL CIVIL JUDGE (JR. DN.) AND JMFC COURT JLB ROAD, MYSURU.

THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 20/01/2023 COMING ON FOR PRONOUNCEMENT OF ORDERS THIS DAY, THE COURT PASSED THE FOLLOWING:

### **ORDER**

The petitioner-accused is before this Court seeking grant of bail under Section 439 of Cr.P.C., in Crime No.8/2022 of Lakshmipuram Police Station, Mysuru, , pending on the file of learned 8<sup>th</sup> Additional Civil Judge (Jr.Dn.) and JMFC Court, JLB Road, Mysuru, registered for the offences punishable under Sections 376, 354, 328, 120B of Indian Penal Code (for short 'IPC'), on the basis of the first information lodged by the informant-prosecutrix.

2. Brief facts of the case are that the informant being the victim lodged the first information with Laxmipuram Police Station on 09.02.2022 alleging the commission of sexual assault by the accused on 05/06.02.2022 at ICONIC Resto Pub/Jade Garden, Lakshmipuram, Mysuru. It is stated that the informant and the accused were knowing each other since 2017 and were meeting occasionally. On 05.02.2022 around 4.30 p.m., accused called the informant and invited her for

dinner. He came in his Car at around 8.30 p.m., and taken her to Bopy's Bar & Restaurant. They had snacks and drinks till about 11.00 p.m. She used the washroom twice and during that time, the food and drinks ordered by her was left unattended. Even while leaving Bopy's Bar & Restaurant, the accused brought 60ml bottles of whisky, said to be 'for the road'. She does not remember anything thereafter, except walking towards the Car.

3. The informant further stated that prosecutrix woke up on 06.02.2022 and found herself in an unknown place, without any clothes. She had a sharp throbbing pain in her private parts, breast and lower lip. Accused was also laying naked next to her. When the informant questioned the accused as to what had happened, he coolly answered there is nothing to worry. She slowly understood that she is in a hotel room and accused had committed sexual assault without her consent. She suspected that the accused might have exploited her sexually from about 8.00 a.m. to 10.00 a.m. on 06.02.2022. It is stated that the accused was still committing sexual acts in spite of resistance and request by the informant. He informed the informant that he has repeated

his acts of sexual intercourse on her. The informant stated that she was on her period and the stained pad was laying by the side of the table, but there were no blood-stains on the bed sheet, blanket etc. She suspected that the accused might have changed the same when the informant was unconscious. Informant stated that she was disoriented and asked for a coffee. But the accused was very cool and confident and he even called his friend Bharath over phone. Thereafter, both of them came out of the room and she was dropped to her house around 10.30 a.m. on 06.02.2022 by the driver of the accused. The informant suspected the role of the driver who accompanied the accused as to whether he is also a perpetrator or an accomplice?

4. The informant found G-Pay transaction of Rs.1,000/- transferred through her phone to one Ravindra Naik on that day at 00.44 hours. She suspected that the accused might have taken videos or photographs of the entire/part of the incident by using her mobile and might have shared through Whatsapp, social media chats and must have been deleted or erased from her phone. Therefore, it is stated that the accused has sexually assaulted and raped the

victim repeatedly without her consent by intoxicating and administering the drug and taking advantage of the situation.

5. The informant also stated that she has taken the contraceptive pill as per the advice of the Doctor at Apollo, JSS Hospital on 07.02.2022 and she was also advised by Dr.Abhijeeth of Prerana Hospital to take a decision in consultation with her mother. Her mother came to Mysuru on 08.02.2022 and the informant along with her mother came to Lakshmipuram Police Station and reported the incident. The first information was dated 09.02.2022 and FIR was registered on 10.02.2022 at 11.55 a.m., for the above said offences.

6. Heard Sri. Aditya Sondhi, learned Senior Counsel for Sri. Parashuram, learned counsel for the petitioner, Sri. K.Rahul Rai, learned High Court Government Pleader for respondent No.1 and Smt. Jayna Kathari, learned Senior Counsel for Sri. Rohan Kathari, learned counsel for informant/respondent No.2.

