

Rahul vs The State Of Karnataka And Anr on 30 September, 2024

Author: K Natarajan

Bench: K Natarajan

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NC: 2024:KHC-K:7540
CRL.P No. 201153 of 2024

IN THE HIGH COURT OF KARNATAKA

KALABURAGI BENCH

DATED THIS THE 30TH DAY OF SEPTEMBER, 2024

BEFORE
THE HON'BLE MR. JUSTICE K NATARAJAN

CRIMINAL PETITION NO.201153 OF 2024
(439(Cr.PC)/483(BNSS))

BETWEEN:

RAHUL
S/O PUNDALIK CHAVAN,
AGE: 24 YEARS, OCC: AUTO DRIVER,
RESIDENCE OF BEDSUR (K) TANDA,
TQ. KALAGI, DIST. KALABURAGI-58522.

...PETITIONER

(BY SRI. SANJAY A PATIL, ADVOCATE)

AND:

Digitally signed
by KHAJAAMEEN
L MALAGHAN
Location: High
Court Of
Karnataka

1. THE STATE OF KARNATAKA
THROUGH KALAGI POLICE STATION,

KALAGI CIRCLE, TQ. KALAGI,
DISTRICT: KALABURAGI-585312,
REPRESENTED BY ADDL. SPP,
HIGH COURT OF KARNATAKA
KALABURAGI BENCH-585107.
2. NEELAKANTRAO
S/O RAMU NAYAK RATHOD,

AGED ABOUT 38 YEARS,
OCC: KIRANA SHOP,
RESIDENCE OF BEDSUR (K) TANDA,
TQ. KALAGI, DIST. KALABURAGI-585322.

...RESPONDENTS

(BY SRI. SIDDALING P. PATIL, ADDL. SPP)

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THIS CRIMINAL PETITION IS FILED UNDER SECTION 439 OF CR.P.C (OLD) UNDER SECTION 483 OF BNSS (NEW) ACT, PRAYING TO ALLOW THE PETITION, THERE BY ENLARGE THE PETITIONER/SOLE ACCUSED ON BAIL IN SPL.CASE (POCSO) NO. 47/2024 ON THE FILE OF ADDL. DISTRICT AND SESSION JUDGE, FTSC-I, SPECIAL COURT OF POCSO AT KALABURAGI TO BE TRIED FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 448, 363, 376(2)(N) OF IPC AND SEC 4, 6 OF POCSO ACT 2012 AS PER CHARGE SHEET, ARISING OUT OF CRIME NO. 25/2024 REGISTERED BY KALAGI, POLICE STATION, DISTRICT KALABURAGI IN THE INTEREST OF JUSTICE

THIS PETITION, COMING ON FOR ORDERS, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE K NATARAJAN

ORAL ORDER

(PER: HON'BLE MR. JUSTICE K NATARAJAN) This petition is filed by the petitioner/accused under Section 483 of the Bharatiya Nagarik Suraksha Sanhita (in short 'BNSS Act') Act for granting regular bail in Crime No.25/2024 registered by Kalagi Police station and charge sheet for the offence punishable under Section 48, 363, 376(2)(n) of IPC and sections 4 and 6 of POCSO Act 2012, pending on the file of SPL.Case (POCSO) No. 47/2024 on the file of Addl District and Session Judge, FTSC-I, Special Court of POCSO at Kalaburagi.

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2. Heard the arguments of learned counsel for the petitioner and learned Addl. SPP for the State.

3. The case of the prosecution is that on the complaint of respondent No.2, the police registered FIR regarding missing of the daughter of complainant who is below 18 years from the house since 05.05.2024/06.05.2024. Subsequently, they have been traced in Mumbai on 12.5.2024. They were brought before the court and the accused was remanded to judicial custody. His bail petition came

to be rejected, hence he is before this court.

4. Learned counsel for the petitioner has contended, the complaint came to be filed against unknown persons, there is no details of the victim and any sexual assault and both of them were apprehended in a mall while they were working in Mumbai. The statement of the victim under Section 161 Cr.P.C. has been recorded, where she has stated in February 2024 the accused called her and had sexual assault on the victim in a land. Thereafter he has called 2 to 3 times and committed sexual assault. However, she has not made any NC: 2024:KHC-K:7540 complaint to the parents and not brought to the notice of the parents. Subsequently, after having contact with the accused and having love affairs, the parents instructed not to have contact. Therefore, she has stopped contact. Subsequently she herself started talking with the accused. Later on 05.05.2024 at 11.30 p.m., she herself telephoned to the accused and went along with him to Mumbai, but she has changed her version under 164 Cr.P.C., statement she has not stated anything about the sexual assault. Another statement made by the victim girl to the police, where she has stated that the accused gagged her mouth and took her to Mumbai and she has stated that due to fear she has stated like that, but she only went along with the accused person. Therefore, it is contended there is a contradictory statement made by the victim girl under 161 Cr.P.C. and 164 Cr.P.C. statement and now her evidence is already recorded by the trial court. Therefore, when the material witnesses evidence has already been conducted by the trial court, keeping the accused in custody will not serve any purpose. He is in custody for almost nearly 5 months. He is ready to abide by any conditions, Hence prayed for granting bail.

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5. Per contra, learned HCGP seriously objected the petition contending that even if the victim went along with the accused with consent but her consent is immaterial as she is minor. The presumption available to the prosecution under Section 29 of the POCSO Act, that both stayed in room even without saying it goes to show he had sexual intercourse with her. The medical examination report also reveals the offence committed by the accused. Therefore, at this state, if he is granted bail, he may abscond and tamper with the witnesses hence prayed for rejecting the bail petition.

6. Having heard the arguments and perused the records which reveals ofcourse the victim has stated she has fallen in love with accused since last 3 years and both of them had sexual affairs in February 2024 itself but she has not intimated to the family. Later, on the instructions made by the parents, she had discontinued the affairs with the accused. However, she started once again talking with accused and she herself called accused to home at 11.30 p.m., and she went along with the accused in a car belonging to his friend Raju. Later, they have been apprehended till then she has not stated anything about the sexual affair by the accused. However, once again NC: 2024:KHC-K:7540 statement made under 164 Cr.P.C., the police have recorded before the Magistrate and also 164 Cr.P.C. statement recorded by the police she has changed some versions with the police as well as court. However, her evidence is already completed by the trial court. She is the material witness or as victim she is already been examined before the court and completed her evidence. Such being the case, I am of the opinion without expressing any opinion on the merits of the case, by imposing certain stringent conditions, if bail is granted, no prejudice would cause to the prosecution case.

Hence, the following order:

ORDER Accordingly, this Criminal petition is allowed. The petitioners/accused is ordered to be released by the trial court in Crime No.25/2024 registered by Kalagi Police station, pending on the file of SPL.Case (POCSO) No. 47/2024 on the file of Addl District and Session Judge, FTSC-I, Special Court of POCSO at Kalaburagi, subject to the following conditions:

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- (i) Petitioner- accused shall execute a personal bond for a sum of Rs.2,00,000/- (Rupees Two Lakhs only) with two sureties for the likesum to the satisfaction of the trial Court;
- (ii) Petitioner shall not indulge in similar offences strictly;
- (iii) Petitioner shall not tamper with the prosecution witnesses directly/ indirectly;
- (iv) Petitioner shall not leave the jurisdiction without prior permission of Trial court and
- (v) Petitioners shall take the trial without causing any delay.

If any of the bail conditions is violated, the prosecution is at liberty to file an application for cancellation of bail.

Sd/-

(K NATARAJAN) JUDGE AKV CT:SI