

Yeshappa Mundalmani @ Yesuraj vs The State Of Karnataka And Anr on 26 October, 2023

Author: K Natarajan

Bench: K Natarajan

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NC: 2023:KHC-K:8249
CRL.P No. 201381 of 2023

IN THE HIGH COURT OF KARNATAKA

KALABURAGI BENCH

DATED THIS THE 26TH DAY OF OCTOBER, 2023

BEFORE

THE HON'BLE MR JUSTICE K NATARAJAN
CRIMINAL PETITION NO.201381 OF 2023 (439)

BETWEEN:

YESHAPPA MUNDALMANI @ YESURAJ
S/O UDAYKUMAR MUNDALMANI,
AGE: 27 YEARS, OCC: COOLIE
R/O NAIKAL VILLAGE,
TALUKA: WADAGERA
DISTRICT: YADGIRI-585203.

...PETITIONER

(BY SRI. GANESH NAIK, ADVOCATE)

AND:

Digitally
signed by B
NAGAVENI
Location:
High Court
Of Karnataka

1. THE STATE OF KARNATAKA THROUGH
POLICE YADGIRI WOMEN POLICE STATION
YADGIRI, DISTRICT: YADGIRI
REPRESENTED BY ADDITIONAL SPP

HIGH COURT OF KARNATAKA

KALABURAGI BENCH-585107.
2. SOUBHAGYAMMA W/O CHARLIE MALLALLI
AGE: 40 YEARS OCC: HOUSEHOLD
R/O NAIKAL VILLAGE TQ: WADGERA
DIST: YADGIR-585203.

. . .RESPONDENTS

(BY SMT. ANITA M. REDDY, HCGP FOR R1;
NOTICE TO R-2 IS HELD SUFFICIENT V/O DATED 03.10.2023)

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NC: 2023:KHC-K:8249
CRL.P No. 201381 of 2023

THIS CRIMINAL PETITION IS FILED UNDER SECTION 439 OF CR.P.C., PRAYING TO ALLOW THE PETITION AND ENLARGE THE PETITIONER ON BAIL IN CRIME NO.13/2023 OF RESPONDENT/WOMEN POLICE STATION, YADGIRI FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 376 (3), 506 AND 448 READ WITH SECTION 34 OF IPC AND UNDER SECTIONS 4, 6, 12, 14 AND 17 OF THE POCSO ACT, 2012 AND SECTION 67 OF THE I.T. ACT, 2008, PENDING ON THE FILE OF DISTRICT AND SESSIONS JUDGE, SPECIAL COURT AT YADGIRI IN SPL. CASE NO.63/2023.

THIS PETITION, COMING ON FOR ORDERS, THIS DAY,
THE COURT MADE THE FOLLOWING:

ORDER

This petition is filed by the petitioner - accused No.3 under Section 439 of Cr.P.C. for granting bail in Crime No.13/2023 registered by Yadgiri Women Police Station for the offences punishable under Sections 376 (3), 506 and 448 read with Section 34 of the Indian Penal Code (for short 'IPC') and under Sections 4, 6, 12, 14 and 17 of the Protection of Children from of Sexual Offences Act, 2012 (for short 'POCSO') and Section 67 of the Information Technology Act, 2008.

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02. Heard the learned counsel for the petitioner and the learned High Court Government Pleader for the respondent - State. The notice issued to respondent No.2 though served, but unrepresented.

03. The case of the prosecution is that on the complaint of respondent No.2 filed on 20.04.2023 the police have registered the FIR against the petitioner - accused No.3 and Ningappa - accused No.1 and Kumar - accused No.2, for the aforesaid offences. It is alleged by the de-facto complainant in her complaint that her younger daughter aged about 14 years victim who is studied up to 7th standard and dropped out. The accused No.1 - Ningappa used to follow her and tease her stating that he is fall in love with her and used to threaten that she should come and stay with him. Due to the same, the complainant went to the house of the accused No.1 and informed to his parents. In spite of the same, the accused No.1 started continue to teasing her. Therefore, she was shifted the

house to the Bengaluru and stayed at Bengaluru. It is further alleged that on 17.04.2023 at NC: 2023:KHC-K:8249 about 05.00 p.m. her son Devappa came and informed that he has received a mobile phone whats app video and 07 photographs from the mobile phone of Kumar - accused No.2 wherein it was found the video of his sister victim, wherein accused No.1 sexually assaulting her and also 07 obscene photos. Immediately he questioned the victim, the victim also told that on 09.04.2023 when she was alone in the house, the accused No.1 came to the house and threatened her to come with him otherwise he will spread the roamer that she has love affair with him. Due to fear she went along with accused No.1, where the accused No.1 said to have been committed sexual assault on her or forcible rape on her. At that time, this petitioner

