

Ashok S/O Tippanna Sannakki vs The State Of Karnataka on 8 June, 2022

Author: K. Natarajan

Bench: K. Natarajan

IN THE HIGH COURT OF KARNATAKA
DHARWAD BENCH

DATED THIS THE 8th DAY OF JUNE 2022

BEFORE

THE HON'BLE MR.JUSTICE K. NATARAJAN

CRIMINAL PETITION NO.101111/2022
c/w CRIMINAL PETITION NO.101187/2022

IN CRL.P. NO.101111/2022
BETWEEN:

ASHOK, S/O TIPPANNA SANNAKKI
AGE 30 YEARS, OCC: AGRICULTURE
R/O ASANGI VILLAGE 587 311,
RQ. RABAKAVI BANAHATTI,
DIST. BAGALKOT.

.. PETITIONER

(BY SRI. PRASHANTH S. KADADEVAR, ADVOCATE)

AND:

1. THE STATE OF KARNATAKA,
REP. BY STATE PUBLIC PROSECUTOR
HIGH COURT OF KARNATAKA
DHARWAD BENCH AT DHARWAD,
THROUGH ITS LOKAPUR PS.

2. YALLAPPA S/O LAKSHMAPPA PADEPPANNAVAR,
AGE 45 YRS., OCC: AGRICULTURE
R/O MALLAPUR P L 587 111
TQ. MUDHOL, DIST. BAGALKOT.

.. RESPONDENTS

(BY SMT. GIRIJA S. HIREMATH, HCGP FOR R1.
SRI. GIRISH A. YADAWAD, ADV. FOR R2.)

THIS PETITION IS FILED UNDER SECTION 439 OF CR.P.C. SEEKING TO ALLOW THE PETITION AND GRANT REGULAR BAIL TO PETITIONER ACCUSED NO.2 IN LOKAPUR PS CR.NO.29/2022 FOR THE OFFENCE PUNISHABLE UNDER SECTIONS 363, 366, 366A, 506(2), 342, 354A R/W 34 OF IPC AND SECTIONS 8, 12 AND 17 OF POCSO ACT.

IN CRL.P. NO.101187/2022
BETWEEN:

1. PRAKASH, S/O MAHAVEER SHIRAGAVANKAR
AGE 38 YRS., OCC: RETIRED SERVICE
R/O ASANGI 587 314
TQ. RABAKAVI, BANAHATTI,
DIST. BAGALAKOTE.

2. SHRISHYAL, S/O SIDDALINGAPPA DHARUR
AGE 20 YRS., OCC.STUDENT
R/O ASANGI 587 314,
TQ. RABAKAVI BANAHATTI,
DIST. BAGALAKOTE.

.. PETITIONERS

(BY SRI. SHRIHARSH A. NEELOPANTH, ADVOCATE
SRI. P.N. HOSAMANE, ADV. FOR P2.)

AND:

1. THE STATE OF KARNATAKA,
REP. BY THE PSI
POLICE SUB INSPECTOR
LOKAPUR POLICE STATION, LOKAPUR,
TQ. MUDHOL. DIST. BAGALAKOTE,
THROUGH STATE PUBLIC PROSECUTOR
HIGH COURT OF KARNATAKA
DHARWAD BENCH

2. YALLAPPA S/O LAKSHMAPPA PADEPPANNAVAR,
AGE 45 YRS., OCC: AGRICULTURE
R/O MALLAPUR P L KEMPANDI FORM
TQ. MUDHOL, DIST. BAGALKOT. 587 313.

.. RESPONDENTS

(BY SMT. GIRIJA S. HIREMATH, HCGP FOR R1.
SMT. ARCHANA MAGADUM, ADV. FOR R2.)

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THIS PETITION IS FILED UNDER SECTION 439 OF CR.P.C. SEEKING TO ALLOW THE PETITION AND GRANT REGULAR BAIL TO PETITIONER ACCUSED NOS.3 AND 4 IN LOKAPUR PS CR.NO.29/2022 FOR THE OFFENCE PUNISHABLE UNDER SECTIONS 363, 366, 366A, 506(2), 342,

354A R/W 34 OF IPC AND SECTIONS 8, 12 AND 17 OF POCSO ACT
PENDING TRIAL OF THE SAID CASE, WHO IS IN JUDICIAL CUSTODY IN
THE ABOVE SAID CRIME ON SUCH TERMS AND CONDITIONS.

