

Prakash S/O Mahaveer Shiragavankar vs The State Of Karnataka on 16 November, 2022

Author: K.Natarajan

Bench: K.Natarajan

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IN THE HIGH COURT OF KARNATAKA AT DHARWAD BENCH,

DHARWAD

DATED THIS THE 16TH DAY OF NOVEMBER, 2022

BEFORE

THE HON'BLE MR. JUSTICE K.NATARAJAN

CRIMINAL PETITION NO.102333 OF 2022

BETWEEN

PRAKASH

S/O. MAHAVEER SHIRAGAVANKAR

AGED ABOUT 38 YEARS

OCC: RETIRED SERVICE

R/O. ASANGI - 587 314

TALUK: RABAKAVI BANAHATTI

DISTRICT: BAGALAKOTE

... PETITIONER

(BY SRI SHRIHARSH A. NEELOPANT, ADVOCATE (VIDEO
CONFERENCE))

AND

1. THE STATE OF KARNATAKA
REPRESENTED BY THE PSI
POLICE SUB INSPECTOR
LOKAPUR POLICE STATION
LOKAPUR
TALUK: MUDHOL
DISTRICT: BAGALAKOTE
THROUGH STATE PUBLIC PROSECUTOR
HIGH COURT OF KARNATAKA BENCH
DHARWAD - 580 011

2. YALLAPPA
S/O. LAKSHMAPPA PADEPPANAVAR

AGED ABOUT 45 YEARS

OCC: AGRICULTURE

R/O. MALLAPUR P.L. -587 111

2

TALUK: MUDHOL

DISTRICT: BAGALAKOTE

... RESPONDENTS

(BY SRI V.M. BANAKAR, ADDITIONAL S.P.P. FOR R1
SRI VIDYASHANKAR G. DALWAI, ADVOCATE FOR R2 (VIDEO
CONFERENCE))

THIS CRIMINAL PETITION IS FILED UNDER SECTION 439
OF THE CODE OF CRIMINAL PROCEDURE, PRAYING TO
ENLARGE THE PETITIONER (ACCUSED NO.3) ON REGULAR BAIL
IN LOKAPUR P.S. CRIME NO.29/2022 BY THE RESPONDENT
LOKAPUR POLICE STATION, LOKAPUR, FOR THE OFFENCES
PUNISHABLE UNDER SECTIONS 363, 366, 366A, 368, 506(2),
342, 354A, 376D READ WITH SECTION 34 OF IPC AND
SECTIONS 4,6,8,12 AND 17 OF PROTECTION OF CHILDREN
FROM SEXUAL OFFENCES ACT 2012, PENDING TRIAL OF THE
SAID CASE, WHO IS IN JUDICIAL CUSTODY IN THE ABOVE
SAID CRIME.

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

ORDER

This successive bail petition filed under Section 439 of Cr.P.C. by petitioner/accused No.3 for granting of bail in Crime No.29/2022 registered by Lokapur Police Station, Lokapur, for the offences punishable under sections 363, 366, 366A, 368, 506(2), 342, 354A, 376DA read with section 34 of IPC and Sections 4, 6, 8, 12 and 17 of Protection of Children from Sexual Offences Act 2012.

2. Heard learned counsel for petitioner and learned Addl.S.P.P for respondent No.1/State and learned counsel for respondent No.2.

3. The case of the prosecution is that on the complaint of father of the victim one Yallappa who filed complaint to the police on 11.03.2012 alleging that he received phone call from one Hanamant Balavatti that his daughter victim was taken by some persons in car. He tried to search his daughter but did not find, hence filed kidnapping case before police under offence punishable under section 363 of IPC. Subsequently on 13.03.2022, the police apprehended accused Nos.2 to 4 including this petitioner. On enquiry they came to know that these accused persons involved in abduction of the minor girl and accused No.1 had kept the minor girl in house of CW20 and 22. Therefore, the police went and rescued the victim girl, but accused No.1 was not found in the house. Subsequently, accused No.1 was also arrested. These accused persons were remanded to judicial custody. The

present petitioner's bail petition along with other accused persons came to be rejected by this Court in Crl.P.No.101111/2022 C/w Crl.P.No.101187/2022 on 08.06.2022 again this petitioner/accused No.3, hence filed this successive bail petition on additional grounds.

