

Shaik Raheel vs The State Of Karnataka And Anr on 19 September, 2024

Author: K Natarajan

Bench: K Natarajan

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NC: 2024:KHC-K:7082
CRL.P No. 201084 of 2024

IN THE HIGH COURT OF KARNATAKA

KALABURAGI BENCH

DATED THIS THE 19TH DAY OF SEPTEMBER, 2024

BEFORE
THE HON'BLE MR JUSTICE K NATARAJAN

CRIMINAL PETITION NO.201084 OF 2024 (482(BNSS))
BETWEEN:

SHAIK RAHEEL S/O SHAIK SHAKEER
AGE: 24 YEARS, OCC: LABOURER,
R/O BORI VILLAGE, TQ. JINTUR,
DIST. PARBHANI-413104
(MAHARASHTRA STATE)

...PETITIONER

(BY SRI. SANJAY A. PATIL, ADVOCATE)

AND:

1. THE STATE OF KARNATAKA
THROUGH BIDAR WOMEN POLICE STATION,
BIDAR SUB-DIVISION, DIST. BIDAR-585401
REP. BY ADDL. SPP
HIGH COURT OF KARNATAKA
KALABURAGI BENCH.

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by KHAJAAMEEN
L MALAGHAN
Location: High
Court Of
Karnataka

2. MOHAMMED ABDUL,
S/O MOHAMMED ABDUL JALEEL

AGE: 47 YEARS, OCC: NOT KNOWN,
R/O H.NO.5-2-191, BARUD DULEN,
DRAVAJA BARUD GALLI, BIDAR,

DIST. BIDAR-585401

...RESPONDENTS

(BY SRI. JAMADAR SHAHABUDDIN, HCGP FOR R1;
NOTICE TO R-2 SERVED BUT UN-REPRESENTED)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 438 OF
CR.P.C (OLD) / U/SEC. 482 OF BNSS ACT (NEW) PRAYING TO ALLOW
THE PETITION, THERE BY ENLARGE THE PETITIONER / ACCUSED
NO.1 ON BAIL IN SPL.CASE NO. 620/2024 ON THE FILE OF ADDL.
DISTRICT AND SESSIONS COURT BIDAR, DISTRICT BIDAR TO THE

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TRIED FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 363, 366,
376(2) (N) OF IPC AND SECTIONS. 4, 6, 8, 12 AND 17 OF POCSO
ACT 2012 AS PER CHARGE SHEET, ARISING OUT OF CRIME NO.
05/2024 REGISTERED BY BIDAR WOMEN POLICE STATION,
DISTRICT BIDR,

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 No.1 under Section 482 of BNSS(439 of Cr.P.C.) for granting bail in Crime No.5/2024 registered by Bidar Women Police Station, Bidar and charge-sheeted for the offences punishable under Sections 363, 366, 376(2)(n) of IPC and Sections 4, 6, 8, 12, 16 and 17 of POCSO Act, 2012.

2. Heard learned counsel for the petitioner and learned High Court Government Pleader for the respondent-State. Respondent No.2 served and unrepresented.

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3. The case of the prosecution is that on the complaint of respondent No.2, the police have registered a complaint against the petitioner on 17.01.2024 for the offence punishable under Section 363 of IPC for kidnapping and missing of his minor daughter aged about 17 years. After registering the FIR, the police said to be arrested the petitioner/accused on 24.01.2024 and later he was produced before the Court and remanded to judicial custody. The bail petition of the petitioner came to be rejected by the Special Court. Hence, the petitioner is before this Court.

4. The learned counsel for the petitioner has contended the petitioner has been falsely implicated. The respondent No.2/victim girl was aged about more than 20 years, while she was accompanied by the accused No.1 and went to Maharashtra. They married in Madarasa as per the Muslims rights and customs. As per the birth certificate issued by the Corporation her date of birth was 18.03.2003 as on 16.01.2024 she has crossed 18 years, NC: 2024:KHC-K:7082 she is running 21 years. Therefore, the question of attracting POCSO Act does not arise and the abduction and kidnapping also not arises; she is consenting party. He also contended that the 164 of Cr.P.C. statement recorded by the Magistrate; she has not made any sexual assault on the accused, which was recorded on the 14.02.2024. But 161 of Cr.P.C. statement recorded by the police, which was implicated the petitioner, which was recorded only on 22.02.2024. Therefore, it is contended there is no offence alleged against the petitioner. Hence, prayed for allowing the petition.

5. Per contra, learned High Court Government Pleader has seriously objected the petition and has contended that, she is a minor, her school certificate shows she is 17 years old. The materials/articles seized were found the bloodstains were detected. The hymen was not intact, it suggests there was sexual assault on the victim. Therefore, prayed for dismissing the petition.

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6. Having heard the learned counsel for the both the parties and perused the records, which reveals that as per the complaint, the accused said to be abducted the minor girl from the lawful guardian and he said to be forced the minor girl for the purpose of marriage or sexual intercourse. The police have filed charge-sheet for the offence punishable under Section 366-A and 376(2)(n) of IPC, whereas 164 of Cr.P.C. statement of the victim girl which was recorded on 14.02.2024, she has stated on the 16.01.2024 the accused came near the house and she has accompanied to Maharashtra of Bori village near Parabhani and later both of them were married in the Madarasa and later her parents and police came there, therefore, she came back and finally she stated the accused blackmailed and took her along with him. Except this allegation, she has not stated anything about the sexual assault by the accused on her. However, 161 Cr.P.C. statement recorded subsequently by the police where she has made allegation that the accused sexually assaulted by threatening her, abducted her, etc. However, the accused was arrested on NC: 2024:KHC-K:7082 24.01.2024. The police have investigated the matter and filed the charge-sheet and for last eight months he is in custody. The birth certificate produced by the learned counsel for the petitioner which reveals the certificate is issued by the Government of Karnataka, where her date of birth was shown as 18.03.2003, whereas the Investigating Officer has collected the school certificate, which shows her date of birth as 18.03.2006, which is less than three years. Of course, the school record shows she is a minor, whereas the birth certificate issued by the Corporation, it reveals she is major more than 18 years. When two documents were produced, the documents issued by the Government of Karnataka a lawful authority is having presumptive value under the law. It appears she is more than 18 years of age. Therefore, when said certificate was carried by the victim along with the accused when she was accompanied the accused to the Maharashtra. Therefore, at this stage, without expressing any opinion of the case, by looking to the facts and circumstances of the case, keeping the accused/petitioner in custody will not serve NC: 2024:KHC-K:7082 any purpose except for trial. The apprehension of the prosecution may be safeguarded by imposing stringent conditions. If bail is

granted, no prejudice would be caused to the prosecution case.

7. Accordingly, I pass the following:

ORDER The petition is allowed.

The Trial Court/Special Court is directed to release the petitioner/accused No.1 on bail, subject to the following conditions:

(i) Petitioner shall execute a personal bond for a sum of Rs.2,00,000/- with two sureties for the likesum to the satisfaction of the Trial Court/Special Court;

(ii) Petitioner shall not indulge in similar offences strictly;

(iii) Petitioner shall not tamper with the prosecution witnesses directly/ indirectly;

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(iv) Petitioner shall face 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 SDU CT:SI