THESE PETITIONS COMING ON FOR ORDERS THROUGH PHYSICAL
HEARING/VIDEO CONFERENCING HEARING THIS DAY, THE COURT MADE
THE FOLLOWING:

ORDER

Criminal petition No.101111/2022 is filed by accused No.2 and Criminal Petition No.101187/2022 is filed by accused Nos.3 and 4 under Section 439 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C.' for brevity) for granting bail in Crime No.29/2022 registered by the Lokapur Police Station, Mudhol Circle, Bagalkot district, for an offence under Section 363 of the Indian Penal Code, 1860 (hereinafter referred to as 'IPC' for brevity) and also filed charge sheet for the offences punishable under Sections 363, 366, 366A, 506(2), 342, 354A, 376DA read with Section 34 and Sections 4, 6, 8, 12 and 17 of Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as 'POCSO Act' for brevity).

2. Heard the arguments of the learned counsel for the petitioners/accused Nos.2 to 4 and the learned High Court Government Pleader for the respondent No.1/State and the learned counsels appearing for the respondent No.2/complainant in both the cases.

3. The case of the prosecution is that, on the complaint of the father of the minor victim girl, Yallappa, a complaint is registered by the Police on 11.03.2012 alleging that he is having 7 children and the 2nd daughter is the victim girl, aged about 14 years 7 months and she along with his another younger daughter went to school on 11.03.2022 and at about 5:00pm on the same day, he received a phone call from Hanamant Bavalatti that his daughter- the victim girl was taken by some persons in a car. Therefore, he tried to search the victim girl, but could not find. Hence, he filed a missing complaint. The Police, initially, registered kidnapping case under Section 363 of IPC against unknown persons. Subsequently, it is alleged that, on 13.03.2022, the police apprehended accused Nos.2 to 4 on suspicion and on inquiry, they came to know that these accused were involved in abduction of the minor girl and left her in a rented house of accused No.1 on 11.03.2022. Subsequently, the police went along with accused Nos.2 to 4 to the place where victim was lodged but accused No.1 was not found. Thereafter, the victim was rescued and the statement of the victim was recorded by the police and her further statement was also recorded. Subsequently, accused No.1 was also arrested. They were remanded to judicial custody. Their bail petitions came to be rejected by the learned Sessions Judge. Hence, they are before the Court.

4. Learned counsel appearing for the petitioner/accused No.2 has contended that the petitioner is innocent of the alleged offence. He has been falsely implicated and he was not in a position to accompany the other accused as he had met with an accident on 31.12.2021 and he is under continuous treatment. Even otherwise, on merits, there is no material to show that this petitioner has committed the offence of rape and in the statement of the victim recorded, she has given a stereo type statement before the trial Court and also no proper statement is made before the Magistrate to connect the petitioner with the offence of committing rape on the victim girl.

Investigation is already completed. Charge-sheet is filed. Therefore, prayed for granting bail both on the merit as well on the medical ground.

5. Learned counsel for accused No.3 vehemently contended that the victim herself has given statement to the police at an earlier point of time that, she has not stated about commission of rape and subsequently, the police once again recorded the statement of the victim, where, again she has not stated anything about the commission of rape and thereafter 3rd statement of the victim was recorded on 5.4.2022 wherein she has stated that accused No.1 committed rape. Further, she has stated that, after accused No.1 committed the offence, her eyes were closed by a cloth and for 3 times rape was committed on her. Therefore, it is contended that this petitioner has not committed rape on the victim. Even otherwise, there are no injuries found on the body of the victim and except rupture of hymen, absolutely, there is no medical evidence to connect the accused person with the commission of rape. Investigation is completed. Charge sheet has been filed.

Counsel further contended that the victim also disclosed the fact with the mother but her mother also not stated anything about the commission of rape in her statement and also in the further statement. Therefore, there is no material to show that this petitioner committed rape on the victim girl nor has committed offence under Section 376DA of IPC. The petitioner is in custody for almost 3 months. Hence, prayed for granting bail.

Learned counsel for accused No.3 mainly contended that he is the driver of the car hired by the accused and he is not involved in the commission of the offence.

