

IN THE HIGH COURT OF KARNATAKA
DHARWAD BENCH

DATED THIS THE 4TH DAY OF NOVEMBER, 2019

BEFORE

THE HON'BLE MR. JUSTICE ASHOK G NIJAGANNAVAR

CRIMINAL PETITION NO. 101779/2019

BETWEEN:

SANTOSH S/O KRISHNAPPA DANAKANAKERI,
23 YEARS, OCC-AGRICULTURE, R/O BASAPUR,
TQ & DIST: KOPPAL.

PETITIONER

(BY SRI. ANAND R. KOLLI, ADVOCATE)

AND:

STATE OF KARNATAKA REPRESENTED
BY STATE PUBLIC PROSECUTOR,
HIGH COURT OF KARNATAKA,
DHARWAD BENCH (THROUGH
RURAL POLICE STATION)

RESPONDENT

(BY SMT. SEEMA SHIVA NAIK, GOVT. PLEADER)

THIS PETITION IS FILED UNDER SECTION 439 OF CR.P.C.
SEEKING TO ENLARGE THE PETITIONER ON REGULAR BAIL IN
CONNECTION WITH SPL. S.C. (POCSO) NO. 28/2019 (FIR POCSO
NO. 266/2019) (CRIME NO. 81/2019, RURAL POLICE STATION)
FOR THE OFFENCES PUNISHABLE U/S 363, 376 OF IPC R/W
SEC. 6 OF THE POCSO ACT, 2012 & ETC.

THIS PETITION COMING ON FOR **ORDERS** THIS DAY, THE
COURT MADE THE FOLLOWING:

ORDER

The petition is filed u/S 439 of Cr.P.C. by the petitioner-accused for grant of bail in Spl. S.C. (POCSO) 28/2019 FIR POCSO No. 266/2019 [Crime No. 81/2019] of Koppal Rural Police Station for the offences punishable u/S 363, 376 of Indian Penal Code, 1860 (for short 'IPC') r/w Sec. 6 of the Prevention of Children from Sexual Offences Act, 2012 (for short 'POCSO').

2. The facts briefly stated in the petition are that, initially on 14.04.2019 a complaint was registered by the brother of the deceased-victim that the accused petitioner has kidnapped his sister. On the basis of the said complaint, the case was registered at Koppal Rural Police Station Crime No. 13/2019. Later on 30.05.2019 the victim girl committed suicide. Thereafter, on the basis of the statement of the mother of the deceased, the Police have registered the case in Koppal Rural Police Station Crime No. 81/2019 for the aforesaid

offences. The accused was arrested on 10.05.2019. Since then, he is in judicial custody. The bail petition filed before the Sessions Court was rejected.

3. Heard the learned counsel for the petitioner and the learned Govt. Pleader for the respondent-State. Perused the prosecution records.

4. The counsel for the petitioner strenuously contended that, as on the date of the complaint, the victim girl was more than 17 years old and she had mental ability to understand the consequences. Even in the statement recorded u/S 164 of Cr.P.C. before the learned Magistrate, she has not disclosed about the kidnapping or sexual harassment or the rape committed by the accused. The charge sheet has already been filed. Since nothing is required to be recovered from the bail petitioner, as such his custodial interrogation is not

necessary, this petitioner cannot be allowed to incarcerate in jail for indefinite period.

5. Per contra, learned Govt. Pleader submitted that keeping in view the gravity of the offences allegedly committed by the petitioner, he does not deserve to be enlarged on bail. The victim prosecutrix was kidnapped by the accused-petitioner on the pretext of marrying her and she has been subjected to sexual intercourse. The petitioner taking undue advantage of the innocence of the victim girl, who was a minor at the time of the alleged incident, was sexually assaulted. Thereafter, on account of the subsequent events, the victim girl was compelled to commit suicide. There is a *prima facie* evidence to prove the complicity and involvement of the accused-petitioner. Thus, he is not entitled for bail.

6. Having heard the learned counsel for the parties and perused the material available on record, this Court

finds that it has come in the evidence of the prosecutrix recorded u/S 164 of Cr.P.C. that she had gone with the accused-petitioner on her own volition and had joined the company of the petitioner on the date of the alleged incident. Further she has stated that she resided along with the petitioner-accused for 18 days and the Police have brought her before the Court. Apart from this, there are no specific allegations of kidnapping or sexual assault or rape committed by the accused-petitioner.

