

**Somashekar Vs. The State By**

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**Court :** Karnataka

**Decided On :** Oct-11-2023

**Judge :** S Vishwajith Shetty

**Appeal No. :** CRL.P 7421/2023

**Appellant :** Somashekar

**Respondent :** The State By

**Judgement :**

- 1 - NC:

2023. KHC:37164 CRL.P No.7421 of 2023 IN THE HIGH COURT OF KARNATAKA AT BENGALURU R DATED THIS THE11H DAY OF OCTOBER, 2023 BEFORE THE HON'BLE MR JUSTICE S VISHWAJITH SHETTY CRIMINAL PETITION No.7421 OF 2023 BETWEEN: SOMASHEKAR S/O SHEKAR PUJARI AGED ABOUT24YEARS R/O VATEHALLI VILLAGE BELAGODU HOBLI SAKALESHPURA TALUK HASSAN DISTRICT. PETITIONER (BY SRI SHETTY DEEPAK, ADV.) AND:

1. THE STATE BY RURAL POLICE STATION AUTHORITIES, SAKALESHPURA REPRESENTED BY STATE PUBLIC PROSECUTOR, HIGH COURT OF KARNATAKA, BENGALURU - 560 001.

2. SUNANDA W/O MAHESH AGED 37 YEARS R/O VATEHALLI VILLAGE BELAGODU HOBLI SAKALESH PURA RESPONDENTS (BY SMT. SOWMYA R, HCGP) THIS CRL.P FILED U/S.439 CR.P.C PRAYING TO ENLARGE THE PETITIONER ON BAIL IN CR.NO.279/2023 REGISTERED BY SAKALESH PURA RURAL POLICE STATION, HASSAN FOR THE OFFENCE P/U/S448 504 AND 305 OF IPC, SECTION 12 OF POCSO ACT, AND SECTION 32(va) OF SC/ST (POA) AMENDMENT ACT, - 2 - NC:

2023. KHC:37164 CRL.P No.7421 of 2023 2015, PENDING BEFORE THE ADDITIONAL DISTRICT AND SESSIONS JUDGE, FTSC-1, HASSAN IN SPL.C.NO.279/2023. THIS PETITION, COMING ON FOR

ORDER

S, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

1 Accused in Spl.C.No.279/2023 pending before the Court of Addl. District & Sessions Judge, FTSC-I, Hassan, for the offences punishable under Sections 448, 504, 305 of IPC, Section 12 of the Protection of Children from Sexual Offences Act, 2012 (for short, 'POCSO Act') and Section 3(2)(va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short, 'Atrocities Act'), arising out of Crime No.67/2023 registered by Sakaleshpura Rural Police Station, Hassan District, is before this Court under Section 439 of Cr.PC.

2. Heard the learned Counsel for the petitioner and the learned HCGP for respondent no.1. Respondent no.2/defacto complainant though served in the matter, has remained unrepresented.

3. The defacto complainant, who belongs to Scheduled Caste community, had approached Sakaleshpura Rural Police - 3 - NC:

2023. KHC:37164 CRL.P No.7421 of 2023 Station and submitted a typed complaint dated 17.03.2023 at about 3.00 p.m., alleging that the petitioner who is the resident of their village was pestering her minor daughter aged about 17 years to love him. On 17.03.2023 at about 11.00 a.m., petitioner allegedly came to the

house of the complainant and called out her minor daughter's name. When the complainant inquired with him about his whereabouts, he informed her that he was the lover of her daughter. Complainant and her brother-in-law Praveen advised the petitioner, but he went inside the house of the complainant and quarreled with her minor daughter and started pestering her to love him. Since the complainant's daughter did not agree, petitioner allegedly abused her and threatened her with dire consequences to her life and went away. Complainant's daughter who got ashamed due to the said incident, went inside the house and allegedly committed suicide by hanging herself with a saree. It is under these circumstances, complainant had approached the police and submitted the typed complaint, based on which, FIR was registered in Crime No.67/2023 against the petitioner herein and another initially for the offences punishable under Sections - 4 - NC:

2023. KHC:37164 CRL.P No.7421 of 2023 306, 504, 34 of IPC, Section 12 of the POCSO Act and Section 3(2)(va) of the Atrocities Act.

4. During the course of investigation in the said case, petitioner was arrested on 30.04.2023. Investigation in the case was completed and charge sheet was filed only against the petitioner herein for the aforesaid offences. The bail application filed by the petitioner before the Trial Court in Spl.C.No.279/2023 was dismissed on 28.06.2023. Therefore, he is before this Court.