4. Learned counsel for petitioner contented that there is no direct allegation against this petitioner for having involved in commission of rape of the minor girl. The vehicle seized by the police does not belong to this petitioner it is hired vehicle. The accused No.1 who is having serious allegation is already committed suicide on 15/8/2022 in Bagalokote jail and a case was registered against the complainant and family members in Crl.P.No.83/2022 for the offence punishable under Section under Section 306 and 34 of IPC. This court while rejecting bail petition, observation made by the court to show to the police hurriedly filed the charge sheet without proper investigation, but inspite of rejection of the bail petition and observations, the police did not choose to further investigate the matter and filed any additional charges. Therefore, prayed for granting bail.

5. Per contra learned counsel for respondent No.2 seriously objected bail petition and contented that there is no change in circumstances for granting bail. The accused persons involved in serious offence of committing abducting of minor girl and committing gang rape. If he is granted bail, he may tamper and threaten the witnesses, therefore prayed for rejecting the bill petition.

6. The additional S.P.P objected bail petition mainly on the ground that there are eye witnesses to the incident for having kidnapped the minor girl by this accused persons in a car. The accused No.1 and this petitioner involved in the abduction of minor girl and accused No.1 took the rented house as per the statement made by CW 20 and 22 who are the landlords and petition came to be filed within one month of the rejection of the bail petition and there is no changed circumstances. The medical record reveals the hymen of the minor child was ruptured which suggests the commission of sexual assault on the minor girl and it is a gang rape committed by the accused persons on the minor girl and the punishment is life imprisonment. Throughout life they have they been in custody in jail, if they are granted bail they may tamper the witnesses and committing similar offenses are not ruled out. Further contended observation made by this court in respect of accused persons committing kidnap and rape of other women and other girls but not in this case therefore prayed for rejecting the bail.

7. Having heard the arguments and perusal of the records, especially the aforementioned order passed by this Court on 08.06.2022 by this court taken all the contention raised by the learned counsel for petitioner while arguing the matter of this petitioner and other accused also. The accused Nos.2, 3 and 4 together filed application which came to be rejected by this court by detailed order consisting more than 21 pages. This court considered all the grounds urged by the counsel as well as other side and finally held these accused persons committed gang rape on the minor victim girl and also observed about recommendation made by the Division Bench of this Court in Crl.A.No.246/2014 that division bench of this court recommended the central government/state government to amend provisions of Section 376 AB in the gang rape case there shall be punishment for death penalty. Such being the case, this court considering all the aspects had rejected the bail petition.

8. Admittedly accused No.1 said to be committed suicide in the jail and the case said to be registered against victim family and it is an abatement of committing suicide that too filed by the father of accused No.1 who is outside the case. When the prosecution case reveals the involvement of petitioner in commission of gang rape and abduction of minor girls, the police papers categorically reveals connecting him to the crime with accused persons especially in POCSO Act 376DA which is punishable with imprisonment for life. This petition came to be filed just after a month of rejection of the bail petition. Absolutely there is no change in circumstances made whether learned counsel for petitioner in the petition except stating that accused No.1 committed suicide. Merely accused No.1 committing suicide and case was registered against some persons for complainant for abetting suicide that cannot be a ground for granting bail to this petitioner, as these petitioners have abducted the minor girl, kept her in the house of accused No.1 who took the accommodation and rented from CW20 and CW22. The accused No.1 said to have committed rape subsequently they tied the eyes with cloth and subsequently 3 times they committed rape on victim girl. Therefore, this court held a gang rape committed by the accused persons and it is not an ordinary case to grant bail. That apart, there was a rumours and a complaint and allegation made by respondent No.2 that these petitioners including accused No.1 were in the habit of abducting minor girls as well as ladies, they used to commit rape and threaten them and no persons came forward for filing complaint against them. In this aspect, this court has directed the police to investigate the matter, if they are involved in any other commission of rape on any other victims in the village but not stated that police not investigate matter in this case against this petitioner. Therefore, I am of the view there is no change in circumstances for the petitioner to grant bail.

Accordingly, the successive bail petition filed by petitioner/accused No.3 is hereby dismissed.

Sd/-

JUDGE AKV