

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 26<sup>TH</sup> DAY OF AUGUST 2020

BEFORE

THE HON'BLE MR. JUSTICE S. SUNIL DUTT YADAV

**CRIMINAL PETITION No.3524/2020**

**BETWEEN:**

Sri Shivakumar,  
S/o Late Sanjeevappa,  
Aged about 26 years,  
R/at Sugatur Village,  
Jangamakote Hobli,  
Sidlaghatta Taluk,  
Chikkaballapur District – 562 105. ... Petitioner

(By Sri Nanjunda Gowda, M.R., Advocate)

**AND:**

State of Karnataka by  
Sidlaghatta Rural Police,  
Chikkaballapur District,  
Represented by  
State Public Prosecutor,  
High Court of Karnataka,  
Bengaluru – 560 001. ... Respondent

(By Smt. Rashmi Jadhav, HCGP)

This Criminal Petition is filed under Section 439 of the Code of Criminal Procedure, praying to enlarge the petitioner on bail in Cr.No.62/2020 (S.C. No.14/2020) registered by Shidlagatta Rural Police Station, Chikkaballapura for the offences p/u/s 363, 366(A) and 376 & 214 of IPC and Sections 19(1), 4, 8 and 12 of POCSO Act and Section 9 of Prohibition of Child Marriage (Karnataka Amendment) Act.

This Criminal Petition coming on for Orders, this day, the Court made the following:

**ORDER**

The petitioner who is the sole accused is seeking to be enlarged on bail pursuant to his arrest in Crime No.62/2020 for the offence punishable under Section 363 of IPC and the offences that were made out after investigation while filing the charge-sheet whereby other offences came to be included viz., Section 216, 366(A), 376 of IPC r/w Section 4, 8, 12 of the POCSO Act and Section 9 of the Prohibition of Child Marriage Restraint Act and Section 214 IPC.

2. The case as made out in the complaint is that the complainant's daughter was studying in 2<sup>nd</sup> Year

PUC at Kapilamma Samyuktha PU College at Nadipinayakanahalli. It is stated that on 17.03.2020, the complainant's daughter left the house in the morning to attend the examination. It is stated that when she did not come home in the evening, the complainant had enquired with the victim's friends and came to know that she went to Jangamanakote cross by 2.00 p.m., after attending the examination. A complaint came to be filed after the complainant was not able to trace the whereabouts of his daughter and has expressed his suspicion that Shivakumar who is the resident of same village might have kidnapped her.

3. The learned counsel for petitioner would submit that initially case was made out under Section 363 IPC, and it is only thereafter, the prosecution has improved its case and have made out other offences as mentioned in the charge-sheet. It is further submitted that admittedly the age of the victim was 17 years 6 months

and that the voluntariness of the victim in having a relationship with the petitioner is reflected in the 164 statement recorded on 13.04.2020, wherein the victim has specifically stated of having 'love relationship' with the petitioner. It is further made out in the 164 statement recorded before Magistrate that the victim has gone along with the petitioner and stayed with the petitioner.

4. The learned counsel for petitioner would point out that no where in the 164 statement has there been any imputation regarding act of sexual intercourse between her and the petitioner.

5. The learned counsel for petitioner further points out that investigation has not been fair as the version made in the 161 statement stated to have been recorded on 22.03.2020 refers to acts of sexual intercourse despite her protest, which version is completely absent in the 164 statement recorded before

the Magistrate. It is submitted that in light of the age of the petitioner and the undisputed voluntariness in the relationship between the petitioner and the respondent and in the absence of any clinching evidence forthcoming in the FSL report, the petitioner is entitled to the discretionary relief of bail under Section 439 of Cr.P.C.

6. It is pointed out that the petitioner has been in custody since 20.03.2020.

7. The learned HCGP however, submits that consent would be irrelevant in light of the age of the victim and the petitioner needs to be subjected to the rigors of the law as he had a relationship with the victim who had not attained the age of 18 years.

8. Heard both sides.

9. At the outset, it is to be noted that the age of the victim is 17 years 6 months even as per the case of

the prosecution. The said aspect may have to be kept in mind while exercising judicial discretion in deciding applications for grant of bail. It comes out emphatically in the 164 statement that the victim had a voluntary 'love relationship' with the petitioner.

10. It is to be noticed that the case as regards offences made out also prima-facie are not backed by the version of the victim as made out in the statement recorded under Section 164 Cr.P.C., which can be taken note of while considering grant of bail.

11. As pointed out by the learned counsel for petitioner, there is apparent contradiction as regards to the version of the victim as noticed in the statement under Section 161 recorded on 22.03.2020 and the version of the victim recorded under Section 164 Cr.P.C., recorded before the Magistrate on 13.04.2020.

12. It is also noticed that the petitioner has been in custody since 20.03.2020, and investigation is complete. More importantly, the stand of the victim before the Magistrate as reflected in the statement under Section 164 Cr.P.C., does not reveal any act of sexual intercourse as sought to be made out by the prosecution in the charge-sheet.

13. Taking note of the factual facts and circumstances, and also noticing the stand of the victim in her 164 statement, it would be appropriate to enlarge the petitioner on bail. The proof as regards to commission of offence is a matter to be established during trial. The material available on record at present, more importantly 164 statement and the apparent contradiction between the statement of the victim as reflected in the 161 statement and subsequent statement under Section 164 Cr.P.C., would prima-facie weaken the case of the prosecution.

14. Without expressing anything further as regards to the merits of the matter, it is an appropriate case to enlarge the petitioner on bail subject conditions.

15. In the result, the bail petition filed by the petitioner under Sec. 439 of Cr.P.C. is allowed and the petitioner is enlarged on bail in Crime No.62/2020 for the offence punishable under Sections 363, 216, 214, 366 (A), 376 of IPC r/w Section 4, 8, 12 of the POCSO Act and Section 9 of the Prohibition of Child Marriage Restraint Act, subject to the following conditions:

- (i) The petitioner shall execute a personal bond of ₹1,00,000/- (Rupees one Lakh only) with one surety for the likesum to the satisfaction of the concerned Court.
- (ii) The petitioner shall fully co-operate for the expeditious disposal of the trial.
- (iii) The petitioner shall not tamper with evidence, influence in any way any witness.



- (iv) In the event of change of address, the petitioner to inform the same to the concerned SHO.
- (v) Any violation of the aforementioned conditions by the petitioner shall result in cancellation of bail.

Any observation made herein shall not be taken as an expression of opinion on the merits of the case.

**Sd/-  
JUDGE**

Np/-