- accused No.3 said to be videographed the entire episode of sexual assault made by the accused No.1 on the victim. Thereafter, the complainant went and approached the accused Nos.1 to 3, at that time they threatened her with dire consequences. The accused No.1 said to be abused her and attempted to outrage her modesty. Hence, the complaint came to be filed. After registering the FIR, the NC: 2023:KHC-K:8249 police have arrested this petitioner - accused No.3 on 21.04.2023. He was remanded to judicial custody and his bail petition came to be rejected. Hence, he is before this Court.

04. The learned counsel for the petitioner has contended that the petitioner - accused No.3 is innocent. He is nothing to do with the sexual assault committed by the accused No.1. The allegation against him is that he has videographed the sexual abuse and the mobile phone through which the episode was recorded is also not belonging to this petitioner - accused No.3, it was belonging to one Esaak which was seized. Even the offence alleged against this petitioner - accused No.3 is under Section 67 of the I.T. Act, which is bailable in nature and punishable up to 03 years. He is in judicial custody for more than 06 months. The charge-sheet is already filed. Accordingly, he prays to allow the petition.

05. Per contra, the learned High Court Government Pleader seriously opposed the bail petition and filed written objections.

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06. Upon hearing the arguments and on perusal of the records it shows that the accused No.1 is not the petitioner before this Court, who used to harass the victim and pressurizing her to love him. The complainant has also made a complaint to his parents. In spite of the same, he was continuously harassing the victim and therefore, they have shifted the house to the Bengaluru. On 09.04.2023 when the victim was alone in the house, the accused No.1 came there and threatened her that he will spread the roamer that she loves him and by force and coercion, he took her with him and then he has committed sexual assault on the victim aged about 14 years. At that time the present petitioner - accused No.3 said to have been videographed the sexual abuse made by the accused No.1 in the mobile phone. Subsequently, they have also threatened her not to disclose the same, otherwise they will send this video in the internet. The video recorded by this petitioner - accused No.3 said to be edited and photocopy was taken and the accused No.2 transferred the NC: 2023:KHC-K:8249 same to the brother of the victim girl on 17.04.2023. Therefore, the complaint came to be filed.

07. Though, the learned counsel for the petitioner contended that Section 67 of the I.T. Act, attracts to this petitioner, but on perusal of the averments made in the complaint, which attracts Section 67 (B) of the I.T. Act, as he has recorded the abuse in electronic form and it is abuse of children and sexually explicit the victim, which is punishable up to 05 years and fine of Rs.10 lakhs rupees. The accused No.2 has only transferred the said video, which attracts Section 67 of the I.T. Act, but Section 67 (B) of I.T. Act is attracts to this petitioner - accused No.3. That apart as per Section 17 of the POCSO Act, there is punishment for abetment of the commission of offence which is committed by accused No.1 and as per Section 6 of the POCSO Act, there is punishment up to 20 years. The accused No.1 made a sexual assault on the victim girl who is aged about 14 years by force and this petitioner - accused No.3 videographed the sexual affairs and send to the brother of the victim girl, which reveals that prima-

NC: 2023:KHC-K:8249 facie case made out against the accused persons for committing sexual assault and videographed by this petitioner - accused No.3, which cannot be considered as a simple offences and bailable offences, but it is nothing but abetment of commission of sexual assault on the minor girl by the petitioner - accused No.3, which attract POCSO Act. Therefore, I am of the view that, offences are very serious in nature and the petitioner - accused No.3 is not entitled for bail. If the petitioner is granted bail, there is every possibility of tampering the witnesses and threatened witnesses are not ruled out, as they are already threatened the witnesses, before lodging the complaint. Such being the case, the petitioner - accused No.3 is not entitled for bail. Accordingly, I proceed to pass the following;

ORDER The petition filed by the petitioner is dismissed.

Sd/-

JUDGE KJJ CT:SI