

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 30TH DAY OF NOVEMBER, 2020

BEFORE

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

CRIMINAL PETITION No.6869 OF 2020

BETWEEN:

Shri. Madan,
S/o Shekar,
Aged about 21 years,
R/at No.4, 'N' Block,
Slum Road,
Sadaramangala,
Kadugodi Post,
Bengaluru – 560 067.
(Now is in judicial custody)

...Petitioner

(By Sri. Dharanesha, Advocate)

AND:

The State of Karnataka,
By Kadugodi Police Station,
Rep. by its State Public Prosecutor,
High Court of Karnataka Building,
Bengaluru – 560 001.

...Respondent

(By Sri. Mahesh Shetty, HCGP)

This Criminal petition is filed under Section 439 of Cr.P.C. praying to enlarge the petitioner on bail in Cr.No.1/2019 registered by Kadugodi Police Station,

Bengaluru for the offence punishable under Sections 342, 506, 376(3) of IPC and Section 4 and 6 of POCSO Act.

This Criminal Petition coming on for Orders this day, the Court made the following:-

ORDER

The present petition is filed by the petitioner-accused under Section 439 of Cr.P.C. to enlarge him on bail in Crime No.1/2019 of Kadugodi Police Station, Bengaluru, for the offences punishable under Sections 342, 506, 376 (3) of IPC and Section 4 and 6 of POCSO Act.

2. I have heard the learned counsel Sri. Dharaneesha, for the petitioner-accused No.1 virtually and the learned High Court Government Pleader Sri.Mahesh Shetty, for the respondent-State.

3. Notice to complainant has been served, she has remained absent.

4. The gist of the case is that the complainant is living with her husband along with her three children. On

02.01.2019 there was a holiday for the school, on morning the victim daughter gone to the house of her aunt in 'N' Block at slum board, but she did not return even at the evening hours. They started for searching, some elderly persons who were standing near 'N' Block told her that her daughter was dragged into the house of the petitioner, immediately the complainant her husband, sister-in-law, mother-in-law and another person went to the house of the accused in slum board and the door was locked from inside. When the complainant knocked the door petitioner-accused opened the door and ran out of the house. The complainant went into the house and saw her daughter has been tied with hands and eyes with veil and she was pushed below the cot, when she enquired with her, she told that at about 2.00 pm when she was returning from her aunt's house, petitioner-accused by showing the knife by threatening that if she shouts he will kill her and thereafter tied her eyes and hands, forcibly committed sexual assault on her and thereafter he pushed

her below the cot. By hearing the noise of knocking of the door, petitioner ran away. On the basis of the complainant case has been registered.

5. Learned counsel for petitioner-accused submits that, petitioner-accused is languishing in jail since 02.01.2019, immediately after filing of the complaint. He further submits that there are contradictions in the statement of the complainant, in the complaint and report of the medical authorities. He further submits that the victim has been taken immediately for medical examination and the medical examination report shows that there are no injuries found over the body of the victim. The doctor has opined that there are no evidence of forcible vaginal penetration and no bleeding has been noticed when she has been examined. He further submits that petitioner-accused belongs to 'E' block, but the alleged incident has taken place in 'N' block, and there is a changes with regard to the place of incident. He further submits that there is contradiction in the statement of the complainant and the

medical evidence. He further submits that petitioner-accused is ready to abide by the conditions that may be imposed by this Court and ready to offer the sureties. On these grounds he prayed to allow the petition and to release the petitioner-accused on bail.

6. It is vehemently contented by the learned High Court Government Pleader that the statement of the victim has been recorded under Section 161 and 164 of Cr.P.C. and in both the statement she has deposed that petitioner-accused has sexually assaulted her by threatening with knife. He further submits that medical evidence also substantiates the case of the prosecution to the effect that hymen is not intact and there is evidence of physical assault and there is presumption under Section 29 of the act, with regard to the alleged act of sexual assault is concerned. He further submits that there is a *prima facie* material as against petitioner-accused for having sexually assaulted the minor victim girl, who is aged about 13 years

9 months. On these grounds he prays to dismiss the petition.

7. I have carefully and cautiously gone through the submissions of the learned counsel appearing for the parties and perused the records.

8. On reading of the contents of the complaint and the charge sheet material it is the case of the prosecution that, when a victim girl had gone to her aunt's house at that time it is the petitioner-accused who dragged her into his house and threatened her by showing the knife and by tying her hands and eyes has sexually assaulted. It is contended by the learned counsel for the petitioner-accused that there is a contradictory statement of the complainant mother, but that is also the matter which has to be considered and appreciated during the course of trial. But it has to be seen from the medical record that hymen not in tact, no bleeding edge there is evidence of physical assault and there is no evidence of forceful vaginal

penetration and samples have been collected. It is the specific case of the complaint and that when they went in search of the victim, one elderly person told that the accused has dragged her inside the house when they knocked the door and the petitioner-accused came outside the house and he ran away from the said house and the victim was there inside the same house. Under what circumstances victim was there along with him in the said house is also explained by the victim and even under what circumstance false complaint also registered as against him is also not made out.

9. Taking into consideration of the presumption which is there under POSCO Act, I am of the considered opinion that at this stage this Court cannot hold a mini Trial. There is a *prime facie* material as against the petitioner-accused for having involved in a serious offence. Petitioner-accused has not made out any grounds to release him on bail and accordingly, the petition is ***dismissed***. Trial Court is directed to expedite the trial

expeditiously. Liberty has been given to the petitioner-accused after examination of the victim and the complainant to revive his right for bail.

**Sd/-
JUDGE**

gpg/-