



CRL.A No. 100555 of 2022

IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 30TH DAY OF NOVEMBER, 2022

BEFORE

THE HON'BLE MR JUSTICE SHIVASHANKAR AMARANNAVAR
CRIMINAL APPEAL NO. 100555 OF 2022 (U/S 14 A(2) of SC
and ST ACT-)

BETWEEN:

SHRI SHIVARANJAN S/O RAMESH MARIHAL
AGE: 22 YEARS, OCC. MASON
R/O: KHANAGAON BK
TQ AND DIST. BELAGAVI-591307

...APPELLANT

(BY SRI. GANGADHAR S. HOSAKERI, ADVOCATE)

AND:

1. THE STATE OF KARNATAKA
THROGUH ANKALAGI PS
TQ. GOKAK, DIST. BELAGAVI
REP. BY THE STATE PUBLIC PROSECUTOR
HIGH COURT BUILDING,
DHARWAD-580011
2. SMT. MEENAKSHI W/O NINGAPPA NESARAGI
AGE. 39 YEARS, OCC. HOUSEWIFE
R/O. ANKALAGI, TQ. GOKAK
DIST. BELAGAVI-590028

...RESPONDENTS

(SRI. PRASHANT V. MOGALI, HCGP FOR R1;
R2 PRESENT BEFORE THE COURT)





CRL.A No. 100555 of 2022

THIS CRIMINAL APPEAL IS FILED U/S 14 A (2) OF SC AND ST (POA) ACT, 1989, SEEKING TO ENLARGE THE APPELLANT/ ACCUSED BAIL IN SPL CASE NO. 101/2022 ON THE FILE OF THE ADDL. DISTRICT AND FTSC-I BELGAVI (ANKALAGI P S CRIME NO. 20/2022) FOR THE OFFENCES UNDER SECTION 363, 376(2)(N) OF IPC AND SECTION 3(2) (va) OF SC/ST ACT 1989 AND SECTION 4 AND 6 OF POCSO ACT, SO FAR AS APPELLANT/ ACCUSED IS CONCERNED.

THIS APPEAL COMING ON FOR ORDERS, THIS DAY, THE COURT DELIVERED THE FOLLOWING:

JUDGMENT

This appeal is filed by the sole accused, challenging the order dated 21.09.2022 passed in Criminal Misc. No.1278/2022 by the Additional District and Sessions Judge, FTSC-I, Belagavi, whereunder, the bail petition of the appellant/accused sought in Ankalagi P.S. Crime No.20/2022, for the offences punishable under Sections 363, 376(2)(N) of IPC, Sections 4 & 6 of POCSO Act, and Section 3(2)(v-a) of SC/ST (POA) Act, came to be rejected.

2. Heard the learned counsel for the appellant/accused and the learned HCGP for the respondent No.1-State.



CRL.A No. 100555 of 2022

3. Respondent No.2 who physically appeared before this Court, prayed not to grant bail to the appellant/accused.

4. The case of the prosecution is that, the mother of the victim-girl has filed complaint stating that, her daughter victim-girl is studying in KRCS College, Bailhongal and she was found missing on 26.02.2022 and in spite of search they did not find her and a complaint came to be filed in Ankalagi Police Station Crime No.20/2022 for the offences punishable under Section 363 of IPC against unknown persons. During the investigation, the police secured the victim-girl on 18.03.2022 and recorded her statement. The police arrested this appellant on 19.03.2022 and he is in judicial custody. The police after completing the investigation, filed charge-sheet against this appellant for the offences punishable under Sections 363, 376(2)(n) of IPC and Section 3(2)(v-a) of SC/ST (POA) Act, 1989 and Sections 4 and 6 of POCSO Act, 2012. The appellant filed Criminal Misc. No.1278/2022 seeking bail and the same came to be rejected by the



CRL.A No. 100555 of 2022

Additional District and Sessions Judge, FTSC-1, Belagavi, by order dated 21.09.2022. The appellant/accused has challenged the said order in the instant appeal.

