

Ashoka vs State Of Karnataka on 3 November, 2022

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 3 R D DAY OF NOVEMBER, 2022

BEFORE

THE HON'BLE MR. JUSTICE SREENIVAS HARISH KUMAR

CRIMINAL APPEAL NO.1538 OF 2022

BETWEEN:

Ashoka
S/o Ob anna,
Age about 28 years,
R/at Kundurp i Villag e,
Kundurp i Mand al,
Kalyanad urga Taluk,
Ananthapura District,
And hra Prad esh.

...Appellant

(By Sri M.Shashidhara, Advocate)

AND:

1. State of Karnataka
By Y.N.Hosakote Police Station,
Represented by SPP,
Hig h Court of Karnataka
Beng aluru.

2. Sriramapp a,
By Late Gang app a,
Age about 45 years,
R/at Kunihalli Villag e,
Pavag ad a Taluk,
Tumakuru District.

...Respondents

(By Sri Mahesh Shetty, HCGP for R1;
R2 - served , unrepresented)

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This Criminal Appeal is filed under Section 14(A)(2) of SC/ST (POA) Act, praying to set aside the order d ated 27.07.2022 in CrI.Misc.No.990/2022 passed by the Additional District and Sessions Judge, FTSC-I, Tumkuru by granting b ail to the appellant in

Spl.C.No.484/2021 originated from Cr.No.46/2019 of respondent Y.N.Hosakote Police Station, registered for the offences p/u/s 376(2)(i)(n) read with 34 of IPC and section 4 of POCSO Act and section 3(1)(w)(ii), 3(2)(va) of SC/ST (POA) Act, which is pending on the file of the Additional District and Sessions Judge (FTSC-I), Tumkuru.

This Criminal Appeal coming on for admission this day, the Court delivered the following:

JUDGMENT

This is an appeal under section 14A(2) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act challenging the order of Additional District and Sessions Judge (FTSC-1), Tumakuru, in CrI. Mis. 990/2022. The appellant is accused No.1 in Crime No. 46/2009 registered by Y.N.Hosakote police for the offences under sections 376(2)(i)(n), 506 IPC, sections 4 and 6 of POCSO Act and section 3(1)(w)(ii), 3(2)(va) of the Scheduled Castes and the Scheduled Tribes :: 3 ::

(Prevention of Atrocities) Act read with section 34 of IPC. One Ananda is accused No.2.

2. Heard Sri M.Shadhidhara, learned counsel for the appellant and Sri Mahesh Shetty, learned Government Pleader for respondent No.1. Respondent No.2 has been served with notice of this appeal, but he has not entered appearance.

3. The FIR contains the allegations that about 9 to 10 months prior to 9.7.2019, Anandappa @ Gollananada of Anantapura, Andhra Pradesh, sexually abused the daughter of second respondent and threatened of dire consequences if she disclosed the same to anybody. It is also alleged that the appellant herein also sexually abused the girl and consequently she became pregnant and then gave birth to a baby on 15.5.2019.

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4. Going by the contents of FIR, two persons appear to have sexually abused the girl. It is not disputed that the girl gave birth to a baby. For rejecting the application for bail, the trial court recorded the reasons that the materials placed before the court would prima facie indicate that the appellant had committed the offence alleged in the charge sheet. It was the primary duty of the court to ensure that the victim and the witnesses should feel that they could depose before the court without fear or apprehension. It is also observed that the appellant had failed to make out a ground for grant of bail.

5. Learned counsel for the appellant refers to the statement given by the victim girl

before the police during investigation and also her two statements made under section 164 Cr.P.C one before the Judicial Magistrate, Pavagada and the other before the Judicial Magistrate, Anantapura.

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In the statement given before the investigating officer what is recorded is that it was one Gollananada, accused No.2 who used to have sexual intercourse with her and, her aunt namely Gangamma asked her to tell the name of Ashoka as the father of the baby. Therefore while giving statement before the police, she said that it was because of Ashoka she became pregnant and delivered a baby. It may be noted here that in the same statement she has inculpated Ananda also. Then in the statement given by the girl before the JMFC, Pavagada, she stated that she became pregnant because of rape committed by Ashoka. In the statement given by her before the JMFC, Anantapura, she took the name of Gollananada to be responsible for her pregnancy. Therefore if these statements of the girl are considered, a doubt would certainly arise in the prosecution case. The court below has not considered this aspect of the matter at all. Very interestingly, in :: 6 ::

para 14 of the impugned order, the following observations are made : -

"14. In view of the aforesaid contentions, I have meticulously perused the materials placed before me.

As per the D.N.A. report the petitioner is not the biological father of the child born to the victim. However, according to the report even the victim is not the biological mother of the child. Hence not much reliance can be placed on the DNA report."

6. That means the court below has noted that even according to the DNA report, the appellant was not the biological father. If the materials do indicate like this, it is strange the court below would come to the conclusion that prima facie case exists against the appellant. While it is certainly true that the victim and the witnesses should have a congenial atmosphere in the court when they come to give evidence, it does not mean if bail is :: 7 ::

denied such an atmosphere is created. The principles of bail clearly postulate that if a prima facie case does not exist, accused may be admitted to bail by imposing conditions that safeguard the interest of the witnesses. Looked in this view, I am of the opinion that the impugned order cannot be sustained. Appellant is entitled to bail. Hence, the following :

ORDER Appeal is allowed.

The order passed by the Additional District and Sessions Judge (FTSC-1), Tumakuru, dated 27.07.2022 in Crl. Mis.No.990/2022 on the application of the appellant under

section 439 Cr.P.C., is set aside. The said application is allowed.

The appellant is admitted to bail on obtaining from him a bond for Rs.1,00,000/- (One Lakh only) and two sureties for the likesum to the satisfaction of the trial court.
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appellant is also subjected to following conditions:-

- i. He shall not tamper with the evidence and threaten the witnesses.
- ii. He shall regularly appear before the trial court till conclusion of the trial.
- iii. He shall not get involved in any other criminal case/s in future. In case any FIR is registered against him, the same will be considered for cancellation of bail.

Sd/-

JUDGE ckl/-