

IN THE HIGH COURT OF KARNATAKA
KALABURAGI BENCH

DATED THIS THE 28TH DAY OF FEBRUARY, 2017

BEFORE

THE HON'BLE MR.JUSTICE B. A. PATIL

CRIMINAL PETITION No.200194/2017

Between:

Veeresh S/o Siddanna Shetty
Age: 26 years, Occ: Coolie
R/o Chittapur, Now residing
in Sattarseth Polish
Machine Company, Kalaburagi

... Petitioner

(By Sri Basavaling Nasi, Advocate)

And:

State through
Grameen Police Station
Through A.G.P.
High Court of Karnataka
Kalaburagi Bench

... Respondent

(By Sri Sheshadri Jaishankar M., HCGP)

This Criminal Petition is filed under Section 439 of Cr.P.C., praying to release the petitioner on bail in Crime No.17/2016 of Gulbarga Rural Police Station, Gulbarga, bearing in C.C.No.37/2016 pending on the file of II-Additional Sessions Court at Kalaburagi which is registered for the offences punishable under Sections 363, 376(2)(n), 506 of IPC and also for the offences punishable under Sections 4, 6, 11, 12 and 17 of the Protection of Children from Sexual Offences Act, 2012.

This petition is coming on for Orders this day, the Court made the following:-

ORDER

This petition is filed by the petitioner/accused under Section 439 of Cr.P.C., seeking regular bail in Crime No.17/2016 of Gulbarga Rural Police Station, Gulbarga, registered for the offences punishable under Sections 363, 376(2)(n), 506 of IPC and also for the offences punishable under Sections 4, 6, 11, 12 and 17 of the Protection of Children from Sexual Offences Act, 2012.

2. Brief facts are that, a lady by name Malanbee W/o Ibrahim Patel of Kalagurathi village lodged a complaint stating that her daughter was aged 16 years and she has studied upto 6th standard. The petitioner and the said victim girl were moving closely with each other. In this background, it is alleged that on 04.01.2016, the petitioner eloped the victim girl and they went away together and in fact, he has persuaded

the said girl to take along with him. In spite of her best efforts, she could not able to locate the whereabouts of the victim. Therefore, she lodged a missing complaint and also to take action against the petitioner.

3. During the course of investigation, the petitioner and victim-girl were traced in a shed situated at Industrial Area, Berur. The victim girl has also revealed that they went together and they were loving with each other and have got married in Choudamma temple and thereafter, the petitioner had sexual intercourse with her. Thereafter, the investigation was completed and charge sheet has been filed.

4. I have heard the learned counsel for the petitioner and the learned High Court Government Pleader appearing for respondent-State.

5. The main grounds urged by the learned counsel for the petitioner are that on the earlier

occasion, the petitioner had moved the bail application and the same was dismissed with liberty to move the bail application after filing of charge sheet. As such, now the petitioner has moved this petition. It is contended that petitioner has been falsely implicated in this case. The victim-girl has voluntarily gone along with the petitioner and with her consent, he had sexual intercourse with her. It is also contended that the medical certificate indicates that there are no external injuries and there is no evidence of recent sexual intercourse. It is further contended that the statement of the victim has been recorded under Section 164 of Cr.P.C., wherein she has not specifically deposed about the sexual assault committed by the petitioner. It is also contended that the victim is at the verge of attaining the age of majority and she was knowing pros and cons. The petitioner is behind the bar since more than one year without any fault of him. It is further contended that if the petitioner is released on bail, he is

ready to abide by the conditions to be imposed by this Court and he is ready to offer sureties. On these grounds, he prays for allowing the petition.

6. On the contrary, learned High Court Government Pleader appearing for the respondent-State has vehemently contended that the victim is a minor and at the age of 16, the petitioner has eloped her and keeping her in a shed, has sexually assaulted her without there being any consent from the victim. It is further alleged the petitioner was having love affair with the victim girl and only with an intention to sexually assault her, he has kidnapped and has caused the alleged offences. At this juncture, if the petitioner is released on bail, he may tamper with the prosecution witnesses, he may abscond or he may not be available for trial. On these grounds, he prays for dismissal of the petition.

7. I have gone through the contents of the charge sheet and other material made available before this Court. The statement of the victim girl recorded under Section 164 of Cr.P.C., by the jurisdictional Magistrate clearly indicates that the victim has gone along with the petitioner on her own will and wish; she is aged about 18 years and that they have stayed in a house at Chikkamagaluru and the petitioner has not eloped her and he has not threatened her and he has not forced her to have sexual intercourse. But the medical certificate dated 28.03.2016 indicates that the age of the victim is 16 years and it also indicates that they had sexual intercourse regularly from 01.01.2016 to 29.02.2016 and lastly it has been mentioned that there is no evidence of recent sexual intercourse. On going through the entire material, it clearly indicates that the victim girl is a minor. Though she has deposed under Section 164 of Cr.P.C., to the effect that the petitioner has not forced her at the time of eloping and she has

given consent for sexual act, when she is a minor, that consent is not considered be a legal consent as contemplated under law. When that being the case, the contention of the learned counsel for the petitioner is not acceptable. As such, the bail application is liable to be dismissed.

Accordingly, the petition is dismissed.

Since the petitioner is in custody from long time, the Trial Court is directed to expedite the case.

**Sd/-
JUDGE**

NB*