5. Learned counsel for the appellant would contend that, the complaint has been filed by the mother of the victim for missing of her daughter on 03.03.2022 and the victim-girl came to be secured on 18.03.2022 and the police have recorded her statement. Even the statement of the victim-girl has been recorded under Section 164 of Cr.P.C. The victim-girl in her all statements has stated that, she is in love affair with this appellant/accused and she voluntarily went along with him. It is his further submission that, the victim girl in her statement recorded under Section 164 of Cr.P.C. has made no allegation of sexual intercourse by this appellant/accused. The Doctor, who examined the victim girl has noted that, there are no injuries on her body and her hymen is absent and there is old tear. The victim girl is of the age of 17 years 9 months and she is of the age of understanding the consequences of her acts. As charge



CRL.A No. 100555 of 2022

sheet is filed, the appellant is not required for custodial interrogation. The appellant is not an habitual offender. Without considering all these aspects, the learned Special Judge has passed the impugned order which requires interference by this Court. With this, he prayed to allow the appeal.

6. Per contra, learned High Court Government Pleader would contend that, the date of birth of the victim girl as per her school records is 04.06.2004. The statement of the victim girl recorded by the police and under Section 164 of Cr.P.C. reveal the acts of the appellant/accused enticing her and having sexual intercourse under the pretext of marriage. The Doctor, who examined the victim girl has noted that, her hymen is not intact and there is old tear. Charge sheet material show prima facie case against the appellant for the offences alleged against him. If the appellant/accused is granted bail, there is threat to the complainant and other prosecution witnesses. Considering all these aspects, the learned Special Judge has rightly rejected the bail petition



CRL.A No. 100555 of 2022

and it does not call for any interference by this Court. With this, he prayed to dismiss the appeal.

7. Having regard to the submission made by the learned counsel for the appellant and the learned High Court Government Pleader, this Court has gone through the charge sheet records and the impugned order

8. The date of birth of the victim girl is 04.06.2004 as per her school records. The victim girl in her statement recorded by the police she has stated that she is in love affair with the appellant and on coming to know of the said love affair, the parents have advised her and thereafter she stopped contacting this appellant either physically or through phone. Subsequently, there were talks of her marriage and as she was not interested in marrying any other person except this appellant, she made a phone call to him and went with him and stayed with him till 17.03.2022 where the appellant/accused had sexual intercourse on her against her will. The statement of the victim girl has also been recorded under Section 164



CRL.A No. 100555 of 2022

Cr.P.C. wherein she has stated that she is in love affair with this appellant and she went along with him and stayed with him till 17.03.2022. There is no allegation of sexual intercourse on this victim girl by this appellant/accused. The Doctor who examined the victim girl has noted that there are no injuries over her body and genetalia, her hymen is absent and there is an old tear. The victim girl is of the age of understanding the consequences of her acts. As charge sheet is filed, the appellant/accused is not required for custodial interrogation. There are no criminal antecedents of the appellant. Without considering al these aspects, the learned Special Judge has passed the impugned order which requires interference by this Court.

9. The main apprehension of the prosecution is that, if the appellant is granted bail, there is threat to the complainant and other prosecution witnesses, can be met with by imposing stringent conditions.



CRL.A No. 100555 of 2022

10. In the facts and circumstances of the case and submission of the counsel, this Court is of the view that there are valid grounds for setting aside the impugned order and to grant bail to the appellant/accused subject to certain terms and conditions. Hence, I proceed to pass the following:

ORDER

The criminal appeal is allowed. The order dated 21.09.2022 passed by the learned Additional District and Sessions Judge, FTSC-1, Belagavi, in Criminal Miscellaneous No.1278/2022 is set aside. Consequently, the appellant/accused is granted bail and he is ordered to be released on bail in Crime No.20/2022 of Ankalagi Police Station subject to the following conditions:

- i) The appellant/accused shall execute a personal bond for a sum of Rs.1,00,000/- (Rupees one lakh only) with one surety for the likesum to the satisfaction of the jurisdictional Court.
- ii) The appellant/accused shall not indulge in tampering the prosecution witnesses.



CRL.A No. 100555 of 2022

iii) The appellant/accused shall attend the Court on all the dates of hearing unless exempted and co-operate in speedy disposal of the case.

**Sd/-
JUDGE**

SVH,KMV
List No.: 1 Sl No.: 29