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Court : Karnataka Kalaburagi

Decided On : Jun-28-2017

Judge : B.A. Patil

Appeal No. : Criminal Petition No. 4174 of 2017

Appellant : Ramesh

Respondent : The State of Karnataka, Represented by State Public Prosecutor, Through Yadrami Police Station, Kalaburagi

Judgement :

(Prayer: This Criminal Petition is filed under Section 439 of Cr.P.C., praying to enlarge the petitioner on bail in Crime No.206/2016, Yedrami P.S., Kalaburagi District, for the offence P/U/Sec. 366(A), 376(2)(N), 109 R/W 34 of I.P.C. and also U/Sec. 4 and 6 POCSO Act.)

1. This petition is filed by the petitioner/accused No.1 under Section 439 of Cr.P.C., seeking regular bail in Crime No.206/2016 of Yedrami Police Station (Special Case POCSO No.5/2017 pending on the file of II Addl. District and Sessions Judge, Kalaburagi), registered for the offences punishable under Sections 366(A), 376(2)(n), 109 R/w Section 34 of IPC and also Sections 4 and 6 of the Protection of Children from Sexual Offences Act.

2. Brief facts leading to filing of the complaint are that, the victim is the eldest daughter of the complainant, who is pursuing her studies in 10th standard in the Urdu School at Jewargi. It is further alleged that, the complainant's daughter used to complain about the petitioner stating that, he is always behind her, stating that, he loves her and wants to marry her. In this context, he has been advised by the complainant and he did not change his behavior. It is further alleged that on 02.11.2016, the victim left the house at about 10.30 a.m. by stating that, she will go to her school and even after 6.00 p.m. she did not return to the house. The family members searched for the victim girl, but they did not trace her. As such, the complaint came to be lodged on 06.11.2016. Thereafter, the police apprehended the accused and the victim and at that time the victim told that, when she was going to the school on 02.11.2016, accused Nos.1 and 2 and his friends came in a Tavera vehicle and took her forcibly into the said jeep and thereafter they took her to Chatra village and there they left her and accused No.1. There, accused No.1 and herself lived in a room and there the accused sexually assaulted her. On the basis of the said statement, the petitioner was apprehended and now he is in judicial custody.

3. I have heard the learned counsel for the petitioner and the learned Additional State Public Prosecutor appearing for respondent-State.

4. The main grounds urged by the learned counsel for the petitioner are that, the petitioner is innocent and he has not abducted the victim girl. It is also contended that, the statement of the victim clearly goes to show that she herself has voluntarily gone along with the petitioner and there is no sexual assault committed by the petitioner on her. It is further contended that, the medical examination conducted on the victim clearly indicates that, there were no injuries and there is no recent sexual assault on her. It is further contended that the alleged offences are not punishable with death or imprisonment for life and as the victim used to love the petitioner since last two years, she herself has gone along with him. It is further contended that the petitioner has got both movable and immovable properties, therefore there is no chance of he being absconded. It is further contended that, if the petitioner is enlarged on bail, he is ready to abide by the conditions to be imposed by this Court and ready to offer sureties. Further it is

contended that, already the charge sheet has been filed and the petitioner is not required for the purpose of further investigation or interrogation. On these grounds, he prays for allowing the petition.

5. Per contra, learned Additional State Public Prosecutor appearing for the respondent-State would contend that the petitioner has eloped the victim girl in a Tavera vehicle along with his friends and thereafter he had sexually assaulted her by confining her in a room. The certificate issued by the doctor clearly indicates that the victim girl is below 18 years and she was pursuing her studies in 10th standard. He would also contend that, there is a prima facie material as against the petitioner/accused. As such, he is not entitled to be released on bail. On these grounds, he prays for dismissal of the petition.

6. I have gone through charge sheet material, which has been made available along with the petition.

7. As could be seen from the statement of the victim recorded by the JMFC Court, Jewargi on 10.11.2016, therein she has deposed that, she is having consciousness that she is giving evidence and without there being any pressure or threat, she has given the said statement. She has further deposed that she used to love the petitioner since two years and as she was unable to live the life without him, she has gone along with him, he has not eloped her, he has not forcibly had a sexual intercourse with her and he has not committed any offence. Though the charge sheet material indicates that the victim has been confined in a room and she has been sexually assaulted, but her statement recorded under Section 164 of Cr.P.C. by the Magistrate, clearly indicates that she has been not forcibly taken by the petitioner and had sexually assaulted. Even the wound certificate issued in respect of the victim girl by the Casualty Medical Officer, District Hospital, Gulbarga indicates that Hymen is torn old healed scar noted and no external injuries were found on the body of the victim. Under the said circumstances, that too when already the charge sheet has been filed, I feel that by imposing some stringent conditions if the petitioner is enlarged on bail, it would meet the ends of justice.

8. For the above reasons, the petition is allowed and the petitioner/accused No.1 is ordered to be released on bail, subject to the following conditions:

i. The petitioner shall execute a personal bond for a sum of Rs.2,00,000/- (Rupees Two Lakhs Only) with two solvent sureties for a likesum to the satisfaction of the jurisdictional Court;

ii. The petitioner shall not tamper with any of the prosecution witnesses directly or indirectly;

iii. The petitioner shall make himself available to the Investigating Officer as and when required;

iv. The petitioner shall mark his attendance before the Investigating Officer once in fortnight till the trial is concluded;

v. The petitioner shall appear before the Trial Court on all the dates of hearing without fail.

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