

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 30TH DAY OF APRIL 2014

BEFORE

THE HON'BLE MR. JUSTICE BUDIHAL R.B.

CRIMINAL PETITION NO.1989 OF 2014

BETWEEN:

BABUJAAN @ BABU
S/O LATE ANWAR PASHA
AGED 38 YEARS
NASEER BUILDING
11TH CROSS, ADEE MASJID
J.C.LAYOUT
DEVSANDRA, K.R.PURAM
BANGALORE-560 036
PERMANENTLY AT:
NO.228, GOVERNMENT URDU SCHOOL
AZADNAGAR, SHILDALGHATTA TOWN
CHIKKABALAPURA DISTRICT-562 101

... PETITIONER

(BY SRI.NEHRU M.N, ADV.,)

AND:

STATE BY
K.R.PURAM POLICE STATION
BANGALORE-560036

... RESPONDENT

(BY SRI.K.NAGESHWARAPPA, HCGP)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 439 OF CR.P.C. PRAYING TO ENLARGE THE PETITIONER ON BAIL IN CRIME NO.132/2014 OF K.R.PURAM P.S., BANGALORE CITY FOR THE OFFENCES P/U/S 376, 511 OF IPC AND SEC.4 OF PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012

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

ORDER

This is the petition filed by the petitioner – accused under Section 439 of Cr.P.C. seeking his release on bail for the offences punishable under Sections 376 and 511 of IPC and under Section 4 of the Protection of Children from Sexual Offences Act, 2012, registered by the respondent – police in Crime No.132/2014.

2. Heard the arguments of the learned counsel appearing for the petitioner – accused and also learned High Court Government Pleader for the respondent – State.

3. Learned counsel for the petitioner during the course of his argument submitted that even looking to the prosecution materials, the offence alleged under Section 376 of IPC is not attracted at all. Counsel made the submission that the statement of the victim girl

itself goes to show that there is no sexual intercourse by the present petitioner on the victim girl. Even if the prosecution materials are accepted at the face value, counsel made the submission, at the most, the offence under Section 354 for outraging the modesty may attract. He submitted that even the medical evidence is also not supporting the case of the prosecution so far as the alleged offence under Section 376 of IPC is concerned. Hence, counsel submitted that by imposing reasonable conditions, petitioner may be admitted to bail. In support of his contention learned counsel for the petitioner relied upon the decision in the case of Koppula Venkat Rao Vs. State of Andhra Pradesh reported in 2004 Cr.L.J. 1804.

4. As against this, learned High Court Government Pleader during the course of his argument submitted that there are eyewitnesses to the alleged incident. Looking to the statement of the victim girl coupled with statement of eyewitnesses, it goes to show

the involvement of the present petitioner in the commission of the alleged offences. He also made the submission that the matter is still under investigation, at this stage, petitioner is not entitled to be granted with bail.

5. I have perused the averments made in the bail petition, FIR, complaint and other materials placed on record, so also order passed by the lower Court on the bail application. Perusing the statement of the victim girl, that itself goes to show that there is no sexual intercourse committed by the present petitioner on the victim girl and what is alleged is that he removed her clothes and made an attempt to commit the rape on her, by the time when she screamed, the father and others came to the house and accused ran away from that place. Perusing the medical report, it goes to show that there is no sexual intercourse committed by the present petitioner on the victim girl. Therefore, looking to the materials on record and averments made in the bail

petition that the petitioner is innocent and he is not involved in the commission of the alleged offences and there is a false implication in respect of the loan transaction of Rs.30,000/- which was borrowed by the complainant from the petitioner and that he has asked for the refund of Rs.30,000/-. As a counter blast, the complainant filed the said false case against him. I have also perused the decision and principles enumerated in the said decision relied upon the learned counsel for the petitioner. Considering the materials placed on record, I am of the opinion that it is a fit case to exercise the discretion in favour of the petitioner.

6. Accordingly, petition is allowed. The petitioner – accused are ordered to be released on bail for the offences punishable under Sections 376 and 511 of IPC and under Section 4 of the Protection of Children from Sexual Offences Act, 2012, registered by the respondent – police in Crime No.132/2014, subject to the following conditions:

(i) The petitioner shall execute a personal bond for a sum of Rs.50,000/- (Rupees Fifty Thousand only) with one solvent surety for the likesum to the satisfaction of the concerned Court;

(ii) The petitioner shall not directly or indirectly tamper with any of the prosecution witnesses;

(iii) The petitioner shall appear before the concerned Court regularly.

**Sd/-
JUDGE**

VMB