

# Huligeppa S/O. Shivalingappa Vaddar vs The State Of Karnataka on 16 November, 2022

**Author: K.Natarajan**

**Bench: K.Natarajan**

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IN THE HIGH COURT OF KARNATAKA AT DHARWAD BENCH,

DHARWAD

DATED THIS THE 16TH DAY OF NOVEMBER, 2022

BEFORE

THE HON'BLE MR. JUSTICE K.NATARAJAN

CRIMINAL PETITION NO.102634 OF 2022

BETWEEN

HULIGEPPA

S/O. SHIVALINGAPPA VADDAR

AGED ABOUT 25 YEARS

OCC: MASON WORK

R/O. SIMIKERI

TALUK AND DISTRICT: BAGALKOT

PIN: 591 301.

... PETITIONER

(BY SRI S.B. PATIL, ADVOCATE)

AND

1. THE STATE OF KARNATAKA  
THROUGH SAUNDATTI TOWN  
POLICE STATION, REPRESENTED BY  
SPECIAL PUBLIC PROSECUTOR  
HIGH COURT OF KARNATAKA  
DHARWAD BENCH  
AT DHARWAD - 580 007

2. GANGAVVA  
W/O. MALLAPPA PATTADKAL  
AGED ABOUT 35 YEARS  
OCC: HOUSE HOLD WORK  
R/O. ALAGAWADI  
TALUK: NAVALGUND  
DISTRICT: DHARWAD - 580 007

... RESPONDENTS

(BY SRI V.M.BANAKAR, ADDL. SPP FOR R1 (VIDEO CONFERENCE)  
RESPONDENT NO.2 SERVED, UNREPRESENTED)

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THIS CRIMINAL PETITION IS FILED UNDER SECTION 439  
OF THE CODE OF CRIMINAL PROCEDURE, PRAYING TO  
ENLARGE THE PETITIONER/ACCUSED NO.1 ON REGULAR BAIL  
IN SOUNDATTI POLICE STATION CRIME NO.293/2021 FOR THE  
OFFENCES PUNISHABLE UNDER SECTION 376(2)(1)(n) OF IPC  
AND SECTION 6 OF POCSO ACT 2012, PENDING ON THE FILE  
OF ADDITIONAL DISTRICT AND SESSIONS JUDGE, FTSC-1,  
BELAGAVI IN CRIMINAL.MISC.NO.437/2022.

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

#### ORDER

This successive bail petition filed by petitioner/accused filed under Section 439 of Cr.P.C. in Crime No.293/2021 now pending on the file of Special Court in Special case NO.47/2020 for the offences punishable under Section 376 (2)(1)(n) of IPC and Section 6 of Pocso act 2012 pending on the file of Addl District and Sessions Judge, FTSC-1, Belagavi in CrI.Misc.437/2022.

2. Heard the arguments of learned counsel for petitioner, learned Addl. S.P.P for state. R2 served and unrepresented.

3. The case of the prosecution is that on the complaint filed by the mother of the victim on 18/10/2021 alleging that her daughter went to her father's house as they are living separately, but she did not reach the home, thereafter, she filed missing complaint. Subsequently, the police apprehended the accused and victim in the house of the accused on 15/1/2022 and on investigation it was revealed, the victim went to the Mangalore to see her friend-Sharadha. At that time she came in contact with this petitioner and later she has gone and stayed with this petitioner house between 31.12.2021 till 04.01.2022. During the stay the petitioner and herself having sexual intercourse. Subsequently, the accused was arrested and remanded to judicial custody. His bail petition came to be dismissed as withdrawn. Now the petitioner is before this court with additional grounds.

4. The learned counsel for the petitioner contended he is innocent of the alleged offence and has been falsely implicated. The earlier bail petition was withdrawn on the ground of FSL report which was not received. Now the FSL report is received where there is no scientific evidence against him and there is no stains of either spermatozoa or blood stain on the cloth of the accused as well as the victim. Therefore, he suggests there is no commission of rape on the victim. He is in custody from almost 10 months, hence prayed for granting bail.

5. Per contra learned Additional S.P.P objected the bail petition and contented that this petitioner is a habitual offender. Previously he was also involved in similar rape case in special case No.78/2018, though it was acquitted but he is in the habit of committing similar offences. He is a married person and the age of the victim is below 18 years, she is a child, as per the definition of Pocso as well as IPC and the consent is also immaterial, hence prayed for rejecting the bail.

6. Having heard the arguments and the perused the records, admittedly the victim ages is below 18 years and she is a child for the purpose of Pocso Act. The statement of the victim reveals she herself went to the house of her friend Shardha and stayed at Mangalore for 3 months. During that time the accused came in contact with her and both of them used to speak through mobile phones and fell in love. Subsequently, she went to the house of accused Jalakeri and she stayed with the accused from 31.12.2021. to 04.01.2022 those time they were having sexual intercourse between them. Of course, the statement of victim reveals she has consented for the same but the victim is below 18 years she is minor therefore either willingness or consent it is immaterial and it amounts to rape as per Section 375 of IPC. Also it amounts to rape or sexual assault as per Section 6 of the POCSO Act. The petitioner of course is in custody for almost 10 months. The investigation is completed charge sheet has been filed. The FSL report also reveals there is no blood stains or spermatozoa or blood stain on the cloth of the accused or the victim girl. But the fact remains the incident took place from 31.12.2021 till 04.01.2022 whereas the petitioner and victim were arrested on 14.01.2022 they have been apprehended and the medical examination was done after 8 days. Therefore, it cannot be possible to verify whether blood stains or other stains on the cloth of the victim or the accused. That apart, the medical examination report reveals there was old hymen tear of the victim which suggests she was subjected to sexual assault, as per the medical record. Be as it may, the petitioner also having a criminal record that he was involved in a similar rape case of a minor girl in Special Case No.78/2018 and he is said to be acquitted by the Court for want of evidence as the victim in the case was turned as hostile. Therefore as learned S.P.P rightly contended that the petitioner is habitual offender. If he is granted bail, there is every possibility of committing similar offenses not ruled out. That apart the petitioner is a married man and committing rape and habitually committing rape on the victim, especially the teenage minor girl below 18 years of age. Therefore, I am of the view, if petitioner is granted bail there is every possibility of tampering the witness and committing the similar offenses are not ruled out. Therefore, the successive bail petition filed by the petitioner is liable to be dismissed.

Accordingly, this petition is dismissed.

Sd/-

JUDGE AKV