7. Learned Senior Advocate for the petitioner submitted that the petitioner is a young man of 26 years, a

reputed financial planner and identified as one amongst the 10 most influential business leaders. He was apprehended on 11.02.2022 and had approached this Court for grant of bail. His prayer was considered by the Co-ordinate Bench of this Court and vide order dated 10.06.2022 granted bail, subject to conditions. Accordingly, the petitioner was released from custody. The informant challenged the order dated 10.06.2022 before the Hon'ble Apex Court in a Criminal Appeal No.1981/2022, which was came to be allowed vide order dated 17.11.2022. The bail granted to the petitioner was cancelled and he was directed to surrender either before the Court concerned or before the Jail Authority and accordingly, the petitioner has surrendered on 22.11.2022 and since then he is in judicial custody.

8. Learned Senior Advocate submitted that as per the direction of the Hon'ble Apex Court, the relevant aspects which are required to be kept in mind while considering the bail application such as seriousness of the offence alleged, materials that are collected by the Investigating Officer, statement of the prosecutrix recorded under Section 161 of Cr.P.C., were considered by the co-ordinate bench of this

court. But it was felt that the same were not considered in a proper manner in the order dated 10.06.2022, the criminal appeal preferred by the informant/prosecutrix was allowed. Now the entire charge sheet is placed before the Court and therefore, he submits that even on merits the petitioner is entitled for grant of bail for the following reasons:

1. There is inordinate delay in lodging the first information. The incident said to have occurred on 05/06.02.2022 but the FIR was registered on 10.02.2022.
2. The prosecutrix and the petitioner were familiar with one another since long and she voluntarily accompanied him and had consumed whisky.
3. The medical examination report does not support the contention of the prosecutrix as it is stated that she was sensible when examined, no redness or injury was found on examination of the vagina. As per the medical opinion there was signs of vaginal penetration without any external injury.
4. No seminal stains were found in any of the articles including the clothes that were produced by her as worn on the date of incident, nor spermatozoa was detected as per FSL Report. Therefore, the contention that the accused has

committed the rape repeatedly cannot be accepted.

5. The samples sent for FSL examination responded negative for the residues of the poisons or toxic articles. Therefore, the contention that the prosecutrix was either intoxicated or drugged cannot be accepted.
6. Even though it is contended that the petitioner is having criminal antecedents, the criminal case registered against the petitioner which was referred to by prosecutrix is as a result of the present complaint and the same was lodged after registration of this complaint. However, the same is already settled before the Lok-Adalath.
7. The statements of the other witnesses do not support the contention of the prosecutrix in any manner.
8. Even the spot panchanama reveals that there were no traces of commission of any offence.

9. Therefore, the learned Senior Advocate submits that there are no strong prima-facie materials to constitute the offence as tried to be projected. The accused is in judicial custody for about three months. There is no chance of his abscondence nor there is any chance of tampering or influencing either the prosecutrix or the prosecution



witnesses. Since the investigation is already completed, detention of the petitioner in custody is not required for any reason except to ensure his presence before the trial Court. Under such circumstances, detention of the petitioner in custody would amount to pre-trial punishment. He is the permanent resident of the address mentioned in the cause-title to the petition. He is ready and willing to abide by any of the conditions that would be imposed by this Court.

10. Learned Senior Advocate placed reliance on the decision of the Hon'ble Apex Court in the case of ***Santosh Prasad alias Santosh Kumar vs. State of Bihar***<sup>1</sup>, in support of his contention that except the interested version of the prosecutrix there is absolutely no material in support of the commission of the offence by the petitioner and there is remote chance of the petitioner being held guilty for the offence. He also placed reliance on the decision of the Hon'ble Apex Court in the case of ***X vs. State of Telangana and Another***<sup>2</sup>, in support of his contention, that even if the factors like the nature of accusation, severity of punishment in case of conviction, the nature of supporting evidence,

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<sup>1</sup> (2020) 3 SCC 443

<sup>2</sup> (2018) 16 SCC 511

reasonable apprehension of tampering with the witnesses and prima-facie satisfaction of the Court in support of the charges are taken into consideration, the scale should tilt in favour of the petitioner and discretion for grant of bail is to be exercised in his favour. Accordingly, he prays for allowing the petition in the interest of justice.