6. Learned counsel for accused No.4 has taken a similar contention and contended that there is no direct evidence against the petitioner for having committed the offence except the allegation that he has kidnapped the victim at the instance of accused No.1 and medical record also does not reveal any commission of sexual assault on the victim girl and there is delay in medically examining the victim which was on 06.04.2022. The entire charge sheet material does not make out any prima facie case against him. Therefore, the petitioner is entitled for bail. Hence, prayed for granting bail.

7. Per contra, learned High Court Government Pleader for respondent No.1/State seriously objected the bail petition and contended that accused Nos.1 to 4 were hatching conspiracy and with the help of accused Nos.2 to 4, accused No.1 got abducted the minor girl aged about 14 years, a school going girl. After abducting the victim girl, she was handed over to the custody of accused No.1 where she was detained in a room in a rented house secured by accused No.1 on the ground that he will bring his wife. Subsequently, statement of the owner was also recorded. He has also stated the same. She further contended that accused persons had threatened the victim girl not to disclose the incident to anybody otherwise they will kill her and her sisters would face the same. Therefore, due to fear, she has not disclosed the commission of rape before the police as well as the Magistrate. Subsequently, the Investigating Officer has been transferred and a Women PSI was appointed and she recorded the statement of the victim wherein she has clearly stated about the commission of rape by 4 accused persons which amounts to gang rape. If the accused persons are granted bail, they will commit similar offence and tamper the prosecution witnesses. Hence, prayed for dismissal of the petitions.

8. Learned counsel appearing for respondent No.2 Sri.Girish A. Yadawad in Criminal Petition No.101111/2022 seriously objected the bail petition and contended that accused Nos.1 to 4 committed gang rape on the victim girl. The medical report reveals rupture on the private part of the victim i.e. hymen, which is a serious crime. He further contended that the accused persons used to kidnap and rape the minor girls and that there are number of offences of this nature committed by the accused in the village and due to fear none of them have given complaint to the police. The police are hand in glove with the accused persons. They have not conducted proper investigation and even they failed to take the victim girl to the hospital immediately for medical examination after rescuing her, which itself shows their involvement with the accused persons. If the petitioners are granted bail, they will abscond and threaten the witnesses. The victim in her statement has clearly stated about accused No.1 committing rape and thereafter, by tying her eyes with a cloth, 3 times committed rape, which is possible to have been committed by these petitioners, which amounts to gang rape. The punishment for the said offence is imprisonment for not less than 20 years which may extend to imprisonment for life. Therefore, prayed for dismissing the petitions.

He further objected the contention regarding medical ground urged by the counsel for accused No.2 by contending that accused No.2 though was admitted on 31.12.2021 but he was discharged on 16.01.2022 and at the time of discharge, his health condition was good. Though he is on follow up treatment, the accident took place two months prior to the commission of crime by the petitioner and discharge summary shows that there are no serious injuries and follow-up treatment other than simple medication. This is a serious case of abduction and gang rape committed on the victim girl. Therefore, he contended that the Court cannot consider his medical ground also. Hence, prayed for dismissal of the petition.

9. Learned Counsel Sri. Archana Magadam appearing for respondent No.2 in CrI.P.No.101187/2022 seriously objected the bail petitions and contended that investigating Officer, purposely, has not properly conducted the investigation. They failed to take the victim to the hospital for medical examination as required under the provisions of POCSO Act and Section 376 of IPC. Subsequently, on the complaint, the investigating Officer was transferred and a new Investigating Officer was appointed and recorded the statement which shows that the petitioners have influenced the police officials and they are in the habit of committing similar offence and threatening the witnesses and because of life threat given to the victim and family members of the victim, due to fear, not disclosed the actual rape committed on her and she has given statement on 05.04.2022 that she has stated that all these 4 persons have committed rape on the victim which amounts to gang rape. If the petitioners are granted bail, the petitioners threatening the witnesses, absconding and committing similar offences cannot be ruled out. Hence, prayed for dismissal of the petition.

Learned counsel further contended that the victim has given statement under Section 164 of Cr.P.C. before the Magistrate that the Investigating Officer himself threatened her not to disclose the real fact. Therefore, due to fear, the victim did not give a proper statement. Subsequently, she gave a statement before the women PSI. Hence, prayed for dismissal of the petition.