7. During the course of arguments, the learned counsel for the petitioner submitted that on account of the arrest of the petitioner-accused, she went into depression and committed suicide. Even in the initial complaint filed by the brother of the victim girl, it is nowhere stated that she was sexually exploited.

8. Having carefully perused the statement of victim-prosecutrix recorded u/S 164 of Cr.P.C. this Court finds

no force in the arguments of the learned Govt. Pleader that the victim girl was kidnapped by taking undue advantage of her innocence. Nowhere it suggests that the victim girl was incapable of understanding or answering the questions put to her by the Court. Rather the narration of facts given by her clearly suggests that she was capable of understanding the questions clearly. Ultimately, all these aspects are to be considered and decided by the Court below on the basis of evidence collected by the prosecution.

9. In the instant case, the charge sheet has been filed and no grounds are made out to infer that in the event of petitioner enlarged on bail, he may flee from justice or going to tamper the prosecution witnesses.

10. Recently, the Hon'ble Apex Court in Criminal Appeal No. 227/2018 [2018(2) AICLR (S.C.)204], *Dataram Singh v. State of Uttar Pradesh & Anr.* Decided

on 6.2.2018 has held that freedom of an individual cannot be curtailed for indefinite period, especially when his guilt has not been proved. It has further held by the Hon'ble Apex Court in the aforesaid judgment that a person is believed to be innocent until found guilty. The Hon'ble Apex Court has held as under:

2. A fundamental postulate of criminal jurisprudence is the presumption of innocence, meaning thereby that a person is believed to be innocent until found guilty. However, there are instances in our criminal law where a reverse onus has been placed on an accused with regard to some specific offences but that is another matter and does not detract from the fundamental postulate in respect of other offences. Yet another important facet of our criminal jurisprudence is that the grant of bail is the general rule and putting a person in jail or in a prison or in a correction home (whichever expression one may wish to use) is an exception. Unfortunately, some of these basic principles appear to have been lost sight of with the result that more and more persons are being incarcerated and for longer periods. This does not do any good to our criminal jurisprudence or to our society.

11. By now it is well settled that gravity alone cannot be decisive ground to deny bail, rather competing factors are required to be balanced by the court while exercising its discretion. It has been repeatedly held by the Hon'ble Apex Court that object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. The Hon'ble Apex Court in *Sanjay Chandra v. Central Bureau of Investigation*, (2012) 1 SCC 49; [2012 (1) AICLR (S.C.)1]; wherein it has been held as under:

"The object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it can be required to ensure that an accused person will stand his trial when called upon. The Courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty. Detention in custody pending

completion of trial could be a cause of great hardship. From time to time, necessity demands that some unconvicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, "necessity" is the operative test. In India, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the relief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances. Apart from the question of prevention being the object of refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an unconvicted person for the purpose of giving him a taste of imprisonment as a lesson.

12. Needless to say object of the bail is to secure the attendance of the accused in the trial and the proper test to be applied in the solution of the question

whether bail should be granted or refused is whether it is probable that the party will appear to take his trial. Otherwise, bail is not to be withheld as a punishment. Otherwise also, normal rule is of bail and not jail. Court has to keep in mind nature of accusations, nature of evidence in support thereof, severity of the punishment which are peculiar to the accused involved in that crime.

13. The main objection of the prosecution is that, in the event of granting bail, the accused-petitioner is likely to tamper the prosecution witnesses. The said objection may be set right by imposing stringent conditions. In the facts and circumstances of the case, this Court is of the view that there are valid grounds to consider the bail subject to terms and conditions. Accordingly, the petition is allowed subject to the following conditions.

- (i) Petitioner-accused shall be enlarged on bail in Spl. S.C. (POCSO) 28/2019 [FIR POC defense No. 266/2019] Crime No. 81/2019 of Koppal Rural Police Station on his executing a personal bond in a sum of Rs. 1 lakh with two sureties for the likesum to the satisfaction of the trial Court;
- (ii) Petitioner-accused shall not tamper the prosecution witnesses;
- (iii) Petitioner-accused shall not indulge in any criminal activities henceforth;
- (iv) Petitioner-accused shall appear before the Court on all the dates of hearing unless exempted by the Court;

If the petitioner-accused violates any of the conditions, the bail order shall automatically stand ceased.

Sd/-
JUDGE

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