11. Per contra, learned Senior Advocate for the respondent opposing the petition submitted that the victim herself lodged the first information making specific allegations against the petitioner. Even though it is contended on behalf of the petitioner that there is inordinate delay in lodging the first information, the incident had taken place on 05/06.02.2022. The averments made in the first information disclose the horrifying act committed by the petitioner. The condition of the prosecutrix after the incident is also explained by her. Naturally it will take some time to come out of the shock, she has experienced. Moreover, the mother of the prosecutrix was not in town. She returned back only on 08.02.2022. Having a word with her regarding the incident, the prosecutrix stated that, on the very same day, they had reported the incident with the jurisdictional police. The first

information which is in the handwriting of the prosecutrix narrating the incident in detail was filed on 09.02.2022 but the FIR was registered on 10.02.2022. Under such circumstances, it cannot be held at this stage that there is any delay in lodging the first information.

12. Learned Senior Advocate further submitted that the prosecutrix was examined by the Medical Officer on 10.02.2022 and even then, the bruise measuring 4x3 cms on her left thigh and heeled scar on her left breast were noticed. As per the final opinion, sign of vaginal penetration was also noticed. It is the specific say of the prosecutrix that her clothes were removed by the accused at the time of committing the offence and even she suspected that the bed-spread might have been changed. Under such circumstances, the finding in the FSL Report regarding the absence of either seminal stains or spermatozoa on any of the items sent for examination, may not be of much importance. Similarly, since the urine and blood samples of the prosecutrix were collected for FSL examination only on 10.02.2022, the negative test report for the residues of any poisons or drugs are also of no consequence.

13. Learned Senior Advocate further submitted that immediately after coming to know that the informant is lodging the complaint against the petitioner, he managed to contact the mother of the prosecutrix through an unknown person who introduced himself over phone as one Kumar and as per TrueCaller ID, the said person was the 'Jailor Kumar' who wanted to meet her and talk about the petitioner. He was also referring about the father of the petitioner being a Dean of the Medical College. A criminal case in that regard was registered by the mother of the informant. Learned Senior Advocate further contended that the cell phone of the petitioner was seized. The retrieved phone call details and the extraction report collected by the Investigating Officer disclose that the accused had called the prosecutrix repeatedly on 10.02.2022. Apparently, this was an attempt on the part of the petitioner either to influence or threaten the prosecutrix and her mother.

14. Learned Senior Advocate further submitted that the materials produced by the Investigating Officer along with the charge sheet discloses that the petitioner had taken

several screen shots of the messages, which support the apprehension of the prosecutrix that the photos and videos at the time of commission of the offence must have been taken by the petitioner by using the cell phone of the prosecutrix and must have deleted the same. There is every apprehension of misuser of such photos and videos.

15. Learned Senior Advocate further submitted that the petitioner is having criminal antecedents and he is a repeat offender as an FIR is registered against him by a lady alleging that he had physical relationship with her by promising to marry and also extracted an amount of Rs.25,00,000/- from her. The criminal case for the offences punishable under Sections 406 and 420 of ICP and also under the provisions of Information Technology Act was registered, which disentitles the petitioner from seeking release on bail.

