

IN THE HIGH COURT OF KARNATAKA
DHARWAD BENCH

DATED THIS THE 02ND DAY OF JUNE 2021

BEFORE

THE HON'BLE MR. JUSTICE SHIVASHANKAR AMARANNAVAR

CRIMINAL PETITION No.100271/2021

BETWEEN:

HOLIYAPPA S/O HANAMANTHAPPA GUDASALI
AGE. 32 YEARS, OCC. SERVICE IN PRIVATE
R/O. SOMANAL VILLAGE
TQ. KARATAGI, DIST. KOPPAL-583231.

...PETITIONER

(BY SRI.S S.YADRAMI, ADVOCATE)

AND

1. THE STATE OF KARNATAKA
BY KARATAGI POLICE STATION
REP. BY THE STATE PUBLIC PROSECUTOR
HIGH COURT OF KARNATAKA
DHARWAD BENCH 580011.

2. SMT. ANNAPORNA W/O CHANNAVEERA BHOVI
AGE 23 YEARS, OCC. HOUSEWIFE
R/O: SOMNAL, TQ KARATAGI
DIST. KOPPAL-583231.

(Petition dismissed against R2 on 27.05.2021)

....RESPONDENTS

(BY SRI.RAMESH CHIGARI, HCGP FOR R1)

THIS CRIMINAL PETITION IS FILED U/S 439 OF
CR.P.C. SEEKING TO ALLOW THE PETITION AND ORDER
TO RELEASE THE PETITIONER/ACCUSED ON BAIL IN
S.C.NO.77/2019 PENDING ON THE FILE OF THE I-
ADDL. DIST. AND SESSIONS JUDGE, KOPPAL, SITTING

AT GANGAVATHI FOR THE ALLEGED OFFENCES U/S 376, 504 AND 506 OF IPC, IN CRIME NO.79/2019 IN KARATAGI P.S. S.C.NO.77/2019 FILED BY THE PETITIONER FOR BAIL U/S 439 OF CR.P.C.

THIS CRIMINAL PETITION COMING ON FOR ORDERS THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

This petition is filed by the sole accused under Section 439 of The Code of Criminal Procedure, 1973 (hereinafter referred to as the 'Cr.P.C.', for brevity) seeking bail in Crime No.79/2019 of Karatagi Police Station, registered for the offences punishable under Sections 376, 504, 506 of The Indian Penal Code (hereinafter referred to as the 'IPC', for brevity) now pending in S.C.No.77/2019 on the file of I Addl. District and Sessions Judge, Koppal, sitting at Gangavathi.

2. It is the case of the prosecution that the victim girl has given a complaint on 29.03.2019 at about 5.30 p.m., stating that she has been given in

marriage to Channaveera, after marriage she is residing in the house of her husband's house. A person belonging to Nayak community by name Holiyappa S/o: Hanumantappa Gudasali, since from one month started to give harassment to her by saying that, she should come with him for sleeping and he will give money for that. When the complainant being married woman was alone in the house, the accused used to make a call, asking her to talk with him and gave two phone numbers. Then the complainant disclosed this fact before her mother and her mother advised the accused not to do such things. That on 28.03.2019, at about 8.30 p.m., when she went outside for answering nature call, near Government school, at that time, the accused saw her, followed her, caught her with his hands to her mouth and took her towards school ground. In spite of her resistance the accused forcibly committed the

rape on her and gave life threat by saying, if she discloses the said fact to anybody, then he will kill her. Thereafter, immediately she told the matter to her parents and they told her to lodge complaint on the next day morning after discussing the complaint came to be filed.

3. Heard the learned counsel appearing for the petitioner and the learned High Court Government Pleader for the respondent-State.

4. Learned counsel for the petitioner submitted that this is a successive bail application and the earlier bail application filed by the petitioner in Criminal Petition No.100295/2020, came to be rejected by this Court by order dated 10.07.2020. He further contended that victim lady is a married woman and the petitioner accused had given her two mobile phone numbers and therefore it is consensual sex.

The doctor who examined the victim lady has opined that sexual assault has taken place. He contended that whether the sexual assault is recent or past has not been stated by the doctor. Learned counsel for the petitioner has placed reliance on the decision of the Apex Court reported in 1978 (1) SCC 579. He further contended that the petitioner is a graduate having BA.B-Ed and he is aspirant to teacher, FDA, SDA, posts in the Government and if he is detained in prison, he will not be able to prepare and appear for the competitive examinations. He further contended that due to Covid-19 pandemic and SOP, there is delay in trial which may take longer period. With this, he prayed for allowing the petition.

5. Per contra, learned High Court Government Pleader contended that the contention raised by the counsel for petitioner has been considered in earlier petition. The petitioner has not made out new ground

for grant of bail. Aspiring to appear for competitive examinations and delay in trial due to pandemic and SOP, are not the grounds to grant bail. With this, he prayed to dismiss the petition.

6. The petitioner has earlier approached this Court seeking bail in Criminal Petition No.100295/2020, raising several grounds. This Court after considering all the grounds urged by the petitioner has rejected his petition. The contention of the learned counsel for the petitioner that it is consensual sex has also been considered in the earlier petition. The petitioner is a graduate having BA.B-Ed degree and he has applied for the selection of FDC by competitive examinations, which is scheduled to be held shortly is not a ground to grant bail. Since the petitioner after obtaining permission of the concerned jail authorities/Court, he can appear for the competitive examinations, if he chose to do so. The

delay in trial due to pandemic and SOP is also not a ground for grant of bail. The offence alleged is serious offence punishable with imprisonment for life. Considering all these aspects, the petitioner has not made a new ground for grant of bail.

Hence, the petition is dismissed.

**Sd/-
JUDGE**

Bar & Bench (www.barandbench.com)

RM