

IN THE HIGH COURT OF KARNATAKA
DHARWAD BENCH

DATED THIS THE 31ST DAY OF AUGUST, 2021

BEFORE

THE HON'BLE MR. JUSTICE RAJENDRA BADAMIKAAR

CRIMINAL APPEAL NO.100187 OF 2021

BETWEEN

SHRI DURGARAO S/O NAGESHWARA RAO
AGE. 37 YEARS, OCC. AGRICULTURE,
R/O. SRIRAM NAGAR, TQ GANGAVATHI,
KOPPAL-583227.

...APPELLANT

(BY SRI. MAHESH WODEYAR, ADVOCATE)

AND

1. THE STATE OF KARNATAKA
GANGAVATHI RURAL POLICE STATION
REPRESENTED BY
ADDL. STATE PUBLIC PROSECUTOR,
HIGH COURT OF KARNATAKA,
BENCH AT DHARWAD-580011
2. SMT. RENUKA W/O HANAMANTH NIRMANVI
AGE. 30 YEARS, OCC. COOLIE
R/O. GUNTHAKAL CAMP,
SRIRAM NAGAR, TQ. GANGAVATHI,
DIST. KOPPAL-583227

...RESPONDENTS

(BY SRI.RAMESH B CHIGARI, HCGP FOR R1;
SRI. HEMANTHKUMAR L HAVARGI, ADV., FOR R2)

THIS CRIMINAL APPEAL IS FILED U/S 14A(2) OF SC/ST
(POA) ACT SEEKING TO ALLOW THE CRIMINAL APPEAL AND SET
ASIDE THE ORDER DATED 28/07/2021 PASSED BY THE PRL.
DISTRICT AND SESSIONS/SPECIAL JUDGE AT KOPPAL IN FIR

(SC/ST) NO.292/2021 DISMISSING THE BAIL APPLICATION FOR THE OFFENCES PUNISHABLE UNDER SECTION 341, 354A, 376, 511 IPC AND U/S 3(1)(s), 3(1)(w), 3(2)(v-a) OF SC/ST (POA) AT 1989 (AMENDED AT 2015) AND CONSEQUENTLY, RELEASE THE APPELLANT ON BAIL IN CRIME NO.202/2021 OF GANGAVATHI RURAL POLICE STATION FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 341, 354(a), 376, 511 IPC AND UNDER SECTIONS 3(1)(s), 3(1)(w), 3(2)(V-a) OF SC/ST (POA) ACT 1989 (AMENDED AT 2015).

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

JUDGMENT

This appeal is filed under Section 14A(2) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short "SC/ST (POA) Act") for setting aside the order passed by the Principal District and Sessions/Special Judge, Koppal in FIR (SC/ST) No.292/2021 whereby the Special Judge has rejected the bail petition of the appellant herein.

2. The brief facts leading to the case are that the complainant is a married woman and since ten years she is residing in Gunthakal Camp along with her husband, mother-in-law and children. It is alleged that the appellant was acquainted with the complainant and he used to follow

her for last two years and he used to tease her and under the impression that he may improve his conduct, the complainant did not report the matter to anybody. It is alleged that on 26.06.2021 at 4.30 p.m., the complainant went to attend the call of nature near fallow land of Basayya and at that time, appellant followed her on a motorcycle having knowledge that she belongs to Scheduled Caste Community and stopped her and pulled her sari and attempted to commit rape on her. It is also alleged that lot of tussle underwent amongst them and in the said process, the appellant has sustained injuries to his left eye. It is alleged the accused abused the complainant stating that how she can refuse to have sexual relationship with him being of scheduled caste woman. When she cried for help, Hanumesh and Hanamanth came there and pacified the dispute. Later on, she after discussing with her husband regarding the incident, lodged complaint against the appellant-accused. On the basis of the complaint, crime was registered in Crime No.202/2021 for the offences punishable under Sections 341, 354(a), 376, 511

of IPC and under Sections 3(1)(s), 3(1)(w), 3(2)(v-a) of SC/ST (POA) Act. The appellant was arrested on 27.06.2021 and was subjected to medical examination subsequently, and then he was remanded to judicial custody. He has also moved regular bail petition before the learned Special Judge in FIR (SC/ST) No.292/2021 and the learned Special Judge by order dated 28.07.2021 rejected the bail petition. Hence, the appellant being aggrieved by the rejection of bail petition has filed this appeal for setting aside the impugned order of rejection of bail and sought for releasing him on bail by allowing this appeal.

3. Heard the arguments advanced by the learned counsel for the appellant and the learned counsel for respondents 1 and 2. Learned counsel for respondent No.2 has also submitted his statement of objections. Perused the records.

4. Learned counsel for appellant would contend that there is delay in lodging the complaint and only after

discussion, the compliant came to be lodged and there is also delay in sending the injured complainant as well as the accused for medical examination. He would contend that the ingredients of Section 376 of IPC are not at all attracted and the observation of the learned Special Judge regarding rapture of hymen was unwarranted as she is a married woman and the accused is in custody since 26.01.2020 and he is no more required by the investigation agency. Hence, he would contend that he may be enlarged on bail. He undertakes to abide by all the conditions to be imposed by this Court.

5. Per contra, learned HCGP appearing for respondent-state and learned counsel for respondent No.2 have seriously objected for granting bail to the appellant contending that there is prima facie material evidence as against present appellant. They would also contend that the appellant has attempted for rape on a married woman having knowledge that she is belonging to SC community and also abused her with reference to her caste. They

would also contend that the matter is still at the stage of investigation and in case the appellant is enlarged on bail, there is every possibility of appellant threatening the complainant, her minor children as well as husband and as such, they would seek for rejection of the appeal.

6. Having heard the arguments and perusing the records, it is evident that the main allegations against the appellant are that for last two years, he was following the complainant regularly and he was expecting sexual favour from her. The allegations further disclose that on 26.06.2021 at 4.30 p.m., when the complainant had been to fallow land of one Basayya for attending the call of nature, the appellant tried to rape her and in the said process, he outraged her modesty. No doubt the allegations of the complaint itself establish that there is no penetration and prima facie the provisions of Section 376 of IPC are not applicable. But however, the allegation itself discloses that he has attempted on victim having knowledge that she is a married woman having three

children. The provision of Section 376 of IPC is not directly applicable but the provisions Section 511 of IPC are applicable. Apart from that, the provisions of Section 354(a) are directly applicable. Further, the appellant made allegations against the complainant with reference to her caste and expecting that she is a property, which shows the mentality of the appellant. Admittedly, the matter is still at the stage of investigation. The complaint allegations further reveal that during the tussle, the appellant did sustain injuries to his left eye and the same is supported by the medical evidence. Looking to the facts and circumstances of the case, at this stage, there is prima facie material evidence as against the appellant. Matter is still at the stage of investigation and in case, the appellant is enlarged on bail, there is every possibility of appellant tampering with the prosecution witnesses and jumping on bail. Hence, the appeal is devoid of merits and needs to be dismissed. Accordingly, I proceed to pass the following:

ORDER

The appeal is ***dismissed***.

**Sd/-
JUDGE**

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