10. Having heard the arguments of the learned counsel for the parties, perused the records.

11. On perusal of the records, it reveals that on the complaint of respondent No.2, the police admittedly registered a kidnapping case under Section 363 of IPC against unknown persons wherein the complainant has categorically stated that his daughter- the victim girl along with another daughter proceeded on a bicycle on 11.03.2022 to school and at about 5:00 pm, he got information through one Hanumanth Bavalatti over phone that somebody has abducted his minor daughter in a car and went towards Lokapur. The victim girl was aged about 14 years 7 months. Immediately, he came and enquired his another daughter, who had accompanied the victim to school, she has stated that when herself and her sister came near Mallapur cross, at that time, a white car came there and a person in the car asked the victim about the road leading to Lokapur and immediately they dragged her into the car and went away. After registering the case, the police arrested accused Nos.2 to 4 on suspicion. They confessed that they have abducted the minor victim girl at the instance of accused No.1-Manjunath and they also stated to have taken the victim to the room where accused No.1 had secured a house for rent by misrepresenting the owner of the house that he will bring his wife. Accused Nos.2 to 4 took the police to the house where the victim was illegally detained. The door was latched from inside by the victim and after rescuing, she has stated that accused Nos.1 to 4 have threatened not to open the door and if she complains anything about them, they will kill her family members. When she came out, she fell down due to giddiness. Thereafter, they took the victim to the local hospital and was given first aid. It appears, while recording the statement by the police, she has stated about abduction by accused Nos.2 to 4 and accused No.1 had told that he fell in love with her and detaining her in the house.

12. Learned counsel for the petitioner brought to the notice of the Court that the police previously had recorded the statement of the sister of victim Janu wherein she has also stated that they took the victim and thereafter detained her in the house and the police rescuing her. Subsequently another statement was recorded on 17.03.2022, wherein the victim herself has stated about her kidnapping by accused Nos.2 to 4 in a car on the ground of asking address towards Lokapur and abducted her and taken her to the house of accused No.1 and detaining her. The accused threatened her not to open the door otherwise they would kill her family members. It is also revealed from 164 Cr.P.C. statement that the victim reiterated same thing about all these petitioners kidnapping her and detaining her in the room and accused Nos.1 to 4 committing rape on her and thereafter, at that time, they leaving the room, as they received a phone call.

However, it is brought to the notice of this Court by the learned High Court Government Pleader that the victim girl made a complaint against the investigating Officer before the Magistrate that the Investigating Officer threatened not to disclose anything about the accused persons. Though the said statement is recorded by the Magistrate, the Magistrate did not ask what had actually happened. The Magistrate has mechanically recorded the statement and sent back the victim girl. Thereafter, at the instance of the complainant, the Investigating Officer was changed by transfer and then a Women Sub Inspector of Police was appointed and when she enquired the victim, on 05.04.2022, the victim girl had given written statement that accused No.1 removed her pant and committed forcible intercourse on her. Thereafter, they closed her eyes with cloth and thereafter for 3 times they committed rape on her but she cannot say who actually had sexually assaulted her for 3 times subsequent to sexual assault by accused No.1. In view of this statement, the PSI, took the victim for the medical examination. During medical examination, the victim before the Doctor has clearly

stated that accused No.1 had committed rape on her and subsequently, thrice she was raped by tying her eyes with cloth.

13. Though the learned counsel for the petitioner has contended there is no injury over the body of the victim and that her private parts are intact except hymen, the hymen is shown as ruptured which is not in dispute. Though the radiological report reveals that the victim is aged 16 to 17 years and as per the dental age, the victim is aged 13 to 18 years but she is minor below 18 years. Undergarment, public hair, vaginal swab and vaginal smear were collected by the Doctor and sent for FSL examination. The FSL report is not yet received.

14. Learned Government Pleader and the counsel for respondent No.2 seriously objected the bail petition and contended that accused No.1 and his companion are in the habit of abducting the minor girls immediately after they attaining puberty and they used to commit rape and threatened not to inform. They also contended that 32 girls are ravished by accused No.1. However, there is no complaint filed against them, as he is an influential person and he used to threaten the victim and her family members. Therefore, the family members of the victim were afraid to give complaint against the accused. However, there is no material collected by the Investigating officer in this regard.

