

Suresha S/O Peerunaik Naik vs State Of Karnataka on 25 February, 2025

Author: Ravi V.Hosmani

Bench: Ravi V.Hosmani

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NC: 2025:KHC-D
CRL.P No. 100098 of

IN THE HIGH COURT OF KARNATAKA,
DHARWAD BENCH

DATED THIS THE 25TH DAY OF FEBRUARY, 2025

BEFORE

THE HON'BLE MR. JUSTICE RAVI V.HOSMANI

CRIMINAL PETITION NO.100098 OF 2025
[439(CR.PC)/483(BNSS)]

BETWEEN:

SURESHA S/O. PEERUNAIK NAIK,
AGE: 19 YEARS, OCC. LABOURER,
R/O. TOKKENAHALLI TANDA,
TALUK: SANDUR, DISTRICT: BALLARI-583135.

(BY SRI SRINIVAS B. NAIK, ADVOCATE)

... PETITIO

AND:

1. STATE OF KARNATAKA
REPRESENTED BY STATE PUBLIC PROSECUTOR,
HIGH COURT OF KARNATAKA, DHARWAD BENCH,
THROUGH GUDEKOTE POLICE STATION,
DISTRICT: GADAG-580011.

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2. AMBARISHANAIAK S/O. TIPPESHANAIAK,
AGE: 39 YEARS, OCC. LABOUR,

by
MALLIKARJUN
MALLIKARJUN RUDRAYYA
RUDRAYYA KALMATH

KALMATH

Date:
2025.02.27
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R/O. LINGANAHALLI TANDA,
TALUKA: KUDALGI, DISTRICT: VIJAYANAGAR-583135.

... RESPONDENTS

(BY SRI JAIRA, SIDDI, HCG[FOR R1;
SRI RAJASHEKHAR B. HALLI, ADVOCATE FOR R2)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 439 OF CR.P.C. (UNDER SECTION 483 OF BNSS), SEEKING TO GRANT REGULAR BAIL TO THE PETITIONER/ACCUSED IN SPL.CASE NO.949/2024 ON THE FILE OF ADDL. DISTRICT AND SESSIONS JUDGE FTSC-I BALLARI (IN CRIME NO.56/2024) OF GUDEKOTE POLICE STATION REGISTERED FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 137(2), 64(2) (m), 87 OF THE BHARATIYA NYAYA SANHITA, UNDER SECTION 4(1) AND 6 OF POCSO ACT AND SECTION 9 OF CHILD MARRIAGE ACT, 2012.

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CRL.P No. 100098 of 2025

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 439 of Code of Criminal Procedure, 1973 ('CrPC' for short) for grant of regular bail in Crime no.56/2024 by Gudekote Police Station for offences punishable under Sections 137 (2), 64 (2) (m) and 87 of Bharthiya Nyaya Sanhita, 2023 ('BNS' for short), Section 4 (1) and 6 of Protection of Children from Sexual Offences Act, 2012 ('POCSO' for short) and Section 9 of Prohibition of Child Marriage Act, 2006 ('PCM Act' for short) by sole accused.

2. Sri Srinivas B. Naik, learned counsel for petitioner submitted as per prosecution, Sri Ambarish Naik (complainant) filed complaint on 16.07.2024, stating that along with his four children including victim was residing at Linganahalli Tanda. It was stated that victim was studying in 10th Std. And when complainant went to Ilkal for sugarcane harvesting along with family members, petitioner who was from Tokinahalli Tanda had joined their NC: 2025:KHC-D:3808 Gang. At 12:30 a.m., on night of 16.07.2024, when he was awoken by some sound, he found victim missing from home. They continued searching next day also. At 12:45 p.m. on 16.07.2024, they received information that victim had left with someone on motorcycle. Therefore, complainant suspected that she was kidnapped by petitioner and filed complaint. Same was registered as Crime no.56/2024 for offence under Section 137 (2) of BNS.

3. It was submitted, she was traced at petitioner's house on 18.07.2024 and her statement under Section 161 of CrPC was recorded. Though, she stated that petitioner married her by tying sacred thread around her neck at Durgamma Temple before taking her to his house and having sexual intercourse there, by ignoring her resistance on ground that she was still a minor, in her statement recorded under Section 164 of CrPC, she did not mention about her resistance to marriage and totally omitted stating about having sexual intercourse. She specifically stated that she was in love with petitioner since two years. Thus, victim herself did not support prosecution case.

NC: 2025:KHC-D:3808 Therefore, expansion of crime for offences under Sections 64 (2) (m) and 87 of BNS, Section 4 (1) and 6 of POCSO and Section 9 of PCM Act, was rendered without basis.

