

IN THE HIGH COURT OF KARNATAKA
KALABURAGI BENCH
DATED THIS THE 08TH DAY OF SEPTEMBER, 2022
BEFORE
THE HON'BLE MR. JUSTICE P.N.DESAI
CRIMINAL PETITION NO.200911/2022

BETWEEN:

BASAVARAJ S/O SURAPPA JADHAV
AGE: 28 YEARS OCC: AGRICULTURE
R/O: VILLAGE YARAKIHAL TANDA
TQ: HUNASAGI DIST: YADGIRI.

...PETITIONER

(BY SRI. GANESH NAIK, ADVOCATE)

AND:

01. THE STATE OF KARNATAKA
THROUGH NARAYANPUR P.S.
DIST: YADGIRI, ITS REPRESENTED BY
ADDL. SPP HIGH COURT OF KARNATAKA
AT: KALABURAGI BENCH,
DIST: KALABURAGI-07.

02. LAXMI KUMAR W/O NAGAPPA KUMBAR
AGE: 25 YEARS OCC: TAILORING WORK
R/O: KURIKNAL VILLAGE TQ: HUNASAGI
DIST: YADGIRI.

...RESPONDENTS

**(BY SRI.GURURAJ V. HASILKAR, HCGP FOR R1
SRI.SHIVASHARAN REDDY, ADVOCATE FOR R2 &
TO ASSIST THE PROSECUTION)**

THIS CRIMINAL PETITION IS FILED UNDER SECTION 439 OF THE CODE OF CRIMINAL PROCEDURE, PRAYING TO ALLOW THE BAIL PETITION AND ENLARGE THE ACCUSED/PETITIONER ON BAIL IN C.C.NO.163/2021 ON THE FILE OF JMFC COURT AT YADGIRI (CRIME NO.26/2021 OF GURUMITKAL POLICE STATION, DIST: YADGIRI), FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 323, 343, 354 (D), 366, 376 (2) (A), 417, 212 AND 506 OF INDIAN PENAL CODE.

THIS PETITION COMNG ON FOR ORDERS THIS DAY, THE COURT PASSED THE FOLLOWING:

ORDER

This petition is filed under Section 439 of the Code of Criminal Procedure, 1973 ('Cr.P.C.' for short), seeking to enlarge the petitioner, who is arraigned as accused No.1, on bail in Crime No.26/2021 of Gurumitkal Police Station, Dist: Yadgiri registered for the offences punishable under Sections 323, 343, 354 (D), 366, 376(2) (n), 417, 212 and 506 of Indian Penal Code (for short 'IPC'), pending on the file of JMFC Court at Yadgiri in C.C.No.163/2021.

02. It is the case of the prosecution that the complaint is lodged by the complainant - victim stating that on 02.03.2022 at about 10.30 p.m. at Bommagudda village, when the victim after attending nature call was proceeding on a road towards Madalinal village, at that time the accused No.2 and the petitioner came to the said spot and forcibly made the victim to sit on the said motorcycle and went towards Kurekenal Canal. The petitioner committed sexual intercourse on the victim against her will and without her consent. He has also threatened the victim stating that if she discloses the incident to anybody, he will

take away her life. On basis of complaint FIR came to be registered on 10.03.2022 for the offences as stated above. The petitioner is arrested on 10.03.2022. After completion of the investigation, the police have filed the charge sheet against the petitioner. The bail petition filed by the petitioner came to be rejected by the Sessions Court. Hence, the petitioner has filed this petition.

03. Heard Sri. Ganesh Naik, learned counsel for the petitioner and Sri. Gururaj V. Hasilkar, the learned High Court Government Pleader for the respondent No.1 – State and Sri. Shivasharan Reddy, the learned counsel to Assist the prosecution and learned counsel for the respondent No.2.

