

Manjunath S/O Shekaragouda ... vs The State Of Karnataka on 20 June, 2022

Author: K. Natarajan

Bench: K. Natarajan

IN THE HIGH COURT OF KARNATAKA
DHARWAD BENCH

DATED THIS THE 20TH DAY OF JUNE 2022

BEFORE

THE HON'BLE MR.JUSTICE K. NATARAJAN

CRIMINAL PETITION NO.101665 OF 2022

BETWEEN

MANJUNATH
S/O SHEKARAGOUDA DHARMAGAUDRA
AGE.2 YEARS,
OCC. DRIVER IN VRL OFFICE MUDBIDIRI
R/O CHANNAMMA PLOT, NAGANUR,
TQ. KALAGHATAGHI, DIST. DHARWAD

...PETITIONER

(BY SRI.T R PATIL, ADVOCATE)

AND

- 1 . THE STATE OF KARNATAKA
DHARWAD WOMEN P.S.
REPRESENTED BY STATE PUBLIC PROSECUTOR
HIGH COURT OF KARNATAKA BENCH
DHARWAD-580011
- 2 . SMT. GANGAMMA
W/O RAMAPPA GAMANAGATTI
AGE. 45 YEARS, OCC. LABOURER,
R/O JANATA PLOT, NAGANUR,
TQ. KALAGHATAGHI , DIST. DHARWAD

...RESPONDENTS

(BY SMT.GIRIJA S. HIREMATH, HCGP FOR R1)
(R2- SERVED WITH NOTICE, UNREPRESENTED)

THIS CRIMINAL PETITION IS FILED U/SEC. 439 OF CR.P.C. SEEKING TO RELEASE PETITIONER ON BAIL, IN SPL. SC NO. 26/2022, PENDING ON THE FILE OF THE II ADDL. DISTRICT AND SESSIONS AND SPECIAL JUDGE DHARWAD, ARISING OUT OF DHARWAD WOMEN P.S. CRIME NO. 76/2021 FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 376 506 OF IPC AND SECTIONS 5 (L), 6, 17 OF THE PROTECTION OF CHILDREN CFROM SEXUAL OFFENCE ACT 2012.

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

ORDER

This criminal petition is filed by the petitioner/accused No.1 under Section 439 of Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C.', for short) for granting bail in respect of Crime No.76/2021 registered by Dharwad Women Police for the offence punishable under Sections 376, 506 of Indian Penal Code, 1860 (hereinafter referred to as the 'IPC', for short) and Sections 5(L), 6, 17 of Protection of Children from Sexual Offence Act,2012(hereinafter for short 'POCSO').

2. Heard the arguments of the learned counsel for petitioner and learned High Court Government Pleader for respondent no.1-State. Respondent No.2 served with notice, unrepresented.

3. It is the case of the prosecution that on the complaint filed by the mother of victim girl Police have registered case on 14.12.2021. It is alleged in the complaint that she is having a minor daughter aged about 16 years. The accused was opposite house neighbor. His sister one Drakshayani came from Mumbai and stayed in the house of accused. She used to visit the house of complainant and took her daughter to their house. She has allowed because they are neighbors and known persons. Subsequent to last 2 - 3 days of filing complaint, she found stomach of the victim was bulge. Suspecting the same she took her daughter to hospital and she came to know that her daughter was 7 months pregnant. She also stated that accused sent is 3rd wife for delivery and by that time he has committed rape on the minor victim girl for 5 to 6 times with the help of his own sister. After registering the case, Police said to be arrested the petitioner on 01.02.2022 and remanded in judicial custody. He has filed bail petition before II Addl. District and Sessions and Spl. Judge, Dharwad and the same came to be rejected. Hence, he is before this Court seeking regular bail.

4. Learned counsel for the petitioner contended that he is innocent of the alleged offence. He has been falsely implicated in the case. There is a delay in lodging the complaint. Alleged incident took place from 01.05.2021 till 14.05.2021. There is no specific date for having committed rape. He is in custody. Investigation completed. Charge sheet has been filed. He is ready to abide by the conditions imposed by this Court. He is ready to go for medical examination for DNA test. Hence, prays for grant of bail.

5. Per contra, learned HCGP objected and contended that accused is having three wives and 3rd wife went for delivery. At that time he has forcibly committed the rape on minor victim girl aged 16 years. Now she has delivered female child on 24.02.2022. Police yet to obtain permission from Magistrate for drawing blood samples in order to confirm maternity and paternity of the child. Therefore, prays

for dismissal of the petition.

6. Having heard the arguments of learned counsel for the parties, perused the records which reveals that admittedly, victim become 7 months pregnant. Complaint was lodged subsequently suspecting the same by the mother of the complainant who took the victim minor girl to the hospital where the pregnancy was confirmed, she was 7 months pregnant. Now, she delivered to a female child on 24.02.2022. Child said to be in observation along with victim girl. Investigation is completed, charge sheet has been filed. However, Police have stated in the charge sheet that they have yet to obtain permission for ascertaining the paternity of the child and they will file charge sheet. Learned counsel submits that blood samples not yet drawn.

7. As per contention of the learned HCGP and the complainant itself reveals that the accused has married three wives. Of-course, as per submission of learned counsel for petitioner, first wife is no more, second wife is in maternal house and third wife went to delivery of a child to her maternal house. At that time this petitioner committed sexual assault on the 16 years old minor girl and made her pregnant and now the said child gave birth to another child and both children are under observation. Of-course, major portion of investigation is completed. But police yet to obtain the maternity of the child born to the victim. Statement of victim recorded under 164 of Cr.P.C. clearly indicates that, accused no.2 also involved in commission of offence by taking the victim girl to her house and made to her brother for commission of offence. It is informed by the learned counsel for petitioner that Sessions judge has granted bail to accused no.2. No grounds are made for granting bail to the present petitioner. Since petitioner is said to be having three wives and inspite of sending third wife to the delivery, he has committed sexual assault on a minor child. If petitioner is granted with bail, again he will commit similar offence on minor girls by inducing them.

8. Hence, I am of the view that petitioner has committed heinous offence and he may commit similar offences, if he released on bail. Therefore, he is not entitle for bail.

Accordingly, his bail petition dismissed.

Sd/-

JUDGE HMB