4. It was submitted, maximum punishment prescribed for offence under Section 9 of PCM Act being two years, nature of offence would not be heinous and petitioner would be entitled for bail. It was further submitted, petitioner was arrested on 18.07.2024 and while he was in custody, investigation was completed and charge-sheet was filed on 22.08.2024. Since prosecution relied on 46 witnesses, conclusion of trial was likely to be delayed. Besides, petitioner was 19 year old labourer, without any criminal antecedents and permanent resident of Tokinahalli Tanda having movable and immovable properties.

5. In support of submission, learned counsel relied on Deshraj @ Musa v. State of Rajasthan reported in 2024 SCC OnLine SC 2709.

6. On other hand, Sri Jairam Siddi, learned HCGP for respondent no.1 - State submitted, initially complaint NC: 2025:KHC-D:3808 was filed/registered for offence only under Section 137 (2) of BNS. Based on her statement recorded after tracing her, other offences were included in Crime number. Victim had supported prosecution case in her statement recorded under Section 161 of CrPC. As per school certificate, date of birth of victim was 02.06.2008. Therefore, as on date of incident she was 16 years 1 month and 16 days. And as offence under Section 64 (2) (m) of BNS was punishable with imprisonment from 10 years upto life, nature of offences alleged were heinous. Further, there was likelihood of petitioner influencing prosecution witnesses if petitioner were enlarged on bail. On above grounds, sought rejection of petition.

7. Sri Rajashekar B. Halli, learned counsel for respondent no.2 - complainant opposed petition. Apart from adopting submissions of respondent no.1, it was contended, since offences alleged were under POCSO, presumption under Section 29 would be attracted. And as this Court in case of Shashikumar H.K @ Shashi v. State of Karnataka & Another in CrI.P.no.4291/2022 disposed of on 14.03.2023 had rejected bail petition by NC: 2025:KHC-D:3808 referring to Section 29 of POCSO, he sought to be rely on same. On above grounds, sought dismissal.

8. Heard learned counsel.

9. From above, point that arises for consideration is:

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

10. This petition is for regular bail by sole accused in Crime no.56/2024 by Gudekote Police Station for offences punishable under Sections 137 (2), 64 (2) (m) and 87 of BNS along with Sections 4 (1) and 6 of POCSO and Section 9 of PCM Act.

11. While, offence of kidnapping under Section 137 (2) of BNS is punishable with imprisonment upto 7 years; Repeated rape of same woman under Section 64 (2) (m) of BNS with imprisonment from 10 years upto end of natural life; kidnapping to compel marriage under Section 87 of BNS with imprisonment upto 10 years; penetrative sexual assault under Section 4 of POCSO with imprisonment from 7 years upto life; aggravated penetrative sexual assault NC: 2025:KHC-D:3808 under Section 6 of POCSO with imprisonment from 10 years upto life and adult male person marrying child, under Section 9 of PCM Act with rigorous imprisonment upto 2 years. Thus, nature of offences are either heinous or grave.

12. While complainant and prosecution rely on statement of victim and others recorded under Section 161 of CrPC, to contend that petitioner had committed offences as alleged. But in her statement recorded under Section 164 of CrPC, victim has not supported said version and it does not implicate petitioner for offences other than Section 9 of PCM Act, which does not attract punishment of death or imprisonment for life and after petitioner was arrested on 18.07.2024, prosecution had completed investigation and filed charge-sheet on 22.08.2024, taking note of decision by Hon'ble Supreme Court in case of Deshraj's case (supra), wherein accused was granted bail awaiting trial, by imposing stringent conditions, point for consideration is answered in affirmative. Accordingly following:

NC: 2025:KHC-D:3808 ORDER Petition is allowed. Petitioner/accused is released on bail in Crime no.56/2024 by Gudekote Police Station for offences punishable under Sections 137 (2), 64 (2) (m), 87 of BNS, Sections 4 (1) and 6 of POCSO and Section 9 of PCM Act, subject to following conditions:

- a) Petitioner/accused shall execute a personal bond in a sum of Rs.1,00,000/- with two sureties for likesum to satisfaction of Court.
- b) He shall not leave jurisdiction of said Court without prior permission.
- c) He shall not threaten or tamper with any prosecution witnesses either directly or indirectly.
- d) He shall not indulge in any criminal activities.
- e) He shall be regular in attending Court proceedings.
- f) It is clarified that views expressed are prima facie for purposes of this order and shall not influence final outcome after trial.

SD/-

(RAVI V.HOSMANI) JUDGE RH/GRD CT:PA