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Arvind Kumar K S Vs. The State Of Karnataka

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Court : Karnataka

Decided On : Sep-01-2020

Judge : B.a.Patil

Appeal No. : CRL.P 3672/2020

Appellant : Arvind Kumar K S

Respondent : The State Of Karnataka

Judgement :

R1- - IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE1T DAY OF SEPTEMBER, 2020 BEFORE THE HONBLE MR.JUSTICE B.A.PATIL CRIMINAL PETITION NO.3672/2020 BETWEEN : Arvind Kumar K.S., S/o Sri Ram Reddy Aged about 21 years R/at No.25/A, 1st Floor 3rd A Cross, Rajeshwari Layout Monnekolala, Marathalli Bengaluru-560 037. Permanent Address: Kurutahalli Village, Chintamani Taluk Chikkabalapura District-563 125. .. Petitioner (By Sri K.B.K.Swamy, Advocate) AND : The State of Karnataka by Rajajinagar Police Station, Bengaluru. Represented by State Public Prosecutor High Court of Karnataka, Bengaluru-560 001. .. Respondent (By Sri Rohith B.J., HCGP) This Criminal Petition is filed under Section 439 of Cr.P.C praying to enlarge the petitioner on bail in Crime No.12/2018 (Spl.C.C.No.290/2018) registered by 2 - - Rajajinagar Police Station, Bengaluru, for the offences punishable under Sections 363, 366, 366A, 344 and 376 of Indian Penal Code and Sections 4, 6 and 16 of POCSO Act. This Criminal Petition having been heard and

reserved on 26.08.2020 coming on for pronouncement of orders this day, the Court made the following:-

ORDER

The present petition is filed by accused No.1 under Section 439 of Cr.P.C. for grant of bail in Crime No.12/2018 of Rajajinagar Police Station (Spl.CC.No.290/2018) pending on the file of LIV Additional City Civil and Sessions Judge, Bengaluru, for the offences punishable under Sections 363, 366, 366A, 344, 376 of IPC and under Sections 4, 6 and 16 of Protection of Children from Sexual Offences Act, 2012 (POCSO Act for short).

2. I have heard Sri K.B.K.Swamy, learned counsel appearing for the petitioner-accused No.1 and Sri Rohit B.J., learned HCGP for the respondent-State.

3. The genesis of the case of the prosecution in brief is that on 14.1.2018 the mother of the victim girl 3 - - lodged a missing complaint alleging that her 3rd daughter who is studying in 1st year Diploma and attending typing and shorthand classes is missing from 13.1.2018 at about 5.30 p.m. On the basis of the said complaint a man missing case was registered in Crime No.12/2018. During the course of investigation, the Investigating Officer secured the victim girl and recorded her statement. In her statement she stated that the petitioner herein and herself were friends through face book and often they used to meet near her house and he was loving her and intended to marry. It is further stated in her statement that she told him that she is too young to marry and after completing her studies she will get married with him. In spite of that, the petitioner pressurized her and on 13.1.2018 after finishing the class when she came out of the typing institute, at about 6.30 p.m. petitioner went near the typing institute of the victim girl and met her and thereafter he induced her to come with him. In spite of her refusal, forcibly he took her to his room in Marathahalli where he kept her for 10 4 - - days from 13.01.2018 to 24.01.2018 and when she was in the room, against her will, on 20.01.2018 he forcibly committed aggravated penetrative sexual assault on her. Another accused by name Ranjith Kumar used to insist her to marry the petitioner and he used to give financial help.

4. It is the submission of the learned counsel for the petitioner-accused No.1 that petitioner and victim were loving with each other and victim herself has voluntarily gone to the room of the petitioner and stayed with him without any force or pressure. It is his further submission that the petitioner has not sexually assaulted the victim and even the medical evidence also does not substantiate the case of the prosecution. It is his further submission that this Court by the order dated 19.9.2018 dismissed the bail petition filed by the petitioner herein and while dismissing the said petition, a direction was issued to the trial Court to expedite the trial. But in spite of the said direction, till date the trial has not been concluded. It is his further submission that as per 5 - - Section 35 of the POCSO Act, not recording of the evidence of the victim within a period of 30 days from the date of taking cognizance and not concluding the trial within one year from the date of taking cognizance gives a right to the petitioner-accused No.1 for grant of bail. The trial Court has committed omission and has not followed the provision of law. It is his further submission that the trial Court has taken cognizance on 28.4.2018; charge was framed on 28.9.2018; and this Court directed the trial Court to expedite the trial on 19.9.2018. Subsequently, trial was fixed on 5.12.2018. Though the summons have been issued on 17.1.2019, the victim and her mother were not examined and on 18.3.2019 victim was partly examined. Subsequently on 1.4.2019 PW.1- victim was further examined and on 19.12.2019 PW.1 has been partly cross-examined and PW.2 has been examined in part. Subsequently, on 3.3.3020 an application came to be filed under Section 319 of Cr.PC. to implead CWs.3 and 4 as accused Nos.3 and 4. It is his further submission that thereafter because of lockdown 6 - - no progress has been made in the case. It is his further submission that how long the case will be pending for trial cannot be predicted. It is his further submission that because of Covid-19, it is not safe to keep the petitioner-accused No.1 behind the bars. It is his further submission that if the mandate of the provisions of Section 35 of POCSO Act has not been followed and the trial has not been concluded within one year, then under such circumstances, the petitioner-accused No.1 is entitled to be released on bail. In order to substantiate the said contention, he has relied upon the decisions of coordinate Bench of this Court in the case of Vinay Vs. The State of Karnataka in Criminal Petition No.1195/2017 disposed of on 13.7.2017 and in the case of Kundan Kumar

