

IN THE HIGH COURT OF KARNATAKA
KALABURAGI BENCH

DATED THIS THE 31ST DAY OF MAY, 2022

BEFORE

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

CRIMINAL PETITION NO.200319/2022

Between:

Shivu @ Shivalingayya
S/o Irayya Bachimatti,
Age: 25 Years, Occ: Finance work,
R/o Hunasagi, Tq: Hunasagi,
Dist: Yadgiri-585 201.

... Petitioner

(By Sri Chaitanyakumar Chandriki, Advocate)

And:

1. The State of Karnataka
Through Hunasagi P.S.,
Dist: Yadgiri-585201.
Represented by Addl. SPP,
High Court Building,
Kalaburagi-585107.
2. Ninganna S/o Ambrappa
Age: 38 years, Occ: Agriculture
r/o Hunasagi, Tq. Hunasagi
dist. Yadgir.
(amended v/o dated 23.03.2022)

... Respondents

(By Sri Gururaj V.Hasilkar, HCGP for R1;
Sri Veershetty Kondampalli, Advocate for
Sri B.K.Patil, Advocate for R2)

This Criminal Petition is filed under Section 439 of Cr.P.C., praying to allow the above Criminal Petition and

order to release the petitioner on bail in Spl. Case No.43/2021 (Crime No.28/2021) registered by the Hunasagi Police Station, for the offences punishable under Sections 363, 366, 366(A), 376(2)(n), 306, 309 r/w Section 34 of IPC and under Sections 6 and 17 of POCSO Act-2012, pending on the file of District and Sessions Judge at Yadgiri, Dist. Yadgiri.

This petition coming on for Orders this day, the Court passed the following:

ORDER

The petitioner-accused No.1 is before this Court seeking grant of bail under Section 439 of Cr.P.C. in Crime No.28/2021 of Hunasagi Police Station, pending in Special Case No.43/2021 on the file of District and Sessions Judge at Yadgiri, registered for the offences punishable under Sections 363, 366, 366(A), 376(2)(n), 306, 309 r/w Section 34 of the Indian Penal Code (for short 'IPC') and Sections 6 and 17 of the Protection of Children from Sexual Offences Act, 2012, on the basis of the first information lodged by informant-Ninganna.

2. Heard Sri Chaitanyakumar Chandriki, learned counsel for the petitioner and Sri Gururaj V. Hasilkar, learned High Court Government Pleader for respondent

No.1-State and Sri Veershetty Kondampalli and Sri B.K.Patil, learned counsel for respondent No.2. Perused the materials on record.

3. Learned counsel for the petitioner submitted that the petitioner is arrayed as accused No.1 and he has not committed any offences as alleged. He has been falsely implicated in the matter without any basis. In fact, the petitioner and the victim were together in the lodge and both have consumed pesticide with an intention to commit suicide. On seeing them, both were shifted to the hospital by the informant, who is the father of the deceased. There is nothing on record to contend that the petitioner had committed sexual assault on the victim. If at all, there is any act, it is a consensual act. Accused Nos.2 and 3 are already enlarged on bail. Investigation is already completed and charge sheet is already filed. The matter is now pending for trial. The petitioner is not required for any purpose except to ensure his presence before the Trial Court. Therefore, detention of the petitioner in custody

would amount to pre-trial punishment. The petitioner is the permanent resident of the address mentioned in the cause title to the petition and is ready and willing to abide by any of the conditions that would be imposed by this Court. Hence, he prays to allow the petition.

4. *Per contra*, learned High Court Government Pleader appearing for respondent No.1 and learned counsel for respondent No.2 opposing the petition submitted that the deceased was hardly aged 16 years at the time of incident. It is the petitioner who kidnapped the minor girl and kept her in the lodge where he committed sexual assault. The victim was found having been consumed pesticide and she was shifted to the hospital. But she died in the hospital on 08.05.2021. The postmortem report discloses that hymen of the deceased was torn which clearly suggests commission of sexual assault by the petitioner. The deceased informed her mother about the sexual assault committed by petitioner-accused No.1. Therefore, offences alleged against the petitioner is of

serious nature and there are strong materials to support such contention. Looking to the nature and seriousness of the offences, the petitioner is not entitled for grant of bail. Hence, they pray for dismissal of the petition.

5. In view of the rival contentions urged by the learned counsel for both the parties, the point that would arise for my consideration is:

"Whether the petitioner is entitled for grant of bail under Section 439 of Cr.P.C.?"

My answer to the above point is in 'Negative' for the following:

R E A S O N S

6. It is the specific contention of the prosecution that the petitioner had kidnapped the minor girl aged 16 years and taken to the lodge where he committed sexual assault. Accused No.2 instigated them to commit suicide and accordingly, both of them found in the lodge having consumed pesticide. Both were admitted to the hospital. The deceased succumbed to the poison, whereas accused

No.1 is discharged from the hospital. The postmortem report discloses that hymen of the minor girl was torn. It is the contention of prosecution that the deceased while shifting to the hospital informed her mother regarding the act committed by the petitioner. In view of these materials on record, it cannot be said that the petitioner is innocent and has not committed any offences as alleged. The contention of learned counsel for the petitioner that the act was consensual cannot be accepted since the victim admittedly, is a minor girl. Looking to the nature and seriousness of the offences, I am of the opinion that the petitioner is not entitled for bail, at this stage.

7. Accordingly, I answer the above point in the negative and proceed to pass the following:

ORDER

The petition is ***dismissed***.

Sd/-
JUDGE

NB*