16. It is submitted that looking to the nature and seriousness of the offence, supporting materials that are collected by the Investigating Officer, the conduct of the accused, the possibility of the petitioner trying to influence or tamper the prosecution witnesses, including the prosecutrix

and her family members, are to be taken into consideration in deciding the petition. Learned Senior Advocate placed reliance on the decision of the Hon'ble Apex Court in the case of **Jagjeet Singh and Others vs. Ashish Mishra alias Monu and Another**<sup>3</sup>, in support of her contention. She also placed reliance on the decision of the Hon'ble Apex Court in the case of **Y vs. State of Rajasthan and Ors.**<sup>4</sup> reported in, to contend that the petitioner being a habitual offender is not entitled for bail. Reliance is also placed on the decision of the Hon'ble Apex Court in the case of **Brijmani Devi vs. Pappu Kumar and Another**<sup>5</sup>, in support of her contention that a balance is to be struck between the nature of the allegations made against the accused. Severity of punishment on conviction, apprehension of the witnesses being influenced by the accused, tampering with the evidence and criminal antecedents of the accused shall not be lost sight while focusing on the personal liberty of the petitioner. Learned Senior Advocate also contended that the accused is having sufficient means to abscond and there is danger of justice being thwarted and hence the petitioner is not entitled for

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<sup>3</sup> (2022) 9 SCC 321

<sup>4</sup> (2022) 9 SCC 269

<sup>5</sup> (2022) 4 SCC 497

grant of bail. Accordingly, she prays for dismissal of the petition.

17. Learned HCGP supporting the submissions made by the learned senior advocate for respondent No.2, submitted that, considering the specific and serious allegations made against the petitioner, he is not entitled to be enlarged on bail and prays for dismissal of the petition.

18. In view of the rival contentions urged by the learned Senior Advocates for both the parties, the point that would arise for my consideration is:

*"Whether the petitioner is entitled for grant of bail under Section 439 of Cr.P.C.?"*

My answer to the above point is in 'Affirmative' for the following:

### **REASONS**

19. The facts of the case narrated above discloses that the prosecutrix has lodged the first information making specific allegations against the petitioner. The incident said to

have been taken place on 05/06.02.2022. The prosecutrix explained her situation immediately after the incident. She also refers to have contacted the private hospital, where she was advised to take contraceptive pill. She was also advised by another medical professional to take a decision in consultation with her mother. The first information discloses that the mother of the prosecutrix was away and returned to Mysuru on 08.02.2022 and immediately thereafter, she along with her mother had visited the police station. The first information is dated 09.02.2022 and the FIR was came to be registered on 10.02.2022. If all these sequences of events are taken into consideration in the light of serious allegations made about the acts of the petitioner, the contention of the learned Senior Advocate for the petitioner that there is inordinate delay in lodging the complaint cannot be accepted at this stage. The nature of the allegations made in the first information prima-facie reveals the cruelty with which the offence was committed. Naturally the victim will be under shock and needs a reasonable time to think about the future course of action.



20. The Medical Report issued by the Medical Officer discloses that the victim was subjected to medical examination on 10.02.2022 and she was sensible at that time. She gave the history of rape. She had brought the clothes which were worn at the time of incident. On physical examination, two external injuries were noted, i.e., (i) 4x3 cms bruise on her left thigh and (ii) a healed scar on the left breast. Hymen was not intact but there was no redness nor any injury in her private parts. As per the final opinion, there were signs of vaginal penetration, without any external injury. As per FSL Report, no seminal stains or spermatozoa were detected in any of the articles sent for examination. The sample responded negative for the residues of any poison or drug.

21. It is stated that the mobile phone was seized during investigation and its contents were retrieved. Even though the copy of the retrieved messages are produced as part of the charge sheet, by and large they are not legible and even the learned Senior Advocate for respondent No.2 admit that nothing serious could be made out from such messages. However, the call details collected by the Investigating Officer

prima-facie disclose that the petitioner had tried to contact the informant on 10.02.2022 but she had not picked up the call.

22. The document produced by respondent No.2 disclose that one Smt. Amy Mehta of Chamarajapuram, Mysuru said to be the mother of the prosecutrix filed the written information with Lakshmipuram Police Station stating that on 10.07.2022 at 7.40 p.m., a person had called her over phone and introduced himself as one Kumar and informed her that he wanted to meet her. A complaint is also lodged against him by the mother of the prosecutrix.