5. Learned Counsel for the petitioner submits that the petitioner and the victim girl were in love and this was objected to by her parents and relatives. On the date of incident, petitioner had gone to the house of the complainant since the victim girl was confined in her house by her parents. The allegation made in the complaint against the petitioner is totally false. Even if the charge sheet allegations are presumed to be true, the alleged offences cannot be made out against the petitioner. Petitioner who is aged about 24 years, is in custody from 30.04.2023. Investigation in the case is completed and - 5 - NC:

2023. KHC:37164 CRL.P No.7421 of 2023 charge sheet has been filed. Accordingly, he prays to allow the petition.

6. Learned HCGP has raised a preliminary objection with regard to the maintainability of the criminal petition on the ground that since the offence punishable under the provisions of Atrocities Act is invoked against the petitioner, he is required to file an appeal as provided under Section 14A(1) of the Atrocities Act. Alternatively, on the merits of the case, she submits that the material on record makes out a prima facie case against the petitioner, and therefore, she prays to dismiss the petition.

7. Considering the preliminary objection raised by the learned HCGP regarding maintainability of this petition, before advertng to the merits of the case, it would be necessary for this Court to examine the said aspect of the matter.

8. Petitioner has been charge-sheeted for the offences under Sections 448, 504, 305 of IPC, Section 12 of the POCSO Act and Section 3(2)(va) of 'Atrocities Act'. Since the offences punishable under the provisions of Atrocities Act is invoked against the petitioner in the charge sheet, learned HCGP has - 6 - NC:

2023. KHC:37164 CRL.P No.7421 of 2023 raised an objection with regard to the maintainability of the petition in view of Section 14A(1) of the Atrocities Act.

9. The Atrocities Act and the POCSO Act are special enactments. The Atrocities Act was enacted on 30.01.1990, while the POCSO Act was enacted on 09.11.2012. Section 20 of the Atrocities Act provides for overriding effect of the said Act, while Section 42A of the POCSO Act provides for overriding effect of the POCSO Act.

10. Section 20 of the Atrocities Act, reads as under:

"20. Act to override other laws.- Save as otherwise provided in this Act, the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any custom or usage or any instrument having effect by virtue of any such law.

11. Section 42A of the POCSO Act, reads as under:

"42A. Act not in derogation of any other law.-The provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force and, in case of any inconsistency, the provisions of this Act shall have overriding effect on the provisions of any such law to the extent of the inconsistency."

- 7 - NC:

2023. KHC:37164 CRL.P No.7421 of 2023 12. Section 31 of the POCSO Act, reads as under:

"31. Application of Code of Criminal Procedure, 1973 to proceedings before a Special court.-Save as otherwise provided in this Act, the provisions of the code of Criminal Procedure, 1973 (2 of 1974), (including the provisions as to bail and bonds) shall apply to the proceedings before a Special court and for the purposes of the said provisions, the Special Court shall be deemed to be a Court of Sessions and the person conducting a prosecution before a Special Court, shall be deemed to be a Public Prosecutor.

13. From a reading of Section 31 of the POCSO Act, it is evident that the provisions of Cr.PC is made applicable for the cases to be tried under the said Act, and therefore, the provision for bail under Cr.PC would also be applicable for the cases registered under the provisions of the POCSO Act.

14. Section 14A of the Atrocities Act which provides for an appeal remedy as against the orders passed by the Special Judge trying the offences under the provisions of the said Act, reads as under:

"14A. Appeals.- (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), an appeal shall lie, from any judgment, sentence - 8 - NC:

2023. KHC:37164 CRL.P No.7421 of 2023 or order, not being an interlocutory order, of a Special Court or an Exclusive Special court, to the High court both on facts and on law. (2) Notwithstanding anything contained in sub-section (3) of section 378 of the Code of Criminal Procedure, 1973 (2 of 1974), an appeal shall

lie to the High Court against an order of the Special Court or the Exclusive Special Court granting or refusing bail. (3) Notwithstanding anything contained in any other law for the time being in force, every appeal under this section shall be preferred within a period of ninety days from the date of the judgment, sentence or order appealed from: PROVIDED that the High Court may entertain an appeal after the expiry of the said period of ninety days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of ninety days: PROVIDED FURTHER that no appeal shall be entertained after the expiry of the period of one hundred and eighty days. (4) Every appeal preferred under subsection (1) shall, as far as possible, be disposed of within a period of three months from the date of admission of the appeal.

15. A reading of the aforesaid provision of law would go to show that against an order rejecting bail for the offences - 9 - NC:

2023. KHC:37164 CRL.P No.7421 of 2023 punishable under the provisions of the Atrocities Act, the accused is required to file an appeal as required under Section 14A(1) of the Atrocities Act.

16. Whenever, there is a conflict between the provisions of two special enactments, it is trite that the provisions of the later of the two enactments will prevail. This is because the legislature was aware of the earlier statute at the time of enactment of the later statute. Unless the legislature specifically provides in the later statute that the provisions of the earlier statute would prevail, then it has to be understood that the provisions of the later statute would prevail over the earlier statute.