Singh Vs. State of Karnataka in Criminal Petition No.2977/2019, disposed of on 9.9.2019. It is his further submission that the petitioner is ready to abide by any conditions imposed by this Court and he is ready to offer sureties. 7 - - 5. Per contra, the learned HCGP vehemently argued and submitted that the petitioner-accused No.1 eloped the minor victim girl and has committed aggravated penetrative sexual assault. The statement of the victim clearly indicates that the petitioner-accused No.1 had sexual intercourse without her consent. It is his further submission that if the petitioner is enlarged on bail, he may tamper with the prosecution witnesses and even he may threaten the victim and her family members. It is his further submission that delay in trial is not a ground to release him on bail. It is his further submission that this Court has directed the trial Court only to expedite the trial and no time frame has been fixed. Under such circumstances, the accused is not entitled to be released on bail. On these grounds, he prayed to dismiss the petition.

6. I have carefully and cautiously gone through the submissions made by the learned counsel appearing for the parties and perused the records. 8 - - 7. It is not in dispute that earlier the petitioner has approached this Court in Criminal Petition No.5297/2018 for grant of regular bail and this Court by the order dated 19.9.2018 dismissed the said petition and subsequently, again he approached this Court and this Court has also dismissed the said petition on merits. It is the contention of the learned counsel for the petitioner- accused No.1 that the mandate of the provisions of Section 35 of POCSO Act has not been followed and the trial has not been completed within a period of one year from the date of taking cognizance of the offence. For the purpose of brevity, I quote Section 35 of the POCSO Act, which reads as under:- 35. period for recording of evidence of child and disposal of case.-(1) The evidence of the child shall be recorded within a period of thirty days of the Special Court taking cognizance of the offence and reasons for delay, if any, shall be recorded by the Special Court. (2) The Special Court shall complete the trial, as far as possible, within a period of one 9 - - year from the date of taking cognizance of the offence.

8. On close reading of sub-section (2) of Section 35 of the POCSO Act, it indicates that though the Special Court is directed to complete the trial within a period of one

year from the date of taking cognizance, the words used in between the said sentence as far as possible themselves indicate the fact that it is not mandate of the law that the trial should be completed within a period of one year from the date of taking cognizance. When some discretion is given under the said provision, as far as possible the trial Court can try to complete the trial within a period of one year. When that being so, it cannot be held that there is a delay on the part of the trial Court to complete the trial. In that light, the benefit of Section 35 of the Act will not come to the aid of the petitioner-accused No.1.

9. If there is a delay in trial on account of fault of the accused, then under such circumstances, the accused does not deserve for grant of bail. Bail can be granted to 10 - - the accused if there are some lapses on the part of the prosecution in completing the evidence or due to some lapse on the part of trial Court in not completing the trial.

10. As could be seen from the records and the submissions made by the learned counsel for the petitioner, the trial Court has taken cognizance on 28.4.2018; the charge has been framed on 28.9.2018; and trial was fixed on 5.12.2018. Subsequently, the victim came to be examined partly on 18.3.2019, 1.4.2019, 15.6.2019 and 1.10.2019. On 1.10.2019 at the request of the learned counsel for the accused, the date was given for further cross-examination and because of the pandemic disease Covid-19, the case was not fixed for further trial. Under such circumstances, it can safely be held that there is no delay on the part of the trial Court as well as the prosecution.

11. The main object of holding the trial is to ascertain the truth by the Court by recording evidence, assessing the same in the scale of balance and decide the case on merits. If the trial Courts are directed in this 11 - - behalf ultimately justice will suffer. I am conscious of the fact of right of the petitioner-accused No.1, when he is involved in a serious offence like committing sexual assault on minor girl and before recording her full evidence if he is enlarged on bail that too when PW.1-victim has been partly examined-in-chief, he may tamper with the prosecution evidence. It is trite law that if there is apprehension of tampering with the prosecution evidence or petitioner may not be available for trial or he may

abscond, then he is not entitled to be released on bail.

