

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 30TH DAY OF SEPTEMBER, 2021

BEFORE

THE HON'BLE MRS.JUSTICE M.G. UMA

CRIMINAL PETITION No.5603 OF 2021

BETWEEN:

THE STATE OF KARNATAKA
BY CIRCLE INSPECTOR OF POLICE,
KUNDAPURA CIRCLE,
UDUPI DISTRICT
REP. BY THE STATE PUBLIC PROSECUTOR,
HIGH COURT BUILDING,
BANGALORE – 560001.

... PETITIONER

(BY SMT: RASHMI JADHAV, HCGP (PH))

AND:

VISHWAS @ MAHADEVA BALASO GURUV,
S/O BALASO GURUV,
AGED ABOUT 36 YEARS,
R/AT DONGAR SONI, TASGAN TALUK,
SANGLI DISTRICT,
MAHARASTRA STATE.
PRESENT ADDRESS:
C/O SUNDAR MOYILI,
RESIDING NEAR ROYAL SABHA BHAVAN,
CHIKKAN SAL ROAD, KASABA VILLAGE,
KUNDAPURA TALUK – 576 101.

... RESPONDENT

(BY SRI: K.PRASANNA SHETTY, ADV.)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 439(2) OF CR.P.C. PRAYING TO CANCEL THE ORDER GRANTING BAIL TO RESPONDENT/ACCUSED BY VIDE ORDER DATED 17.01.2021, PASSED BY THE ADDITIONAL DISTRICT AND

SESSIONS JUDGE – FTSC -1 UDUPI (SPL. COURT FOR SPL.C TRIAL OF CASES FILED UNDER POCSO ACT) IN SPL.CASE NO.77/2020 IN CONNECTION WITH CRIME NO.74/2020 OF KUNDAPURA P.S., UDUPI, REGISTERED FOR THE OFFENCE PUNISHABLE UNDER SECTIONS 448, 376 OF IPC AND SECTION 4 OF POCSO ACT AND TO DIRECT THAT ACCUSED-RESPONDENT BE ATTESTED AND COMMITTED TO CUSTODY.

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

ORDER

The petitioner-State is before this Court seeking cancellation of bail granted by the learned Additional District and Sessions Judge – F.T.S.C – 1 Udupi (Spl. Court for Spl.C.Trial of Cases filed under POCSO Act) in Special Case No.77/2020 in connection with Crime No.74/2020 of Kundapura Police Station, Udupi, registered for the offences punishable under Sections 376, 448 of the Indian Penal Code (for short 'IPC') and Section 4 of the Protection of Children from Sexual Offences Act, 2012 (for short 'the POCSO Act').

2. Heard Smt. Rashmi Jadhav, learned High Court Government Pleader for the petitioner-State and

Sri. K.Prasanna Shetty, learned counsel for the respondent. Perused the materials on record.

3. Learned HCGP submits that serious allegations are made against the respondent for having committed the offences punishable under Sections 376, 448 of IPC and Section 4 of the POCSO Act. The victim is aged 14 years, who is cited as CW.2 in the charge sheet. The parents of the victim are cited as CWs.1 and 3. The respondent being the neighbor gained entry into their house and taking advantage of the situation, committed sexual assault on the minor girl. The statement of the victim was recorded under Section 164 of Cr.P.C., wherein, she has fully supported the case of prosecution. According to the medical records, the hymen was not intact, which prima-facie discloses commission of offences. The trial Court ignoring all these clinching materials, proceeded to allow the bail application filed by the respondent vide order dated 07.01.2021 in Special Case No.77/2020. Therefore,

the prosecution is before this Court seeking cancellation of bail.

4. Per contra, learned counsel for the respondent submits that even though serious allegations are made against the respondent, the trial Court allowed the bail application on merits. The charge sheet was already filed and the matter is now pending in Special Case No.77/2020 before the learned Additional District and Sessions Judge – F.T.S.C – 1 Udupi. It is not the contention of prosecution that the respondent has violated any of the conditions imposed by the trial Court while enlarging him on bail vide impugned order. Under such circumstances, this petition is not maintainable. Accordingly, he prays for dismissal of the petition.

5. The impugned order was passed by the trial Court on 07.01.2021, whereunder, the respondent was ordered to be released on bail subject to conditions. This petition is filed on 24.07.2021. It is not the contention of prosecution that the respondent has violated any of the

conditions imposed by the trial Court while enlarging him on bail. The only contention raised by the petitioner is that the seriousness of the offence was not considered by the trial Court and bail application filed by the respondent was allowed. It is true that there is serious allegations against the respondent for having committed the above said offences. However, the trial Court thought it fit to enlarge the respondent on bail subject to conditions. When it is not the contention of prosecution that none of the bail conditions were violated by the respondent during this nine months period, I do not find any reason to entertain the petition. Accordingly, petition is dismissed.

**Sd/-
JUDGE**

SMJ