

**IN THE HIGH COURT OF KARNATAKA
KALABURAGI BENCH**

DATED THIS THE 06TH DAY OF JULY, 2020

BEFORE

THE HON'BLE MR.JUSTICE HANCHATE SANJEEVKUMAR

CRIMINAL PETITION NO.200282/2020

Between:

Shivappa S/o Hanumagouda Shake,
Age 34 years, Occ. Agriculture
R/o # 109, K.Irabagera Village,
Tq. Devadurga, Dist. Raichur.

... Petitioner

(By Sri Mahantesh Patil, Advocate)

And:

The State of Karnataka
Represented by Additional State Public Prosecutor,
High Court of Karnataka,
Kalaburagi Bench – 585 107.
(Through Devadurga P.S)

... Respondent

(By Sri Mallikarjun Sahukar, HCGP)

This Criminal petition is filed under Section 438 of Criminal Procedure Code praying to please to grant the anticipatory bail to the petitioner, direct the Devadurga Police Station to release the petitioner on bail in the event of his arrest in Devadurga Police Station in Crime No.170/2019 pending on the file of the learned Munsiff and JMFC Court,

Devadurga for the offence under Sections 392, 376, 511, 354, 323 and 506 of IPC in the interest of justice and equity.

This petition coming on for orders this day, the Court made the following:

ORDER

(Through Virtual Court)

The present petition is filed under Section 438 of Code of Criminal Procedure praying to grant anticipatory bail in connection with Crime No.170/2019 of Devadurga Police Station which is registered against the petitioner for the offences under Section 392, 376, 511, 354, 323 and 506 of IPC.

2. Brief facts of the case are as under;

As per the averments made in the first information statement (FIS) lodged by the grand mother of the victim that the victim is deaf and dumb and the victim was aged 22 years of old as on the date of the incident and on 24.12.2019 at afternoon 1.00 p.m., both victim and the complainant were harvesting the cotton crops and at that moment at 2.00 p.m., the petitioner had come to

the field and tried to strip of the sari of the victim and attempted to commit rape on her and snatched 6 gram of gold and when the victim screamed, the complainant went there and tried to rescue the victim but the petitioner had also manhandled the complainant by holding hair of the complainant and upon hearing this scream the villagers who are named in the FIS have come and rescued both complainant and the victim and the petitioner ran away and while going away the petitioner had criminally intimidated the complainant.

It is further alleged that the victim is deaf and dumb and therefore on her behalf the grand mother of the victim had lodged FIS before the police and based on that a crime is registered for the offences under Sections 392, 376, 511, 354, 323 and 506 of IPC.

3. The counsel for the petitioner vehemently argued that the entire statement made in the FIS are false and petitioner is falsely implicated into the case.

The complainant and the petitioner are close relatives and there are differences between them in regard to dispute over land and thus there remains no cordial relationship between them. Further, submitted that the entire prosecution case is false.

4. Further submitted that the petitioner is living in Bengaluru and doing coolie work for his livelihood and he was not present at the time of alleged incident and now due to the prevailing situation of COVID-19 the petitioner is not able to come to the village otherwise he would have appeared before the police and divulged the true facts.

5. Further submitted that there are no allegations of rape but only it is outraging the modesty of victim by pulling sari and offence under Section 376 of IPC is not attracted. Therefore, submitted there are no allegations warranting punishment even capital imprisonment or imprisonment for life. Therefore,

considering the facts and circumstances as alleged, it is prayed to grant the benefit of anticipatory bail to the petitioner.

6. On the other hand, the learned High Court Government Pleader submitted that the petitioner had tried to rape the victim and also manhandled the complainant and the first informant had tried to rescue the victim, by that time the petitioner had mandhandled the complainant and this fact is witnessed by two witnesses who are villagers in the same village as stated in the complaint. Therefore, there is *prima facie* case against the petitioner and further stated that if the petitioner is released on bail there would be every chances of threatening of complainant and also tampering other witnesses.

7. Further the learned High Court Government Pleader submitted that the Judicial Magistrate has recorded the statement of the victim under Section 164

of Cr.P.C. Investigating Officer is not able to file charge sheet because of the factum that the expert assistance is to be taken but due to current prevailing situation of pandemic COVID-19 it is not possible. Therefore, considering all these facts and circumstances and nature of allegation against the petitioners that he had attempted to commit rape and outraged the modesty of the victim, sought to reject the bail petition filed under Section 438 of Cr.P.C.

8. Having carefully gone through the materials available on record, at this stage the petitioner is facing serious offence of attempt of committing rape on the victim and outraging her modesty and robbing 6 grams of gold of the victim. The petitioner is still absconding and he is not available for facing investigation by the Investigating Officer.

9. The learned counsel for the petitioner submitted that the petitioner is relative of the

complainant and neighbouring land owner and both have civil dispute and therefore a false complaint is filed against the petitioner. But for this the petitioner had not put-forth any material before this Court. Considering the submission of the counsel for the petitioner, whatever may be the above defence trying to be taken by the petitioner as discussed above, it would be worth to consider the same during full fledged trial but not at this stage.

10. Regard being had to the facts and circumstances involved in the present case, the allegation that petitioner criminally trespassed into the field of the complainant and pulled the sari of the victim and attempted to rape on her and robbed 6 grams of gold and upon hearing the scream of the victim, the first informant who is grandmother of the victim reached there to rescue the victim but the petitioner had also manhandled the first informant by holding her hair and upon hearing the scream two witnesses who are named

in the FIS have come and rescued both complainant and the victim. Therefore, at this stage the prosecution has *prima facie* case, which disentitles the petitioner for anticipatory bail because of his abscondance since the date of commission of alleged incident. Therefore, since there is force in the submission made by the learned High Court Government Pleader and also considering taking into note the commission of offence is on a victim who is deaf and dumb, the instant petition deserves to be rejected.

Accordingly, the petition stands rejected.

**Sd/-
JUDGE**

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