

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 14TH DAY OF AUGUST, 2020

BEFORE

THE HON'BLE MR. JUSTICE H.P. SANDESH

CRIMINAL PETITION No.3004/2020

BETWEEN:

MR. KUMAR @ SATISH,
S/O PUTTASWAMAPPA,
AGED 35 YEARS,
RESIDENT OF NO.6,
GUJJAPPA BUILDING,
EDGA ROAD, BEHIND MASJID,
VARTHUR, BENGALURU - 560 087.

... PETITIONER

(BY SRI I.S PRAMOD CHANDRA, ADVOCATE)

AND:

1. STATE OF KARNATAKA,
BY VARTHUR POLICE,
BENGALURU,
THROUGH THE STATE PUBLIC PROSECUTOR,
HIGH COURT BUILDING,
DR.AMBEDKAR VEEDHI,
BENGALURU - 560 001.

2. MRS. SHASHIKALA,
W/O MR. KUMAR @ SATHISH,
AGED 28 YEARS,
R/AT NO.6, GUJJAPPA BUILDING,
EDGA ROAD, BEHIND MASJID,
VARTHUR, BENGALURU - 560 087.

... RESPONDENTS

(BY SRI R.D. RENUKARDHYA, HCGP FOR R-1,
R-2 IS SERVED AND UNREPRESENTED)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 439 OF CR.P.C. PRAYING TO ENLARGE THE PETITIONER ON BAIL IN CR.NO.273/2019 REGISTERED BY VARTHUR POLICE STATION, BENGALURU FOR THE OFFENCE PUNISHABLE UNDER SECTIONS 376 AND 506 OF IPC AND SECTIONS 4 AND 6 OF POCSO ACT.

THIS CRIMINAL PETITION COMING ON FOR ORDERS **THROUGH VIDEO CONFERENCE** THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

This petition is filed under Section 439 of Cr.P.C. seeking regular bail of the petitioner in Crime No.273/2019 registered by Varthur Police Station, Bengaluru, for the offences punishable under Sections 376 and 506 of IPC and Sections 4 and 6 of Protection of Children from Sexual Offences Act, 2012 ('POCSO Act' for short).

2. Heard the learned counsel for the petitioner and the learned High Court Government Pleader appearing for the State.

3. The factual matrix of the case is that the complaint is given against the petitioner/accused, who is none other than the father of the victim girl. It is alleged in the complaint that, on 31.08.2019 at about 4.30 p.m., the victim girl was subjected to sexual act by her father and thereafter, he threatened to take

away the life of the victim girl if she informs the same to anybody. Hence, the victim girl did not inform the same to her mother. Subsequently, on enquiry by the mother, when the victim girl complained about the stomach pain and the chest pain, i.e. on 26.10.2019, almost after two months of the incident, the victim girl narrated the same to her mother that her father subjected her for continuous sexual act and hence the complaint is lodged. The victim girl was subjected to medical examination. The police have registered the case against the petitioner for the offence punishable under Sections 376 and 506 of IPC and Sections 4 and 6 of the POSCO Act in Crime No.273/2019 and later the same was re-numbered as Special Case No.47/2020.

4. The main contention of the learned counsel for the petitioner is that there was a strained relationship between the accused/petitioner and his wife and hence a false case has been registered against the petitioner. The complaint was given after two months of the alleged incident and the victim was not subjected to medical examination immediately. Only after

apprehending the petitioner, the victim girl was subjected to medical examination after three months of the alleged incident. The learned counsel also submits that she may be subjected to sexual act, but that does not mean that the petitioner only committed rape on his daughter. The FSL report is not yet filed. There are no injuries as per the medical evidence and the petitioner has been in custody for the last eight months and hence there is no prima facie material against the petitioner and he may be enlarged on bail.

5. Per contra, the learned High Court Government Pleader appearing for the State would submit that the petitioner caused life threat to the victim girl, who is his daughter aged about 11 years, after committing sexual act on her and subsequently the victim girl informed the same to her mother. The victim girl's statement was recorded under Section 164 of Cr.P.C., wherein she has categorically made the statement against the petitioner. The victim girl is also subjected to medical examination and the medical examination report also confirms that she was subjected to sexual act and the hymen is not intact. All these materials

prima facie discloses that the petitioner himself has committed sexual act on the minor girl, who is his daughter. Hence, he is not entitled for bail.

6. Having heard the arguments of the learned counsel for the petitioner and the learned High Court Government Pleader appearing for the State and having examined the material available on record, i.e., charge sheet material, this Court has to examine as to whether it is a fit case to exercise the powers under Section 439 of Cr.P.C.

7. Having considered the complaint averments, 164 statement and also medical report, there is no dispute with regard to the fact that the victim girl is aged about 11 years and she was subjected to sexual act. No doubt there is a delay of two months in lodging the complaint and the same was explained by the complainant that threat was caused to the victim and also the complainant. The victim was subjected to medical examination and as per the medical records, there is no external injuries, but hymen is not intact. It is the opinion of the doctor that sexual act cannot be ruled out.

8. Having considered the factual aspects of the case, the fact that the petitioner is none other than the father of the victim girl, who is aged about 11 years and the complaint averments as well as 164 statement made before the Magistrate prima facie points out that the petitioner subjected the minor girl for sexual act. The Court also cannot expect the injuries on the body of the victim girl when the victim girl was subjected to medical examination after three months of the incident. When the prima facie material discloses that the victim girl, who is aged about 11 years was subjected to sexual act that too by the father himself and when the medical evidence also supports the case of the prosecution, I am of the opinion that it is not a fit case to exercise the powers under Section 439 of Cr.P.C. to admit the petitioner for bail. The contention that there was a strained relationship between the wife and the petitioner cannot be decided at this stage and the same will be tested at the time of the trial, since it is an heinous offence.

9. In view of the discussions made above, I pass the following:

ORDER

The petition is rejected.

**Sd/-
JUDGE**

MD

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