23. The documents produced by respondent No.2 also disclose that a criminal complaint was registered against the petitioner by one Ms. Anusha Neema Gama, with Whitefield CEN Crime Police Station, on 21.02.2022 which was registered in Cr.No.112/2022, for the offence punishable under Sections 406 and 420 of IPC and under Section 66(D) of the Information Technology Act, 2000. It is alleged in the first information that the petitioner had come in contact with the informant therein and he introduced himself as the owner of the private company having 30 workers under him and

promised to marry her. The family of the informant and the petitioner gave approval for their marriage. However, the petitioner had shown the screen shot from his mobile phone and stated that even though he is having two crores of rupees in his Bank Account, due to technical hitch, he could not withdraw the amount and managed to induce her to transfer Rs.25,00,000/- to his Account. But later, she suspected some foul play and lodged the complaint. According to the learned Senior Advocate for the petitioner, the said complaint is the result of the present FIR and the said case is already settled before the Lok-Adalath. He has produced the daily case status from CIS of the Court concerned to state that the matter was settled before the Lok-Adalath on 12.11.2022.

24. It is pertinent to note that the petitioner was enlarged on bail by the Co-ordinate Bench of this Court vide order dated 10.06.2022, which was came to be set aside by the Hon'ble Apex Court in Criminal Appeal No.1981/2022, directing the petitioner to surrender either before the Court concerned or before the Jail Authority. Learned Senior

Advocate for the petitioner would submit that the petitioner had surrendered himself on 22.11.2022.

25. In the light of the facts and circumstances of the case discussed above, let me consider the position of law as declared by the Hon'ble Apex Court in the decisions relied on by both the learned Senior Advocates and as to how the same could be made applicable in considering the bail application moved by the petitioner.

26. In ***Santosh Prasad @ Santosh Kumar*** (*supra*), the Hon'ble Apex Court considered the judgment of conviction passed by the Trial Court, which was confirmed by the High Court of Patna. The Hon'ble Apex Court considering the facts of the case that the accused was convicted solely relying on the deposition of the prosecutrix without there being any independent witness nor the medical evidence in support of the case of the prosecution, allowed the appeal and set aside the judgment of conviction and the order of sentence. But in the present case, this Court is still at the stage of considering the bail petition filed by the petitioner seeking bail. Therefore, I am of the opinion that this decision is not applicable to the facts of the case.

27. In ***X Vs State of Telangana*** (*supra*), the Hon'ble Apex Court referring to its earlier decisions re-iterated the well settled principles of law regarding the factors that are to be taken into consideration while deciding the bail application i.e., nature of accusation, the severity of punishment in cases of conviction, nature of the supporting evidence, reasonable apprehension of tampering with the witnesses, apprehension of threat to the complainant and *prima facie* satisfaction of the Court in support of the charge.

28. In ***Jagjeet Singh*** (*supra*) relied on by learned senior advocate for respondent No.2, the Hon'ble Apex Court referring to its earlier decision once again re-iterated the factors to be borne in mind while considering the application for bail and held in para 30 as under:

*"30. It will be beneficial at this stage to recapitulate the principles that a Court must bear in mind while deciding an application for grant of bail. This Court in the case of Prasanta Kumar Sarkar v. Ashis Chatterjee & Anr, after taking into account several precedents, elucidated the following:*

*"9...However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are:*

*(i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;*

*(ii) nature and gravity of the accusation;*

*(iii) severity of the punishment in the event of conviction;*

*(iv) danger of the accused absconding or fleeing, if released on bail;*

*(v) character, behaviour, means, position and standing of the accused;*

*(vi) likelihood of the offence being repeated;*

*(vii) reasonable apprehension of the witnesses being influenced; and*

*(viii) danger, of course, of justice being thwarted by grant of bail."*

29. In **Y Vs State of Rajasthan** (*supra*), the Hon'ble Apex Court rejected the bail application filed by the accused,

taking into consideration the seriousness of the offence i.e., committing rape by the accused on his niece aged 19 years and that the accused was habitual offender as nearly 20 cases were registered against him. It has also considered the influence that accused No.2 could have over the prosecutrix, as he being the elder family member. It is noticed that the accused was in custody only for a period of three months and held that it is not a fit case for grant of bail.

