

IN THE HIGH COURT OF KARNATAKA
BENGALURU

DATED THIS THE 02ND DAY OF JUNE 2022

BEFORE

THE HON'BLE MR.JUSTICE K. NATARAJAN

CRIMINAL PETITION NO.3997 OF 2022

BETWEEN:

HANUMANTHAPPA

.....PETITIONER

(BY SRI. CHAKRAVATHY T.S., ADVOCATE)

AND:

1. THE STATE OF KARNATAKA,
BY JAGALURU POLICE STATION,
DAVANAGERE DISTRICT-577005
REPRESENTED BY
STATE PUBLIC PROSECUTOR
HIGH COURT BUILDINGS
BANGALORE-560001.

2. SRI.LOKESHWARAPPA P.,

..... RESPONDENTS

(BY SRI.K.S.ABHIJEETH,HCGP FOR R-1-STATE)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 439 OF CR.P.C. PRAYING TO ALLOW THE PETITION AND ENLARGE THE PETITIONER/ACCUSED ON BAIL IN Crime No.163/2020 OF JAGALUR POLICE STATION, DAVANAGERE IN S.C.NO.102/2021 ON THE FILE OF II ADD. DISTRICT AND SESSIONS JUDGE AND SPECIAL JUDGE, DAVANAGERE FOR THE OFFENCE PUNISHABLE UNDER SECTION 276 OF IPC AND SECTION 6 OF POCSO AND SECTION 9 OF THE PROHIBITION OF CHILD MARRIAGE ACT.

THIS PETITION COMING ON FOR **ORDERS**, THROUGH VIDEO CONFERENCING AT DHARWAD BENCH, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

This criminal petition is filed by the petitioner/accused under Section 439 of Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C.', for short) for granting bail in respect of Crime No.163/2020 (S.C.No.102/2021) of Jagaluru Police Station, Davanagere for the offence punishable under Section 376 of Indian Penal Code, 1860 (hereinafter referred to as the 'IPC', for short), Section 6 of Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as 'POCSO Act', for short) and Section 9 of the Prohibition of Child Marriage Act.

2. Heard the arguments of the learned counsel for petitioner and learned High Court Government Pleader for respondent.

3. The case of the prosecution is that on the complaint of CDPO-Lokeshwarappa complaint came to registered on 16.09.2020 alleging that petitioner has forcefully married a minor girl age about 14 years and committed sexual assault on her. After registering the case, after recording the statement of the victim, Police have arrested the petitioner-accused and remanded him in judicial custody. His bail application came to be rejected by this Court vide order dated 24.05.2021 by II Addl. District and Sessions Judge and Special Judge, Davanagere. Hence, petitioner is before this court seeking bail on the changed circumstances.

4. Learned counsel for the petitioner contended that now the petitioner is before this Court on the additional ground and changed circumstances that victim and her mother examined before Special Court as PW.1 and PW.2 and both of them turned hostile and not supported the case of the

prosecution. Petitioner is in judicial custody from 02.10.2020. Investigation is completed. Charge sheet filed. Petitioner is ready to abide by the conditions imposed by this Court. With this prays to allow the petition.

5. Per contra, learned High Court Government Pleader seriously objected the bail petition and contended that even the court can convict the petitioner based upon the evidence of the doctor and investigating officer and prays to reject the bail petition.

6. Having heard the arguments of the learned counsel for petitioner and learned High Court Government Pleader for respondent-State, perused the records.

7. Of-course, the case is against the petitioner for committing sexual assault on the victim girl below 18 years and marrying the victim girl. Section 9 of Prohibition of Child Marriage Act is invoked by Police. Though, the victim and her mother give statement before the Police against petitioner during investigation, but, they turned hostile in the court. Now the charges were framed, trial was started before the

Special Court, where the deposition reveals that PW.1-victim girl and PW.2-mother of victim girl turned totally hostile. In spite of treating them as hostile, nothing is elicited by learned SPP in favour of prosecution.

8. Therefore, under the facts and changed circumstances, successive bail petition can be allowed without expressing any opinion on the merits of the case. Except for further trial, petitioner is not required to be detained in judicial custody. Hence, I am of the view that, if the petitioner is enlarged on bail by imposing stringent conditions, it will not prejudice the case of the prosecution. Accordingly, I pass the following :

ORDER

The criminal petition is allowed.

The trial Court is directed to release the petitioner/accused on bail in Crime No.163/2020 of Jagalur Police Station, Davanagere, subject to the following conditions:

- i. The petitioner shall execute a personal bond for a sum of ₹2,00,000/- (Rupees two lakhs only) with two sureties for the likesum to the satisfaction of the Trial Court.
- ii. The petitioner shall not tamper the prosecution witnesses directly or indirectly.
- iii. The petitioner shall not indulge in similar offences.
- iv. The petitioner shall not leave the jurisdiction of the Trial Court without prior permission of the Trial Court.
- v. The petitioner shall take the trial without causing any delay.

If any of the conditions is violated, then the prosecution is at liberty to move an application for cancellation of bail.

**Sd/-
JUDGE**

HMB