

# Sri Yarab Pasha vs State on 9 November, 2021

**Author: K.Natarajan**

**Bench: K.Natarajan**

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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 9TH DAY OF NOVEMBER, 2021

BEFORE

THE HON'BLE MR. JUSTICE K.NATARAJAN

CRIMINAL PETITION NO.4137 OF 2021

BETWEEN

SRI YARAB PASHA  
S/O. LATE FAKEER SABI,  
AGED ABOUT 27 YEARS,  
RESIDING AT GANJIGUNTE VILLAGE,  
BASETTIHALLI HOBLI,  
SIDLAGHATTA TALUK - 562 105,  
CHICKBALLAPUR DISTRICT.

... PETITIONER

(BY SRI KALYAN R., ADVOCATE)

AND

1. STATE  
BY DIBBURAHALLI POLICE,  
DIBBURAHALLI,  
SIDLAGHATTA TALUK - 562 105,  
REPRESENTED BY PUBLIC PROSECUTOR,  
HON'BLE HIGH COURT OF KARNATAKA,  
BENGALURU - 560 001.
2. SREEKANTA CHARI  
S/O. MANIKYACHARI,  
AGED ABOUT 43 YEARS,  
GANJIGUNTE VILLAGE,  
BASETTIHALLI HOBLI,  
SIDLAGHATTA TALUK - 562 105,  
CHICKBALLAPUR DISTRICT.

... RESPONDENTS

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(BY SRI MAHESH SHETTY, HCGP., FOR R.1;  
R.2 IS SERVED AND UNREPRESENTED)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 439  
OF THE CODE OF CRIMINAL PROCEDURE, PRAYING TO  
ENLARGE THE PETITIONER ON BAIL IN CRIME NO.14/2021  
(SPL.S.C.NO.30/2021) OF DIBBNURHALLI POLICE STATION,  
FOR THE OFFENCES PUNISHABLE UNDER SECTION 4, 6, 12 AND  
14 OF THE POCSO ACT AND SECTIONS 376(2)(i)(n), 354-C,  
504, 506 AND 34 OF THE IPC AND SECTIONS 67(A) AND 67(B)  
OF THE I.T. ACT.

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

#### ORDER

This petition is filed by the petitioner-accused No.2 under Section 438 of Cr.P.C., for granting anticipatory bail in Spl.S.C.No.30/2021 pending on the file of Additional District and Sessions Judge, FTSC-1, Chikkaballapura for the offences punishable under Sections 376(2)(i)(n), 354C, 504, 506 read with Section 34 of the Indian Penal Code, 1860 (for short 'IPC'), Sections 4, 6, 12 and 14 of the Protection of Children From Sexual Offences Act, 2012 (for short 'POCSO Act') and Sections 67(A) and 67(B) of the Information Technology Act.

2. Heard the arguments of learned counsel for the petitioner and learned High Court Government Pleader for respondent No.1 - State.

3. The case of the prosecution is that the complainant-Sreekanta Chari who is the father of the victim filed a complaint on 02.02.2021 alleging that his daughter completed her 10th standard and due to lockdown, she could not continue her studies and was at home. The complainant's wife is working as a daily labour and he is working as a driver and used to return back after 5 to 6 days. In this circumstance, the daughter of the complainant used to stay alone at home. Accused No.1 who is the resident of the same village who is running a salon shop used to visit the complainant's house and was having acquaintance with the complainant's daughter. Taking advantage of the absence of the parents at home, accused No.1 misbehaved with his daughter and had taken some photographs and recorded the video of the sexual assault and has been blackmailing his daughter that if she discloses the same to anyone, he will reveal the said video. Due to the threat by accused No.1, the victim did not disclose the same to her parents. It is further alleged that by using the said video, accused No.1 has repeatedly assaulted the victim sexually. Later, accused No.2-this petitioner and accused No.3 were also insisted her to have sexual affair with them. Accused No.2 also took the victim girl to some unknown place, assaulted her sexually, recorded the same and has been blackmailing his daughter that if she discloses the same to anyone, he will reveal the said video. Accused No.3 also had assaulted the victim sexually. Later, accused Nos.2 and 3 called the victim for having sexual intercourse and when she refused for the same, they forwarded the recorded video to one Ramachari who is the nephew of the complainant. That on 31.01.2021, when CWs.1, 2 and 3

enquired accused Nos.1 to 3 as to why they have done so, then they replied that they will do whatever they want. After registering the case, the Police arrested this petitioner on 30.03.2021 and after medical examination, he was remanded to the judicial custody. Accused No.3 was also arrested and he is said to be released on bail by the learned Sessions Judge. Hence, he is before this Court.

4. Learned counsel for the petitioner has contended that the petitioner is innocent of the alleged offences. The offence under Section 376 of IPC and Sections 4 and 6 of POCSO Act do not attract against him. There is no allegation in the complaint against this petitioner for having committed rape on the victim. Only in the statement under Sections 161 and 164 of Cr.P.C., the victim has stated that there is sexual assault on her. There is delay of two months in lodging the complaint. Accused No.3 has already been granted bail. Therefore, this petitioner is also entitled for bail on the ground of parity. Hence, prayed for granting bail.

5. Per contra, learned High Court Government Pleader seriously objected the petition and contended that on perusal of the statement under Sections 161 ad 164 of Cr.P.C., the main allegation goes against this petitioner, he has committed rape on her and took the victim to unknown place and had assaulted her sexually and also was blackmailing her continuously saying not to disclose the same to anyone and if she does, he will reveal the said photograph and videograph and when she refused to have intercourse with him, he forwarded the said photographs and videograph to one Ramachari who is the uncle of the victim. Accused No.1 is still absconding. If the petitioner is granted bail, he may abscond from the case and tamper the prosecution witnesses. Hence, prayed for dismissing the petition.

6. Upon hearing the arguments and on perusal of the records, admittedly, the complainant-father of the victim has stated that accused No.1 has committed rape on the victim girl and he has taken photographs and videograph of the sexual assault. Subsequently, accused Nos.2 and 3 were also insisted his daughter for sexual intercourse. Therefore, complaint came to be lodged by the complainant after getting information regarding photographs and videograph from Ramachari who is the brother of the complainant. During the investigation, the statement of the victim girl has been recorded by the Police where she has categorically stated that accused No.1 taking advantage of the absence of the parents at home, misbehaved with his daughter and had taken some photographs and recorded the video of the sexual assault and has been blackmailing his daughter that if she discloses the same to anyone, he will reveal the said video. Accused No.2 also took the victim girl to some unknown place, assaulted her sexually, recorded the same and has been blackmailing his daughter that if she discloses the same to anyone, he will circulate the said video in social media and the statement of the victim under Section 164 of Cr.P.C., also reveals the same and accused No.2 had only took the victim in the car. Other accused were also present in the car. Looking to the statement under Sections 161 and 164 of Cr.P.C, there is no allegation against accused No.3, therefore, the trial Court has granted bail to accused No.3. Whereas, the averments made in the complaint may not be refused as the victim herself stated that he has committed rape on her and took photograph and recorded the video of the sexual assault and used to blackmail her continuously. Accused No.1 is still absconding and against him Section 376 of IPC is also alleged. The statement under Sections 161 and 164 of Cr.P.C. clearly reveals that the offence is committed by the accused on the minor girl who is aged about 16 years by taking the photographs and videographs and blackmailing continuously.

Such being the case, the petitioner-accused No.2 is not entitled for bail.

7. Accordingly, criminal petition is dismissed.

Sd/-

JUDGE GBB