

(2022) 01 KAR CK 0054

In the Karnataka High Court

Case No : Criminal Petition No. 7399, 7936 Of 2021

Akhil

APPELLANT

Vs

State Of Karnataka

RESPONDENT

Date of Decision : 25-01-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 164, 439
Indian Penal Code, 1860 — Section 120B, 149, 201, 204, 323, 324, 343, 366, 366(B),
370, 370(A)(2), 376, 376(D), 384, 504, 506
Information Technology Act, 2000 — Section 67(A)
Foreigners Act, 1946 — Section 14
Immoral Traffic (Prevention) Act, 1956 — Section 4, 5, 9

Citation : (2022) 01 KAR CK 0054

Hon'ble Judges : H.P. Sandesh, J

Bench : Single Bench

Advocate : Suresh M. Charamagol, Krishna Kumar K.K

Final Decision : Allowed

Judgement

H.P. Sandesh, J

1. Heard the learned counsel for the petitioners and the learned High Court Government Pleader appearing for the respondent-State.

2. CrI.P.No.7399/2021 is filed by accused No.10 and CrI.P.No.7936/2021 is filed by accused No.11 invoking Section 439 of Cr.P.C seeking regular

bail in Crime No.175/2021 of Ramamurthy Nagar Police Station, Banaswadi Sub-Division, Bengaluru City for the offence punishable under Sections

120-B, 201, 204, 323, 324, 343, 366, 366(B), 370, 370(A)(2), 376(D), 376, 384, 504 and 506 read with Section 149 of IPC, Section 67(A) of I.T. Act,

Section 14 of Foreigners Act and Sections 4, 5 and 9 of I.T.P. Act.

3. The factual matrix of the case is that the other accused persons and the

petitioners herein indulged in committing the act of subjecting the women

for sexual act, uploading the same in Whatsapp, causing life threat and also indulged in the act of trafficking the women from Bangladesh.

4. Learned counsel appearing for the petitioner-accused No.10 in Crl.P.No.7399/2021 would submit that the statement of the victim girl was recorded

under Section 164 of Cr.P.C. and nowhere, she has stated that these petitioners were present and only reference is made that other two unknown

persons were present and not specifically pointed out the very act of subjecting her for sexual act against these petitioners. The counsel would also

submit that this petitioner only received the Whatsapp from one Sagar and except that, no material is collected by the prosecution to keep him in

custody.

5. Learned counsel appearing for the petitioner-accused No.11 in Crl.P.No.7936/2021 would submit that the only allegation against this petitioner is

that she indulged in prostitution and leading her life and except the said allegation, no other material is collected and hence, Section 376 of IPC does

not attract against this petitioner. He would also submit that this Court has already granted bail in respect of accused No.12 in Crl.P.No.7748/2021

vide order dated 14.01.2022 and on the ground of parity, this petitioner is also entitled for bail.

6. Per contra, learned High Court Government Pleader appearing for the respondent-State would submit that, in the 164 statement of the victim girl,

she has referred the name of these petitioners that they were present, but she has not specifically mentioned the name of these petitioners that they

subjected her for sexual act, took nude photographs and uploaded the same. He would also submit that, in the statement of victim girl, she has also

mentioned that two unknown persons were also present and allegations are made against other accused persons.

7. Having heard the respective counsel and also on perusal of the material available on record, particularly, 164 statement of the victim girl, it is seen

that the victim girl was subjected to sexual act against her will and confined her in a house. But, nowhere, she has mentioned the name of the accused

No.10, who is the petitioner in Crl.P.No.7399.2021. However, an allegation is made that, two months prior to the alleged incident, when she was

taken, at that time, the petitioner-accused No.10 was present and no specific allegations are made against the petitioner-accused No.10 that he

indulged in sexual act and only mobile was seized. It is also the contention of the learned counsel for the petitioners that these petitioners received the

Whatsapp communication from one Sagar and it only attracts the offence under I.T. Act and the matter requires to be tested in trial regarding

involvement of these petitioners in a heinous offence under Section 376 of IPC.

8. When such being the factual aspects of the case and these petitioners are in custody from the last 8 months and taking note of the fact that name of

the petitioner-accused No.10 is not mentioned in 164 statement of the victim girl subjecting her for sexual act by petitioner-accused No.10, hence, he

is entitled for bail and also the fact that this Court has already granted bail in favour of accused No.12 in CrI.P.No.7748/2021 and allegations against

the petitioner in CrI.P.No.7936/2021 is similar to that of accused No.12, hence, it is a fit case to exercise the discretion under Section 439 of Cr.P.C.

in favour of the petitioners, subject to imposing certain conditions to protect and safeguard the interest of the prosecution. Hence, I pass the following:-

ORDER

The Petitions are allowed. Consequently, the petitioners/accused Nos.10 and 11 shall be released on bail in Crime No.175/2021 of Ramamurthy Nagar

Police Station, Banaswadi Sub-Division, Bengaluru City for the offence puni.shable under Sections 120-B, 201, 204, 323, 324, 343, 366, 366(B), 370,

370(A)(2), 376(D), 376, 384, 504 and 506 read with Section 149 of IPC, Section 67(A) of I.T. Act, Section 14 of Foreigners Act and Sections 4, 5 and

9 of I.T.P. Act, subject to the following conditions:

(i) The petitioner-accused No.10 shall execute personal bond for a sum of Rs.2,00,000/-(Rupees Two Lakhs only) with two sureties for the like-sum

i.e., one local surety and one surety of a person from Hyderabad to the satisfaction of the jurisdictional Court.

(ii) The petitioner-accused No.11 shall execute personal bond for a sum of Rs.2,00,000/-(Rupees Two Lakhs only) with two sureties for the like-sum

to the satisfaction of the jurisdictional Court.

(iii) The petitioners/accused Nos.10 and 11 shall not indulge in tampering the prosecution witnesses.

(iii) The petitioners/accused Nos.10 and 11 shall appear before the jurisdictional

Court on all the future hearing dates, unless exempted by the Court for any genuine cause.

(iv) The petitioners/accused Nos.10 and 11 shall not leave the jurisdiction of the Trial Court without prior permission of the Court, till the case registered against them is disposed of.

(v) The petitioner-accused No.11 shall mark her attendance once in a month i.e., on 30th of every month between 10.00 am and 5.00 pm., before the Jurisdictional Police, till the disposal of the case since, accused is a foreigner.