30. In ***Brijmani Devi*** (*supra*), the Hon'ble Apex Court while considering the application for bail by the accused asserted the requirement of considering the invaluable right of the accused, nature of accusations, criminal antecedents of the accused and the nature of punishment that would follow in case of conviction of the accused and held in paras 35 and 36 as under:

*"35. While we are conscious of the fact that liberty of an individual is an invaluable right, at the same time while considering an application for bail Courts cannot lose sight of the serious nature of the accusations against an accused and the facts that have a bearing in the case, particularly, when the accusations may not be false, frivolous or vexatious in nature but are*

*supported by adequate material brought on record so as to enable a Court to arrive at a prima facie conclusion. While considering an application for grant of bail a prima facie conclusion must be supported by reasons and must be arrived at after having regard to the vital facts of the case brought on record. Due consideration must be given to facts suggestive of the nature of crime, the criminal antecedents of the accused, if any, and the nature of punishment that would follow a conviction vis à vis the offence/s alleged against an accused."*

36. We have extracted the relevant portions of the impugned orders above. At the outset, we observe that the extracted portions are the only portions forming part of the "reasoning" of the High court while granting bail. As noted from the aforecited judgments, it is not necessary for a Court to give elaborate reasons while granting bail particularly when a case is at the initial stage and the allegations of the offences by the accused would not have been crystalised as such. There cannot be elaborate details recorded to give an impression that the case is one that would result in conviction or, contrast, in an acquittal while passing an order on an application for an grant of bail. At the same time, balance would have to be struck



*between the nature of the allegations made against the accused; severity of the punishment of the offence are proved beyond reasonable doubt and would result in a conviction; reasonable apprehension of the witnesses being influenced by the accused; tampering of the evidence; the frivolity in the case of the prosecution; criminal antecedents of the accused; and a prima facie satisfaction of the Court in support of the charge against the accused."*

31. In view of the above, it is settled proposition of law that the Court must consider the materials that are placed before the Court to form an opinion that *prima facie* materials are available to believe that the accused has committed the offence, nature and gravity of accusation, severity of punishment in the event of conviction, chances of accused absconding and fleeing in case of release on bail. The conduct and behavior of the accused, chances of committing similar offence, chances of tampering or influencing the witnesses or danger to justice being thwarted, if the accused is enlarged on bail are also to be considered.

32. In the present case, the prosecutrix is aged 23 years and it is stated that she was having acquaintance with the petitioner who is aged 26 years, for quite some time. She went with the petitioner to the Bar and Restaurant on 05.02.2022 at 8.30 p.m., where they had snacks and drinks till 11.00 p.m. It is stated that the prosecutrix was conscious of leaving the Bar and Restaurant with the petitioner and thereafter, only on 06.02.2022, she found herself in a room without any clothes and the petitioner lying by her side naked. She realized that she was sexually assaulted and suspected that she was either drugged or poisoned. Later, the petitioner dropped her to the house. The prosecutrix in consultation with her mother is said to have reported the incident in Laxmipuram Police Station on 08.02.2022. However, the first information is dated 09.02.2022 and the FIR was registered on 10.02.2022. As discussed above, the medical report refers to a bruise on the left thigh and healed scar on the left breast. There were sign of vaginal penetration without external injury. The sample sent for FSL examination did not contain seminal stains or spermatozoa.

