

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 31ST DAY OF JANUARY 2022

BEFORE

THE HON'BLE MRS JUSTICE K.S.MUDAGAL

CRIMINAL APPEAL No.1705/2021

BETWEEN:

VINAY GOWDA
S/O. LATE RAVIKUMAR
AGED ABOUT 25 YEARS
OCC: CIVIL ENGINEER
PROPRIETOR, V.DESIGN'S
R/AT NO.24, S.J.COMPOUND
J.H.KERE POST, HASSAN TOWN
HASSAN DISTRICT- 573 201

...APPELLANT

(BY SRI R.B.DESHPANDE, ADVOCATE)

AND:

1. THE STATE OF KARNATAKA BY
WOMEN POLICE STATION
HASSAN, HASSAN SUB DIVISION
HASSAN- 573 201
REP. BY STATE PUBLIC PROSECUTOR
HIGH COURT BUILDINGS
BENGALURU- 560 001

2. KUM.MONIKA
D/O. LATE SHIVAKUMAR
AGED ABOUT 16 YEARS
R/AT NO.665, DEVEGOWDA NAGARA
HASSAN- 573 201
SINCE MINOR REP. BY
HER MOTHER SMT.GOWRAMMA
W/O. LATE SHIVAKUMAR
AGED ABOUT 47 YEARS

...RESPONDENTS

(BY SRI SHANKAR.H.S., HCGP FOR R1;
R2 SERVED)

THIS CRIMINAL APPEAL IS FILED U/S.14(A)(2) OF SC & ST (POA) ACT, 1989 PRAYING TO SET ASIDE THE ORDER DATED 02.11.2021 PASSED BY THE ADDITIONAL DISTRICT AND SESSIONS JUDGE, FTSC-1, HASSAN IN CRIME NO.123/2021 (POLICE CRIME NO.100/2021) OF HASSAN WOMEN POLICE STATION REGISTERED FOR THE OFFENCE PUNISHABLE UNDER SECTIONS 363A, 376, 506, 114 READ WITH SECTION 34 OF IPC AND SECTIONS 4 AND 17 OF THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012.

THIS CRIMINAL APPEAL COMING ON FOR ADMISSION THIS DAY, THE COURT THROUGH VIDEO CONFERENCE DELIVERED THE FOLLOWING:

J U D G M E N T

Heard.

2. Aggrieved by rejection of his application for grant of bail, accused No.1 in Crime No.100/2021 of Hassan Women police station has preferred the above appeal.

3. Crime No.100/2021 was registered for the offences punishable under Sections 363A, 376, 506, 114 read with Section 34 of IPC and Sections 4 and 17 of the Protection of Children from Sexual Offences Act, 2012 initially against accused Nos.2 to 4 by their names and accused No.1/a car driver on the basis of the complaint of 'X' minor girl. For the purpose of confidentiality, the

victim is referred to 'X' henceforth. On investigation, the police have filed the charge sheet implicating the appellant as accused No.1.

4. The case of the prosecution in brief is as follows:

At the time of the incident, 'X' was aged 16 years. She belonged to the scheduled tribe. Another accused (girl) a juvenile in conflict with law is friend of 'X'. Juvenile luring 'X' that if she stays with some person can earn some money, sent her with the appellant. On 08.09.2021 at 8.30 p.m., the appellant picked up 'X' in his car. Took her to the house of CW.6 and during that night, he committed penetrative sexual assault on her and dropped her back paying Rs.1,000/-. It is alleged that similarly accused Nos.2 and 3 sexually abused 'X' on 18.09.2021 and 19.09.2021 at different places.

5. The appellant was arrested on 30.09.2021. The trial Court rejected his bail application on the ground that allegations are serious and the case is still at the investigation stage.

6. As already pointed out, in the first information report and history given before the doctor, the name of the appellant did not figure. The victim said to have implicated the appellant by her further statement recorded on 30.09.2021. It is also material to note that initially 'X' implicated one Kavya as her friend and later, she changed her version and implicated juvenile as her friend.

7. The records show that the victim and her mother have filed affidavit before the Special Court stating that they have given the complaint at the behest of one NGO Ujwala Institution. In her statement before the learned Magistrate under Section 164 of Cr.P.C., 'X' has not implicated this appellant. She also states that she has signed the statement prepared by Ujwala Institution.

8. In the light of the said material and the fact that the charge sheet is already filed, it is not just and fair to subject the appellant to pretrial conviction and sentence. Therefore the appeal is allowed.

The impugned order of the trial Court is hereby set aside. The appellant is granted bail in Crime No.100/2021 of Hassan Women police station subject to the following conditions:

- (i) Appellant shall execute personal bond in a sum of Rs.50,000/- (Rupees Fifty Thousand only) with two sureties in the like sum to the satisfaction of the trial Court.
- (ii) Appellant shall appear before the Court as and when required for trial.
- (iii) Appellant shall not tamper the prosecution witnesses in any manner.
- (iv) Till completion of trial, the appellant shall not visit Devegowda Nagar, Hassan where respondent No.2 resides.

Registry shall communicate the operative portion of the order to the trial Court.

**Sd/-
JUDGE**

KSR