

**IN THE HIGH COURT OF KARNATAKA AT DHARWAD BENCH,**

**DHARWAD**

DATED THIS THE 23<sup>RD</sup> DAY OF NOVEMBER, 2022

BEFORE

THE HON'BLE MR. JUSTICE K.NATARAJAN

CRIMINAL PETITION NO.102918 OF 2022

BETWEEN

DADAPEER  
S/O. NAZIRAHMED HANGARKI  
AGED ABOUT 22 YEARS  
OCC: SALES MAN  
R/O. KRISHI KARIMIKA NAGAR  
1ST CROSS, YALLAPPUR ONI  
HUBBALLI  
TALUK HUBBALLI  
DISTRICT: DHARWAD  
PIN CODE: 580 028.

... PETITIONERS

(BY SRI HEMANTH KUMAR L. HANARAGI, ADVOCATE)

AND

1. THE STATE OF KARNATAKA  
BENDIGERI POLICE STATION  
HUBBALLI  
REPRESENTED BY STATE PUBLIC PROSECUTOR  
HIGH COURT OF KARNATAKA  
DHARWAD BENCH  
DHARWAD - 580 011.
2. SHRI FAROOQ  
S/O. SAIYADSAB NEELAGAR  
AGED ABOUT 45 YEARS  
OCC: PRIVATE WORK  
R/AT DOBIGHAT  
K.K. NAGAR

BIDNAL ROAD  
HUBBALLI - 580 028.

... RESPONDENTS

(BY SRI V.M. BANAKAR, ADDL. S.P.P.)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 439 OF THE CODE OF CRIMINAL PROCEDURE, PRAYING THAT FOR THE REASONS STATED SUPRA THE PETITIONER/ACCUSED NO.1 MAY BE RELEASED ON REGULAR BAIL IN SPL.S.C.NO.59/2021 (HUBBALLI BENDIGER P.S. CR.NO.143/2021) FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 323, 324, 342, 354, 376, 504, 506 READ WITH SECTION 34 OF IPC AND SECTIONS 6,14 OF POCSO ACT 2012 AND SECTION 67(b) OF I.T. ACT, IN SO FAR AS PETITIONER IS CONCERNED, PENDING BEFORE THE II ADDITIONAL DISTRICT AND SESSIONS AND SPL. JUDGE, DHARWAD.

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

### ORDER

This successive bail petition is filed by the petitioner-accused under Section 439 of Cr.P.C. for granting bail in Crime No.143/2021 registered by Bedigeri Police Station, Dharwad District, charge-sheeted for the offences punishable under Sections 323, 324, 341, 354, 376, 504,

506 read with Section 34 of IPC, Sections 6 and 14 of POCSO Act and Section 67(B) of the I.T. Act.

2. Heard the arguments of learned counsel for the petitioner and learned Additional SPP for the respondent No.1-State.

3. The case of the prosecution is that the complainant who is the uncle of the victim filed complaint to the police alleging that he came to know through the victim that the petitioner is said to have been committed sexual assault on her and repeatedly he was assaulting her sexually by showing the video clippings and was threatening her saying that he would upload the same in the social media. Therefore, the complaint came to be lodged. After registering the case, the petitioner was arrested on 22.10.2021 and he was remanded to the judicial custody. His bail petition came to be rejected as withdrawn on 15.06.2022. Hence, the petitioner is before this Court on the additional grounds.

4. The learned counsel for the petitioner has contended that there is contradiction in the statement of the victim as well as mother of the victim. The complainant is not the victim, but he is the relative of the victim, therefore, the complaint is not maintainable. The Police have completed the investigation and there is no opinion in respect of sexual assault by the petitioner. He is in custody for more than one year. He is ready to abide by the conditions that may be imposed by this Court. Hence, prayed for granting bail.

5. *Per contra*, learned Additional SPP objected the petition and contended that though the investigation is completed and charge-sheet has been filed, the FSL report has not yet received. The petitioner has not only committed sexual assault on the victim but he has video graphed the incident and threatening her that he would upload the same in the social media. He has committed repeated sexual assault on her and the case is under trial.

If the petitioner is released on bail, he may tamper the witnesses. Hence, prayed for rejecting the bail petition.

6. Having heard the arguments and on perusal of the records, which reveals, of course, the petitioner is in judicial custody for more than one year. The investigation is completed and charge-sheet has been filed. The police also filed the charge-sheet for the offence punishable under Section 67(B) of the Information Technology Act, apart from Sections 6 and 14 of POCSO Act. The age of the victim is below 16 years. The petitioner forced her to love him, took her forcibly to his relative's house and committed sexual assault on her. At that time, he is said to be taken the videograph of the sexual assault and thereafter, he threatened her to come and lay with him whenever he wants otherwise he will upload the sexual videograph in the social media like whatsapp, facebook etc., hence, for the same the victim once again bent for his desires. Subsequently, the complaint came to be registered. Though, the doctor has given opinion saying

that the sexual intercourse can neither be confirmed nor refuted, but, the hymen of the victim is absent which suggests that there is sexual assault on the victim and that too it is a repeated offence against her. The incident took place long back, therefore, it cannot be expected any blood stain or seminal stains in the physical examination of the victim and the accused. However, the police have already seized the mobile phones of the victim as well the accused, the data was collected and sent to the FSL and the report is awaited. Such being the case, at this stage, if the petitioner is granted bail, there is every possibility of tampering and absconding from the case are not ruled out. Merely there was some contradiction between the statement of the victim as well as her mother before the Police, that itself cannot be a ground for granting bail to the petitioner as the statement of the victim place a vital role in sexual assault case.

7. Therefore, the contention of learned counsel for the petitioner that the petitioner is entitled for bail at

this stage, cannot be acceptable. Therefore, the petitioner is not entitled for bail. However, liberty granted that he can approach the Court after examination of the victim girl before the trial Court.

8. Accordingly, the bail petition is ***dismissed***.

**Sd/-  
JUDGE**

GBB