

**Navesh Vs. The State of Karnataka, Represented by State Public Prosecutor, Kalaburagi**

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**Court :** Karnataka Kalaburagi

**Decided On :** Jun-23-2017

**Judge :** B.A. Patil

**Appeal No. :** Criminal Petition No. 4051 of 2017

**Appellant :** Navesh

**Respondent :** The State of Karnataka, Represented by State Public Prosecutor, Kalaburagi

**Judgement :**

(Prayer: This Criminal Petition is filed under Section 439 of Cr.P.C., praying to allow the bail petition and release the petitioner on bail by taking required surety in Cr.No.159/2016 of Mudhol P.S., registered for the offences punishable under sections 366(A), 376(2) (N) of Indian Penal Code R/w Section 5 and 6 of POCSO Act, 2012, pending trial before the II Additional District and Sessions Judge, Kalaburagi under Spl.C.No.11/2017.)

1. This petition is filed by the petitioner/accused under Section 439 of Cr.P.C., seeking regular bail in Crime No.159/2016 of Mudhol Police Station, registered for the offence punishable under Section 366(A), 376 (2) (N) of IPC and Sections 5 and 6 of Protection of Children from Sexual Offences Act, 2012.

2. Brief facts leading to filing of the complaint are that, the complainant being the mother of the victim filed the complaint alleging that on 2.11.2016 at about 8:00 AM, her daughter went to the college by telling that she will come in the evening hours after the class by late and she took the victim to Yanagundi Gate and there she got boarded her daughter into the bus. But, in the evening hours even after 9:00 PM, the victim did not return to the house, as such, husband and son of the complainant along with other members of the village by taking the jeep searched the victim. On 03.11.2016 at about 8:00 or 9:00 AM they went to college and there the Principal told that her daughter has not come. When they came back alighted from the bus at Gurmitkal, at that time one Anantappa Naikodi, Venkatreddy, Honnur and Kashappa Naikodi informed them that her daughter was waiting near Yanagundi gate along with the petitioner, thereafter they also went into the bus, then thereafter, they went to the house of the petitioner and enquired about his son and there they came to know that, the accused has eloped the daughter of the complainant and when they asked whereabouts her daughter, they also told that if they come to know about victim and petitioner, they will inform and the same was informed to the elders of the village and they also made a search. On 16.11.2016 at about 11:30 AM they came and filed complaint. It is further case of the prosecution that subsequently, victim was traced and she disclosed that since two years, the accused and herself used to love each other and they went to Bengaluru and they stayed in a room of one Navesh in Vasantpur, there by exchanging the garland, got married on 4.11.2016 and when they were staying, they had physical contact with each other. On the basis of the complaint, a case has been registered against the accused.

3. I have heard the learned counsel for the petitioner and the learned Addl. 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 committed any offence alleged against him. He has not eloped the victim-girl. He would further contend that the victim-girl herself has voluntarily gone along with the petitioner and got married with him. He would further contend that, though the age of the victim is shown as 17 years, but according to the radiological report, the age of the victim is more than 19 years. He

would further contend that, the Court could take judicial notice of the margin of error in age ascertained by the radiological examination by two years on either side. He would further contend that, the statement of the victim has been recorded under Section 164 of Cr.P.C before the Magistrate and the victim has clearly deposed that she loved the petitioner and thereafter she herself gone has along with petitioner, got married, and during that period she was having physical contact with the petitioner. He would further contend that, the charge sheet has been filed and petitioner is not required for the purpose of further investigation or interrogation. He would further contend that the victim is matured and by understanding the things, she has voluntarily gone and got married with the petitioner. It is further contended that, if the petitioner is released on bail, he is ready to abide by the conditions to be imposed by this Court and he is ready to offer sureties. On these grounds, he prays for allowing the petition.

5. On the contrary, learned Addl. S.P.P. appearing for the respondent-State vehemently contended that, the date of birth of the victim-girl shows that she is aged about 17 years as on the date of alleged incident. Even the entire record goes to show that, the petitioner has eloped the minor girl and thereafter he had sexually assaulted her. He would further contend that the other material, which has been collected during the course of investigation, clearly shows that the petitioner against the will of the victim had sexually had intercourse with her. He would further contend that if the petitioner is released on bail, there is likelihood of he tampering with the prosecution witnesses and he may abscond and he may not be available for trial. On these grounds, he prays for dismissal of the petition.

6. I have gone through the contents of the documents, which have been produced and I have also perused the contents of the complaint and statement of victim recorded under Section 164 of Cr.P.C.

7. By going through the statement of the victim recorded under Section 164 of Cr.P.C., it clearly goes to show that the victim herself has gone voluntarily along with the petitioner in the first instance to Yadgiri and thereafter to Bengaluru and there they have voluntarily joined together and stayed in a room. Thereafter, after exchange of garland, they got married. During their stay, the petitioner and victim

had a physical contact with each other. The record also goes to show that the petitioner has not eloped the victim without the consent of her or without the consent of her parents. No doubt, the age of the victim is below 17 years, but the material collected during the course of investigation goes to show that, the victim-girl is matured and she is in a position to understand the pros and consequences in the society. Though, the prosecution case is that, the petitioner has sexually assaulted the victim, but so far as voluntarily statement of the victim which has been recorded under Section 164 of Cr.P.C, it clearly indicates that there is no force on the part of the petitioner and that they voluntarily had sexual intercourse with each other without there being any force or physical harassment. By going through the material on record, it is clearly goes to show that the petitioner has not eloped and not forcibly had sexual intercourse with the victim. However, it is not the stage to decide the case on merit whether the petitioner has committed the offence or not, that is a matter which has to be adjudicated and decided at the time of trial, that too when the victim-girl is a minor, then under such circumstances, the Court must be careful and cautious about the cause is concerned. However, by taking into consideration the facts and material that it indicates that the petitioner has not eloped the victim and had not forcibly had sexual intercourse with her. Under the circumstances when the charge sheet has been filed and the presence of the petitioner is not required, then under such circumstances, I feel that by imposing some stringent conditions, if the petitioner is released on bail, it is going to meet the ends of justice. The above discussion will not come in the way of disposal of the case on merits.

8. For the aforementioned reasons, the petition is allowed and petitioner/accused 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 the likesum to the satisfaction of the jurisdictional Court;
- ii) The petitioner shall not indulge in tampering the prosecution witnesses;
- iii) The petitioner shall mark his attendance before the Investigating Officer on every fortnight till the trial is concluded;

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

v) The petitioner shall not leave the jurisdiction of the concerned Court without its prior permission.

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