33. Looking to the facts and circumstances of the case, the delay in lodging the complaint cannot be termed as unreasonable at this stage. However, the fact remains that the opportunity to collect the best evidence immediately after the incident is lost in view of registration of the FIR only on 10.02.2022. It is pertinent to note that the prosecutrix had consulted the medical officers in Appolo JSS Hospital and said to have taken contraceptive pills as per their advise. She had also consulted Dr.Abhijith of Prerana Hospital who said to have advised to take a decision in the matter in consultation with her mother. But the prosecutrix has not subjected herself for medical examination at that point of time. The prosecutrix may have to explain as to why she has not subjected herself for medical examination, immediately, when she had consulted the medical officers.

34. The documents that are produced by the learned senior advocate for the prosecutrix disclose that the petitioner is identified as one of the most influential business leader for 2022. Even though, it is stated that criminal case was registered against him with Laxmipuram Police Station, the

materials placed before the Court *prima facie* discloses that the said criminal case is compromised before the Lok Adalath.

35. The contention of the prosecutrix that her mother lodged the first information as one Kumar had called and insisting her to meet him, a separate criminal case is registered against the said person and it has to be investigated independently. The retrieved details of the i-Phone or extraction report submitted by the Investigating Officer lend some support to the case of the prosecution, but the screen shots of the messages produced before the court does not convey any meaning as the same are not legible.

36. In view of the above, without expressing any opinion on the merits of the case, as it is premature, it can be concluded that there are *prima facie* materials to constitute the offence as alleged. However, the petitioner is also having reasonable defence to be probalised during trial. But it cannot be said that the petitioner who is admittedly a businessman having some standing would flee from justice, if released on bail. I do not find any serious criminal antecedants of the petitioner to refuse grant of bail. The apprehension expressed by the prosecutrix that the petitioner

may venture either to influence or threaten her or her family members or any other the prosecution witness could be taken care of by imposing suitable conditions. It is also pertinent to note that even though the petitioner was released on bail as per the order of the co-ordinate Bench of this Court, when the same was cancelled as per order of the Hon'ble Apex Court, he promptly surrendered himself in compliance of the directions and there is no allegation of misusing the liberty granted in his favor, during that period. The prosecution has cited 38 witnesses in the charge sheet and I do not find any reason to detain the petitioner in custody till conclusion of the trial, which would amount to infringement of his right to life and liberty. While striking a balance between the seriousness of the offence and the invaluable right of the petitioner guaranteed under Article 21 of Constitution of India, I am of the opinion that the petitioner is entitled to be enlarged on bail subject to conditions, which will take care of the apprehension expressed by the learned Senior Advocate for Respondent No.2, as otherwise detention of the petitioner in custody would amount to infringement of his right to life and liberty.

37. Accordingly, I answer the above point in the affirmative and proceed to pass the following:

**ORDER**

The petition is ***allowed.***

The petitioner is ordered to be enlarged on bail in Crime No.8 of 2022 of Lakshmipuram Police Station, Mysuru, pending on the file of the VIII Additional Civil Judge (Jr.Dn.) and JMFC Court, Mysuru, on obtaining the bond in a sum of Rs.2,00,000/- (Rupees Two Lakhs only) with two sureties for the likesum to the satisfaction of the jurisdictional Court, subject to the following conditions:

- a) The petitioner shall not commit similar offences.
- b) The petitioner shall not influence, threaten or tamper with the prosecution witnesses.
- c) The petitioner shall appear before the Court as and when required.

If in case, the petitioner violates any of the conditions as stated above, the prosecution will be at liberty to move the Trial Court, seeking cancellation of bail.

On furnishing the sureties by the petitioner, the Trial Court is at liberty to direct the Investigating Officer to verify the correctness of the address and authenticity of the documents furnished by the petitioner and the sureties and a report may be called for in that regard, which is to be submitted by the Investigating Officer within 5 days. The Trial Court on satisfaction, may proceed to accept the sureties for the purpose of releasing the petitioner on bail.

**Sd/-  
JUDGE**

\*bgn/- & SMJ