12. It is the submission of the learned counsel for the petitioner that petitioner-accused No.1 is languishing in jail since more than two and half years. Merely on the ground that the petitioner-accused No.1 is languishing in jail for more than two and half years, it cannot be a ground to release him on bail. The said contention is unsustainable, that too when earlier this Court has declined to release the petitioner-accused No.1 on bail. In the instant case, the complainant or victim is not in 12 - - any way instrumental in delaying the trial. This proposition of law has been held by the Honble Apex Court in the case of Gobarbhai Naranbhai Singala Vs. State of Gujarat & others, reported in (2008)3 SCC775 wherein at paragraphs-19, 21 and 22 it has been observed as under:- 19. From a reading of the impugned order it is found that the learned Judge, who incidentally happens to be the same Judge who had declined to release the respondent on bail earlier, did not advert to any of the reasons given by him declining to release the respondent on bail. There was no change of circumstances. The reasons given by the learned Judge in the impugned order for grant of bail are untenable.

20. xxx xxx xxx xxx 21. The other reason given in the impugned order is that the trial of the case has not progressed/begun. We find from the record that between 2-6-2004 and 19-12- 2005 the case was listed before the trial court 31 times and on each date, it had to be 13 - - adjourned on the ground that one or the other accused was not present. There are 16 accused in the case. It is not clear from the record whether the accused were not brought by the police from the jail or that they were on bail and had not appeared of their own, but the fact remains that the complainants were not in any way instrumental in delaying the trial between 2-6-2004 and 19-12-2005. It was brought to our notice that the only witness who has been examined so far has turned hostile. Trial was stayed by the High Court on 15-2-2007 at the instance of the appellant as Shri R.R. Trivedi, APP, to whom the case had been assigned for conducting the trial and was allegedly the counsel for the respondent in some other case earlier, continued to appear in the case in spite of the fact that he was replaced by another APP. It just shows that the trial was not progressing smoothly. In any case, the complainant party was in no way responsible for any delay in trial.

22. The third reason given by the High Court for grant of bail, that the respondent 14 - - had been in jail for the last more than 2 years, is equally untenable in view of the observations made by this Court in State of U.P. v. Amarmani Tripathi : (SCC p. 32, para

19) 19. 14. the condition laid down under Section 437(1)(i) is sine qua non for granting bail even under Section 439 of the Code. In the impugned order it is noticed that the High Court has given the period of incarceration already undergone by the accused and the unlikelihood of trial concluding in the near future as grounds sufficient to enlarge the accused on bail, in spite of the fact that the accused stands charged of offences punishable with life imprisonment or even death penalty. In such cases, in our opinion, the mere fact that the accused has undergone certain period of incarceration (three years in this case) by itself would not entitle the accused to being enlarged on bail, nor the fact that the trial is not likely to be concluded in the near future either by 15 - - itself or coupled with the period of incarceration would be sufficient for enlarging the appellant on bail when the gravity of the offence alleged is severe and there are allegations of tampering with the witnesses by the accused during the period he was on bail. 13. Be that as it may, though the provisions of Section 35 of POCSO Act indicate that as far as possible the trial has to be concluded within one year from the date of taking cognizance, now-a-days there is docket explosion and many cases are coming under the POCSO Act. Though the special Courts are constituted, if the trial Court is pressurized by taking shelter under Section 35 of the POCSO Act, then under such circumstances, it is practically impossible for the trial Court to conclude the trial within one year. If in all the cases the same yardstick is adopted, then under such circumstances, the guidelines issued to consider the provisions of Section 439 of Cr.P.C. for grant of bail by the Honble Apex Court are going to be diverted and diluted, that too when the 16 - - petitioner-accused No.1 has been involved in a serious offence of penetrative sexual assault on a minor girl. In that light, contentions taken up by the learned counsel for the petitioner appear to be having no force so as to release the petitioner on bail. Even the decisions of the coordinate Bench of this Court, relied upon by the learned counsel for the petitioner are not applicable to the facts of the case on hand.

14. In the instant case, already bail petitions filed by the present petitioner have been rejected on merits. Under such circumstances and also in view of the ratio laid down in the decision quoted supra, the contention of the petitioner-accused No.1 is not acceptable.

15. It is the submission of the learned counsel for the petitioner that because of Covid-19, the pandemic disease, it is not safe to keep the petitioner behind the bars. But, if the said contention is taken into consideration, now Covid-19 has spread in community as a whole and on that ground, if the petitioner is ordered to be released on bail, it is going to send a wrong signal to 17 - - the society in large and every accused takes the shelter of the said ground. In the present case, no such facts have been stated to the effect that infected prisoners are there in the prison and the life of the petitioner is at risk. In that light also, it is not a ground so as to release the petitioner-accused No.1 on bail. In view of the aforesaid facts and circumstances of the case, I am of the considered opinion that the petition is liable to be dismissed and accordingly the same stands dismissed. Sd/- JUDGE *ck/-

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