15. On perusal of the records, the age of the victim is categorically stated that she is below 15 years and the victim has categorically stated, though, at later stage that, accused No.1 committed rape and subsequently they tied her eyes by a cloth and thrice she was raped, one after the other, it can be presumed that accused No.1 may not be able to commit intercourse continuously for 4 times, obviously, it must be these accused persons 2 to 4 who might have committed rape and ravished her and in order to avoid their identity, her eyes were tied by a cloth by these people. Therefore, it is nothing but a gang rape on a minor girl which is punishable with imprisonment for a term which shall not be less than 20 years, but which may extend to life.

16. Learned counsel for accused No.2 contended that accused No.2 had met with an accident and he is taking treatment and has produced some of the medical records.

17. Of course, accused No.2 had met with an accident and head injury on 31.12.2021 but he was discharged on 16.01.2022. Though he may be continuously under treatment as an out patient but the victim has categorically stated that these accused Nos.2 to 4 had abducted her in a car in the guise of asking the address and thereafter they brought her before accused No.1 to the room and then accused No.1 has committed rape. Subsequently, they also stated to have committed rape on her. Therefore, looking to the discharge summary and the medication given at the time of discharge of accused No.2 and that though he may be under treatment, at this stage, it cannot be said that there is a serious ailment or eminent danger to his life in order to release him on medical ground. That apart, the Investigating officer, who had conducted the investigation at the initial stage, had utterly failed to take the victim girl to the hospital for medical examination of the sexual assault. Even though there is are no allegations of sexual assault on the victim, it is the duty of the Investigating Officer to take the victim to the nearest hospital for medical check up. That was not done. That apart, a statement is made by the sister(Janu) of the victim in her own hand writing in

the name of the victim. The same was received by him. Subsequently, he has recorded another statement from the victim which reveals that the Investigating officer has totally violated the safeguards mentioned under the provisions of POCSO Act and also the guidelines for the offence under Section 376 of IPC. Totally, the victim was not taken to the medical examination at all and recorded the mother's statement. It is gross negligence on the part of the Investigating officer who conducted the investigation at the initial stage and subsequently, it appears a Woman PSI has recorded the statement.

18. The POCSO Act clearly mentions that a woman police or WPSI must be authorized to take the statement and the policeman may also be accompanied with them. The same was not done which shows that the accused persons influenced the Investigating officer and he has not properly conducted the investigation and ultimately the Investigating Officer was changed and a Woman PSI has recorded the statement. Medical examination report shows that hymen is ruptured. Report from FSL is still not yet received. Accused No.1, who is the main accused, has not moved any application and only these petitioners have approached this Court for bail.

19. Admittedly, abducting minor child for procuring, enticing her, forcing her to marry, forced or seduced to illicit intercourse with another person, Section 366A clearly attracts. Committing the sexual assault by 4 persons is nothing but a gang rape. If the petitioner's are granted bail, the possibility of tampering the witnesses and destroying the evidence are not ruled out.

20. Though the counsel for accused No.3 has contended that accused No.3 is a driver of the car, not having any knowledge about kidnapping of the victim, accompanied accused No.4, who is his friend and accused No.2 is the friend of accused No.1 but all of them committed the offence. Therefore, merely because there are some lapses and infirmities in the investigation, that itself is not a ground for granting bail to the accused persons in a serious crime like gang rape.

21. It is worth to mention that the Division Bench of this Court has recommended the Central Government and the State Government for amendment of punishment to 'death sentence' for gang rape in addition to the existing provision of imprisonment for life and shall also liable to fine on par with the provisions of Sections 376AB and 376DB of IPC keeping in view the definition of 'Woman' under Section 10 of IPC in Criminal Appeal No.246/2014 and connected matters decided on 21.10.2020.

22. Though the police might have filed charge sheet hurriedly within 90 days, I am of the view that the matter requires further investigation by Higher Rank of Police to find out about the allegation that they used to abduct girls and committing rape.

23. Considering the facts and circumstances of the case, I am of the view that the petitioners are not entitled for bail.

Accordingly, both the petitions filed by accused Nos.2 to 4 are hereby dismissed.

Sd/-

JUDGE kmv