
(1992) 08 KAR CK 0040
In the Karnataka High Court
Case No : Criminal Petition No. 1151 of 1992

Channappa G. Anagadi

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 19-08-1992

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 439

Citation : (1993) ILR (Kar) 763 : (1992) 4 KarLJ 456

Hon'ble Judges : Shivappa, J

Bench : Single Bench

Advocate : S.A. Kalagi, for the Appellant; M. Marigowda, HCGP, for the Respondent

Final Decision : Dismissed

Judgement

Shivappa, J.—The petitioner has sought for bail u/s 439 of Cr.P.C. It is the case of the prosecution that on 5.6.1992 at about 10 p.m. the complainant Smt.Khajabi was waiting at Bijapur Bus stand, one blue jeep run by one Sangappa Basappa Poojari along with the petitioner was on the way. The complainant made a hand signal and the said jeep was stopped. The driver of the jeep enquired her why and where she wanted to go. The complainant informed that she has to go to Sindagi. Then the driver and the petitioner assured that they will take her to Sindagi, took the complainant in the jeep, stopped after one kilometre and both the jeep driver and the petitioner committed rape on the complainant and thereafter again they travelled in the same jeep and on the way again twice they committed rape on the complainant, The jeep went out of order near Bijapur Railway line. At that time a police jeep came there and the police enquired the complainant. She gave the name of the petitioner and the other person. Thereafter a crime was registered. The jeep driver and the petitioner were arrested on 5.6.1992 at about 2.15 p.m. The petitioner was remanded to judicial custody. He moved the Court of Session, Bijapur in CrI.Misc. 194/92 for bail. The same was rejected by order dated 27.6.1992. But the Sessions Judge granted

bail for Sangappa Basappa Poojari by his order dated 17.6.1992 in CrI.Misc.181/92.

2. The grievance of the petitioner is that a reading of the complaint does not reveal any injuries on the body of the victim and he will abide by the conditions that may be imposed and that he is a permanent resident of Bagalkot and when one of the accused has already been released, there is no justification to reject his prayer.

3. The accused persons involved in this offence for committing rape on the victim are, one, a businessman and, another, a jeep driver. A helpless woman waiting in the bus stand was assured that she will be taken to the place of her destination. They made her to sit in the jeep and her helplessness was exploited by outraging her modesty for no fault of her, a stigma was attached to her character, for which a woman lives throughout her life and this is a crime against morality and the society. Therefore, for the preservation of the social value, heritage and for an orderly society a serious view has to be taken whenever crimes are committed on women when she was in helpless condition. The victim was made to sit in the jeep on a false promise to satisfy the lust of the accused persons. When the driver of the jeep applied for bail before the Court of Session in Cr.Misc.181/92 the case was set down for objections on 15.6.1992. Objections were not filed. Then the case was adjourned to 17.6.1992. The Public Prosecutor conceded for grant of bail, subject to certain conditions. Therefore the Petition was allowed on the submission of the Public Prosecutor and enlarged the 2nd accused on bail on executing a bond for a sum of Rs.5,000/- with a surety for the like sum to the satisfaction of the lower Court with a direction not to tamper with witnesses and not to abscond and to report to the G.C.P.S. on 1st and 15th of every month from 8A.M. to 8 P.M. In respect of the other accused (the petitioner herein) the learned Sessions Judge rejected the bail.

4. While considering the application for bail the Court has to bear in mind the nature and seriousness of the offence, the character of evidence, the circumstances which are peculiar to the accused, the reasonable possibility of the accused persons not being secured at the trial, reasonable apprehension of the witnesses being tampered and the larger interest of the public. In the instant case the offence alleged against the accused is a serious offence. The manner and method adopted to materialise their evil intention is wicked and gall for condemnation and it is an offence against society. Having been suspected of such a serious crime, it cannot be ruled out that the accused will flee from justice. Tampering has two stages, one is during investigation stage meddling with witnesses to prevent the prosecution from collecting materials and the other, after charge sheet, by preventing the evidence so collected being placed during trial. In the instant case the investigation is in progress. Accused No.2 against whom no objection was raised is on bail. When this point was raised before me by the learned Counsel for the petitioner, that when one of the co-accused was enlarged on bail there is no justification to reject the prayer of the petitioner

herein, I directed the learned High Court Govt. Pleader to explain the circumstances under which such a consent was given for enlargement of A.2 on bail, that too without objection. The Investigating Officer appeared before the Court and filed a Memo on 18.8.1992. The Memo reads thus:

"This case was investigated by Sri.S.B.Nirvani, Sub-Inspector of Police, Gandhi Chowk Police Station, Bijapur. The Hon'ble lower Court has granted bail to Accused No.2 Sangappa Basappa Poojari on 17.6.1992. The Investigating Officer Sri.S.B.Nirvani, is on sick leave from 9.6.1992 onwards. I have taken charge of this case on 16.8.1992. On perusal of the records, I came to know that the Public Prosecutor attached to the Court of the Addl. Sessions Judge, has not consulted the investigating Officer and further he has not at all consulted any other staff of the police station for the alleged concede of bail to other accused, for the reasons best known to the said investigating Officer."

Therefore, without instruction the Public Prosecutor has consented for enlargement of A.2 on bail. This is one aspect of the matter.

5. When a judicial discretion has to be exercised by the Court, even if a party gives a consent, while exercising judicial discretion, that too when the offence is serious, heinous, against society, the criteria to exercise such discretion has to be considered. The Court owes a duty to act judiciously and to exercise the discretion within the parameters defined in law. Suppose, if a person who is entrusted with a duty to prosecute concedes, that will not absolve the Court from applying its mind to a given case because it is not the consent that makes the exercise of discretion valid. It is the manner how the judicial discretion has been exercised that will make the order legal or illegal. Therefore, the learned Sessions Judge has failed to apply his mind and acted on the submission of the Public Prosecutor. Submission by Public Prosecutor without instruction is a matter between the client and the Prosecutor. Under the conduct of Litigation Rules, the Government is in the position of a client and the persons engaged by it are in the position of legal advisors. I am not called upon to deal with that aspect.

6. Now, to meet the contention whether a bail to the co-accused will ensure to the benefit of the petitioner herein, it is well settled that ordinarily enlargement of co-accused on bail would be sufficient ground for not denying similar concession to the other accused, but depends upon the facts of each case. But, having regard to the nature of the accusation and the seriousness of the crime, position of the parties, such considerations always should not weigh. In the instant case the petitioner is not a Government servant. What weighed with the learned Sessions Judge to release A.2 is not in the order sheet, produced at Annexure-C. Therefore, I do not wish to give reasons to substantiate the release of A.2, The learned Sessions Judge committed another mistake in not passing a speaking Order while releasing A.2. Normally orders of the subordinate Courts are subjected to scrutiny by the higher Courts. Though he need not write an elaborate order considering and weighing every aspects of the case, atleast in a cryptic manner he ought to have given reasons which weighed with him for

exercise of the discretion. Even that bare minimum is not thought of by the learned Sessions Judge. The consideration that weighed to exercise the discretion with regard to the present petitioner could naturally be different and having regard to his occupation he may flee from justice. He may use influence and prevent evidence being collected, put obstacles in the process of investigation. Therefore the two criteria viz., whether the accused, in the event of his release will flee from justice and whether he will tamper with the evidence have to be answered against the petitioner. Just because a co-accused was enlarged on bail that is no ground for the release of the petitioner herein. There is no merit in the petition and the same is liable to be dismissed.

6. Accordingly, the petition is dismissed.