17. In the background of the aforesaid principle of law, having regard to Section 42A of the POCSO Act, it is very clear that the provisions of the POCSO Act will prevail over the provisions of the Atrocities Act. Similar view has been taken by various High Courts and I am in complete agreement with the same.-. 10 - NC:

2023. KHC:37164 CRL.P No.7421 of 2023 18. The Division Bench of Madhya Pradesh High Court in Criminal Appeal No.5189/2020 disposed of on 22.04.2021, had considered the following questions: (i) Which court shall conduct the trial of a

case, instituted under penal provision of two Special Acts i.e., the Atrocities Act as well as the POCSO Act, either the Special Court constituted under Atrocities Act or the Special Court constituted under the POCSO Act. (ii) Whether an Appeal against an order of rejection of bail of an accused by the Special Court, in a case instituted for committing offences under the POCSO Act & the Atrocities Act, shall lie under the provisions of Section 14-A of the Atrocities Act or application under Section 438/439 of Code of Criminal Procedure, as the case may be.

19. In the said case, the Division Bench of Madhya Pradesh High Court after having referred to the various judgments of the Hon'ble Supreme Court and other High Courts has held that the trial of the case instituted under the provisions of the said Acts viz., Atrocities Act and POCSO Act, shall be conducted by the Special Courts constituted under the POCSO Act and the remedy of the accused against the order of rejection of bail under Section 439 of Cr.PC by such Special Judge would be by - 11 - NC:

2023. KHC:37164 CRL.P No.7421 of 2023 filing the bail application under Section 439 of Cr.PC before the High Court.

20. Under the circumstances, I hold that in cases where the offences punishable under the provisions of these two special enactments viz., Atrocities Act and POCSO Act are invoked, a petition under Section 439 Cr.PC before the High Court is maintainable.

21. Coming to the merits of the case, as per the complaint averments, petitioner allegedly came to the house of the complainant and had called out the name of her daughter and on inquiry, he had informed the complainant that he was the lover of her daughter. In spite of the complainant and her brother-in-law advising the complainant, petitioner allegedly went inside the house and was pestering complainant's minor daughter to love him, for which she had refused. Thereafter, petitioner allegedly abused her and also criminal intimidated her and had left the house.

22. There is no allegation in the complaint that the petitioner had misbehaved with the complainant's daughter except asking her to love him.-. 12 - NC:

2023. KHC:37164 CRL.P No.7421 of 2023 23. According to the learned Counsel for the petitioner, the victim girl and the petitioner were in love and this was objected to by the parents and relatives of the victim girl and since she was confined in their house, the petitioner had gone to their house on 17.03.2023.

24. Considering the nature of allegations made in the complaint, the aforesaid submission made by the learned Counsel for the petitioner cannot be simply brushed aside. Petitioner has not committed any such act in the house of the complainant which would have abetted or instigated the minor girl to commit suicide.

25. Complainant and her brother-in-law who were present in the spot, had not gone to rescue the minor girl when allegedly the petitioner was abusing and pestering her. This conduct of the complainant and her brother-in-law raises a serious doubt with regard to the allegations made by them in the complaint.

26. Investigation in the case is completed and charge sheet has been filed. Undisputedly, the minor girl has died by committing suicide in the house of the complainant. Petitioner - 13 - NC:

2023. KHC:37164 CRL.P No.7421 of 2023 who is an youngster aged about 24 years is in custody from 30.04.2023. The allegations made in the charge sheet against the petitioner is required to be proved in a full-fledged trial. Under the circumstances, I am of the view that the prayer made by the petitioner for grant of regular bail is required to be answered in the affirmative. Accordingly, the following order:

27. The petition is allowed. The petitioner is directed to be enlarged on bail in Spl.C.No.279/2023 pending before the Court of Addl. District & Sessions Judge, FTSC-I, Hassan, for the offences punishable under Sections 448, 504, 305 of IPC, Section 12 of the POCSO Act and Section 3(2)(va) of the Atrocities Act, arising out of Crime No.67/2023 registered by Sakaleshpura Rural Police Station, Hassan District, subject to the following conditions: a) Petitioner shall execute personal bond for a sum of Rs.1,00,000/- with one surety for the likesum, to the satisfaction of the jurisdictional Court; b) The petitioner shall appear regularly on all the dates

of hearing before the Trial Court unless the Trial Court exempts his appearance for valid reasons; - 14 - NC:

2023. KHC:37164 CRL.P No.7421 of 2023 c) The petitioner shall not directly or indirectly threaten or tamper with the prosecution witnesses; d) The petitioner shall not involve in similar offences in future; e) The petitioner shall not leave the jurisdiction of the Trial Court without permission of the said Court until the case registered against him is disposed off. SD/- JUDGE KK

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