

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 30TH DAY OF DECEMBER, 2014

BEFORE

THE HON'BLE MRS. JUSTICE RATHNAKALA

CRIMINAL PETITION NO.6965 OF 2014

BETWEEN:

NISAR @ NISAR AHMED
AGED ABOUT 19 YEARS
S/O.KARIM
RESIDING AT KANAKURUPADAU
SAHA RESIDENCY BELMA
MANGALORE – 574 199.

... PETITIONER

(BY SRI.HASHMATH PASHA, ADV.,)

AND:

STATE OF KARNATAKA
KONAJE POLICE STATION
MANGALORE
PIN CODE – 574 199
(REPRESENTED BY LEARNED
STATE PUBLIC PROSECUTOR)

... RESPONDENT

((BY SRI.K.NAGESHWARAPPA, HCGP)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 439 OF CR.P.C. PRAYING TO ENLARGE HIM ON BAIL IN CRIME NO.192/2013 P/U/S 143, 147, 148, 120(B), 341, 323, 326, 354, 354(B), 364(A), 384, 376(D), 395, 342, 307, 506, 201, 149 OF IPC AND U/S 66(E) INFORMATION TECHNOLOGY ACT, OF KONAJE POLICE STATION, MANGALORE CITY, WHICH IS PENDING IN

C.C.NO.1011/2014 ON THE FILE OF THE III-JMFC COURT, MANGALORE.

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

ORDER

This is the petition filed by the petitioner – accused No.8 under Section 439 of Cr.P.C. seeking his release on bail in respect of crime No.192/2013 registered by respondent police and charge sheeted for the offences punishable under Sections 143, 147, 148, 120(B), 341, 323, 326, 354, 354(B), 364(A), 384, 376(D), 395, 342, 307, 506, 201 r/w. Section 149 of IPC and Section 66(E) of the Information Technology Act by the respondent -police.

2. The allegation is that on the night of 18-12-2013, CW's-1 & 2 were proceeding in a car near Ayyappa Temple of Deralakatte Belma village, Mangalore City, accused Nos.3 and 4 way laid the car and informed the matter to accused No.2 over phone on that accused Nos.1, 2, 5, 6, 7 and 8 assembled, formed

unlawful assembly, and threatened CW's1 & 2 and took them to a house at Thoke village, Kasargodu Taluk and assaulted both of them. They were coerced to indulge in sexual intercourse. This sexual act was videographed in the mobile of accused No.2 i.e., in his Samsung Note-3 and Apple I-Phone. Thereafter, they demanded for a ransom of Rs.5 lakhs and also threatened that if the said amount is not paid, they will upload the videographs to the internet and send the same to the college. Again they tied the eyes of CWs-1 & 2 with kerchief and took them to a bushy place near Bantwala Taluk. They again assaulted both of them and tried to finish them off. Thereafter, they released CW-1 under a condition that she should get Rs.3 lakhs within 12.00 noon, otherwise they will finish off CW-2. CW-1 called them back and told that the money is ready. On hearing the same, accused Nos.1, 2, 3, 6 and 7 went to collect the money. While approaching to receive the amount, they disappeared on smelting the presence of

the police. This matter was informed by accused No.2 to accused Nos.4, 5 & 8. On getting the information, they started to assault CW-2 with a wooden pieces and caused fracture to his hand. They also tried to murder him by dropping a stone on him. However, CW-2 escaped from the clutches of these accused.

3. Sri.Hashmath Pasha, learned counsel for the petitioner submits that initially the allegation was against accused Nos.1, 2 & 3. However, the police during the course of investigation arrested this accused along with seven others only on surmise expressed in the further statement of CW-1. During the identification parade, this petitioner was not identified and also in the statements given by CWs-1 & 2, there was no mention about the involvement of this petitioner in the alleged offences. CW-1 did not submit herself for medical examination. Thereby, there is no proof for the offence of 376 of IPC. No incriminating material is

recovered from the possession of this petitioner. This petitioner is in custody for the last one year. He was aged about 19 years as on the date of his arrest. In view of his arrest, his education is hindered and career will be affected if he is continued in the custody. Hence, prays for release of this petitioner.

4. Sri.Nageshwarappa, learned High Court Government Pleader opposes the bail petition of this petitioner. He submits that the very presence of this petitioner near the place of occurrence establishes the fact that all the accused persons intentionally indulged in the alleged offences which is proved, attract major punishment of death or imprisonment for life. In that view of the matter, petitioner is not entitled for bail.

5. Without expressing any opinion about the merits of the case and having regard to the fact of this petitioner is a young person and investigation is

complete and hold that there is no impediment to enlarge this petitioner on bail.

6. Accordingly, petition is allowed. The petitioner – accused No.8 is ordered to be released on bail for the offences punishable under Sections 143, 147, 148, 120(B), 341, 323, 326, 354, 354(B), 364(A), 384, 376(d), 395, 342, 307, 506, 201 r/w. Section 149 of IPC and Section 66 of Information Technology Act by the respondent -police, subject to the following conditions:

(i) The petitioner shall execute a self bond for a sum of Rs.1,00,000/- (Rupees One Lakh only) with two solvent sureties for the likesum to the satisfaction of the concerned Court and also an undertaking from one his parents about his good behaviour in the future to the concerned Court.

(ii) He shall attend the Court punctually and regularly;

(iii) *He petitioner shall not
indulge in any criminal activities.*

(iv) *He shall not threaten the
prosecution witnesses.*

**Sd/-
JUDGE**

VMB