



IN THE HIGH COURT OF KARNATAKA

KALABURAGI BENCH

DATED THIS THE 17TH DAY OF NOVEMBER, 2023

BEFORE

THE HON'BLE MR JUSTICE K NATARAJAN

CRIMINAL PETITION NO.201309 OF 2023 (439)

BETWEEN:

DEVENDRAPPA @ DEVAPPA
S/O KALLAPPA
AGE: 60 YEARS, OCC: AGRICULTURE,
R/O NELOGI, TQ. JEWARGI,
DIST. KALABURAGI-585115.

...PETITIONER

(BY SRI. CHAITANYAKUMAR CHANDRIKI, ADVOCATE)

AND:

1. THE STATE OF KARNATAKA
THROUGH NELOGI P.S.,
DIST. KALABURAGI-585115
REPRESENTED BY ADDL. SPP,
HIGH COURT BUILDING,
KALABURAGI-585107.
2. NAGENDRA
S/O SHIVARAY KOTARGASTI,
AGE: 38 YEARS, OCC: AGRICULTURE,
R/O NELOGI, TQ. JEWARGI,
DIST. KALABURAGI-585115.

...RESPONDENTS

(BY SMT.ANITA M. REDDY, HCGP FOR R1)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 439 OF
CR.P.C. PRAYING TO RELEASE THE PETITIONER ON BAIL IN
SPL.CASE (POCSO) NO.31/2023 (CRIME NO.36/2023) REGISTERED
BY JEWARGI CIRCLE, NELOGI POLICE STATION, KALABURAGI





DISTRICT, FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 363, 376(2)(N), 354(D) 342, 114, 509 R/W 34 OF IPC AND SECTIONS 4, 6, 12 AND 17 OF POSCO ACT 2012 PENDING BEFORE THE ADDITIONAL DISTRICT AND SESSIONS JUDGE AND FTSC-I (POCSO), AT KALABURAGI.

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

ORDER

This petition is filed by the petitioner-accused No.2 under Section 439 of Cr.P.C. seeking regular bail in Crime No.36/2023 registered by Nelogi Police Station, Jewargi Circle, Kalaburagi District, (Spl.C.POCSO No.31/2023 pending on the file of Additional District and Sessions Judge and FTSC-I (POCSO) at Kalaburagi) and charge sheeted for the offences punishable under Sections 363, 376(2)(n), 354(d), 342, 114, 509 r/w Section 34 of IPC and Sections 4, 6, 12 and 17 of the Protection of Children from Sexual Offences Act, 2012.

2. Heard learned counsel for the petitioner and learned High Court Government Pleader for respondent No.1-State.



3. The case of the prosecution is that on the complaint filed by respondent No.2, the police have registered FIR, for missing of the victim girl, aged about 17 years, against accused No.1 for the offence punishable under Section 363 of IPC. Subsequently, on 30.03.2023, the victim girl was rescued and her statement was recorded wherein it is revealed that accused No.1 has fallen in love with the victim girl and he was always insisting her to marry him. On 21.03.2023, accused No.1 called the victim girl over phone and asked her to elope with him, but she refused. Again on 25.03.2023, accused No.1 called the complainant and told her that she should elope with him, otherwise he will die, again she refused. In spite of her resistance, on 26.03.2023, in the midnight the petitioner and accused No.2 came in a Tum-Tum vehicle and took the victim girl. The petitioner dropped accused No.1 and the victim girl in the Kalaburagi Railway Station. Thereafter, both of them went to Solapur and to Pune where accused No.1 has committed sexual assault on



the victim girl between 27.03.2023 and 30.03.2023. On 30.03.2023, the police rescued the victim girl. Subsequently, the petitioner was arrested on 31.03.2023 and he was remanded to judicial custody. The petitioner approached the Sessions Judge for bail, which came to be rejected. Hence, he is before this Court.

4. Learned counsel for the petitioner submits that the petitioner is innocent of the alleged offence. He has been falsely implicated in this case. The petitioner is in custody from almost 07 months. He submits that the petitioner is ready to abide by any conditions that may be imposed. Accordingly, he prayed for granting of bail.

5. Per contra, learned High Court Government Pleader for respondent No.1-State objected for granting bail to the petitioner.

6. Having heard the learned counsel for the petitioner and the learned High Court Government Pleader, I have perused the records which reveals that the main



allegation goes against accused No.1 who has committed sexual assault on the victim girl. The petitioner has abetted accused No.1 to elope with the victim girl and he dropped the accused No.1 and the victim girl in the Kalaburagi Railway Station. The allegation made against the petitioner attracts the offence punishable under Sections 114 and 366A of IPC. The petitioner was arrested on 31.03.2023 and he is in custody from more than seven months. The investigation has been completed long back and the charge sheet is filed. The matter is pending for trial.

7. Therefore, considering the facts and circumstances of the case, since the petitioner is only abettor of crime and it is accused No.1 who has actually committed sexual assault on the victim girl, I am of the view that the petitioner is entitled for bail. Hence, without expressing any opinion on the merits of the case and by imposing certain conditions, if the petitioner is released on bail, no prejudice would be caused to the case of prosecution. Hence, the following:



ORDER

The petition is ***allowed***.

The Trial Court is directed to release the petitioner-accused No.2 on bail in Crime No.36/2023 registered by Nelogi Police Station, Jewargi Circle, Kalaburagi District, (Spl.C.Pocso No.31/2023 pending on the file of Additional District and Sessions Judge and FTSC-I (POCSO) at Kalaburagi), for the offences punishable under Sections 363, 376(2)(n), 354(d), 342, 114, 509 r/w Section 34 of IPC and Sections 4, 6, 12 and 17 of the Protection of Children from Sexual Offences Act, 2012, subject to the following conditions:-

- (i) Petitioner shall execute a personal bond for a sum of Rs.2,00,000/- with two sureties for the likesum to the satisfaction of the Trial Court;
- (ii) Petitioner shall not indulge in similar offences strictly;



- (iii) Petitioner shall not tamper with the prosecution witnesses directly/indirectly;
- (iv) Petitioner shall not leave the jurisdiction without prior permission of the trial Court.
- (v) Petitioner shall co-operate for trial without causing any delay.

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

Sd/-
JUDGE

NB
List No.: 1 Sl No.: 7