04. The learned counsel for the petitioner argued that the petitioner has been falsely implicated in this case. The victim is major and she is aged about 28 years. So, there is no possibility of forcible sexual intercourse. The medical report also discloses that there are no external injuries. The averments of the complaint cannot be believed. If at all petitioner tried to commit such act, she could have tried to escape, raised voice or screamed for

help of others who are neighbours. Just to spoil the career of the petitioner the false case is filed. It is further argued that the victim is a consenting party to the alleged crime and it is consensual sex. The statement of the victim under Section 164 of Cr.P.C. clearly shows that it is the consensual sex. The victim is a major and she knows the consequences. The medical report shows that there is no forcible sexual intercourse. The petitioner is ready to abide by any conditions that may be imposed by this Court and ready to offer surety. The investigation is already completed and charge sheet is also filed. Hence, the learned counsel for the petitioner prays to allow the petition.

05. Against this, the learned High Court Government Pleader argued that the offence is heinous one. There is a statement of the victim under Section 164 of Cr.P.C. and medical report, which support the case of the prosecution. At this stage, if the petitioner is released on bail he may threaten the victim, tamper the prosecution evidence and he may abscond. Hence, learned High Court Government Pleader prays to dismiss the petition.

06. The learned counsel for the respondent No.2 has stated that the victim has filed an affidavit in support of her contention.

07. I have perused the petition averments, FIR and other materials. Admittedly, the victim has stated that the petitioner has subjected her to sexual intercourse against her will and wish. Even she has stated that she has got children and begged the petitioner not to commit such act, but in spite of that the petitioner committed forcible sexual intercourse on her. The statement under Section 164 of the Cr.P.C. before the Magistrate which is recorded on 14.03.2022 also shows that she was taken forcibly by the petitioner with the help of another person. Thereafter, though she has begged him that she has got two children and leave her, but she was taken for away place and petitioner committed forcible sexual intercourse on her. She was also threatened not to disclose to anybody. She has also stated in the complaint that as there was a threat, she has not to disclosed to anyone earlier, but thereafter she discussed with elders and lodged the complaint. There are

statements of her parents before the police shows that the petitioner involved in this case. This complainant stated before them also that she was subjected to forcible sexual intercourse by the petitioner. Further, before the doctor she has stated that she has subjected to forcible sexual intercourse. Even in the history of assault she has stated that she was raped forcibly and under the threat. The said statement is forthcoming in record. In further enquiry by police on 11.03.2022 also she has given statement that in spite of her request and begging, the petitioner has committed sexual intercourse on her.

08. The petition averments show that according to the petitioner it is a consensual sex. The petitioner committing an act of sexual intercourse on the victim appears to be not disputed. There is a complaint before the police, statement under Section 164 of Cr.P.C. before the Magistrate and statement before the medical officer that sexual intercourse was against her will and wish and also she was threatened. Therefore, it is a consensual sex or not, cannot be determined at this stage. Looking into the

material placed before the Court, prima-facie there is a material to show that the petitioner has committed the offence as alleged against him. It is a heinous offence.

09. It is settled principle of law that bail is a rule and rejection is an exception. While granting or rejecting the bail, the Court will have to take into consideration,

- (1) *the nature and seriousness of the offence;*
- (2) *character of the accused;*
- (3) *circumstances which are peculiar to accused;*
- (4) *reasonable probabilities of presence of the accused not being secured at trial;*
- (5) *reasonable apprehension of witnesses being tampered with; and*
- (6) *larger interest of public or the state and similar other considerations, which arise when a Court is asked to admit the accused to bail in a non-bailable offence.*

10. So, in the light of these principles, if the present allegations against the petitioner and the charge sheet materials, is considered in my considered view the petitioner is not entitled to be enlarged on bail.

11. The apprehension of the prosecution that if the petitioner is released on bail, he may threaten the witnesses and tamper with the prosecution evidence, cannot be ruled out. Accordingly, I proceed to pass the following:

ORDER

The criminal petition filed under Section 439 of Cr.P.C. is dismissed.

**Sd/-
JUDGE**

KJJ