

(2023) 09 KAR CK 0073
In the Karnataka High Court
Case No : Criminal Petition No. 7023 Of 2023

Dinesh

APPELLANT

Vs

State By Somwarpet P S Kodagu District Kodagu-571236
(Represented By State Public Prosecutor High Court Building
Bengaluru-560001 & Others

RESPONDENT

Date of Decision : 29-09-2023

Acts Referred:

Indian Penal Code, 1860 — Section 363, 376
Protection Of Children From Sexual Offences Act, 2012 — Section 4
Prohibition Of Child Marriage Act, 2006 — Section 9, 10, 11
Code Of Criminal Procedure, 1973 — Section 164, 438

Citation : (2023) 09 KAR CK 0073

Hon'ble Judges : S Vishwajith Shetty, J

Bench : Single Bench

Advocate : Kumara K. G, N.Anitha Girish

Final Decision : Allowed

Judgement

S Vishwajith Shetty, J

1. Accused in Crime No.75/2023, registered by Somwarpet Police Station, Kodagu for the offences punishable under Sections 363, 376 of Indian Penal Code, 1860 (for short hereinafter referred to as 'IPC') and Section 4 of the Protection of Children from Sexual Offence Act, 2012 (for short hereinafter referred to as 'POCSO Act') and Sections 9, 10 and 11 of Prohibition of Child Marriage Act, 2006 (for short hereinafter referred to as 'the Act of 2006') is before this Court under Section 438 of Cr.P.C., seeking anticipatory bail.

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

3. On the complaint of Smt.Jayanthi, who is the mother of the victim girl, Somwarpet Police, Kodagu had registered FIR in Crime No.75/2023 initially for the offence punishable under Section 363 of IPC against the petitioner herein. In

the complaint it is averred that the complainant's minor daughter aged about 17 years was missing from their house from 29.04.2023 onwards. Efforts made by the complainant and her family members to trace the minor girl was in vain. Complainant suspected the hand of the petitioner since her daughter was acquainted with him. Therefore, she had approached the Police and lodged a complaint which had resulted in registering FIR in Crime No.75/2023 against the petitioner for the offence punishable under Section 363 of IPC. During the course of investigation, the victim girl was brought to the Police Station by the petitioner's father and thereafter she was subjected to medical examination and her statement under Section 164 of Cr.P.C., was also recorded.

4. Apprehending arrest, the petitioner had filed Criminal Miscellaneous No.184/2023 which was rejected by the Principal Sessions Judge, Kodagu, vide order dated 03.07.2023. It is under these circumstances, the petitioner is before this Court.

5. The learned counsel for the petitioner reiterated the grounds urged in the petition and submits that the petitioner and the victim girl were in love and the victim girl had voluntarily accompanied the petitioner and had married the petitioner. The victim girl has not stated anything against the petitioner either during her medical examination or in her statement recorded under Section 164 of Cr.P.C., and accordingly prayed to allow the petition.

6. Per contra, learned High Court Government Pleader appearing for the respondent-State has seriously opposed the petition and prays for dismissal of the petition.

7. FIR in Crime No.75/2023 was initially registered against the petitioner since the mother of the victim girl had suspected the hand of the petitioner after her minor daughter aged about 17 years was found missing from their house. During the investigation, petitioner's father had brought the minor girl and produced her before the Police. Thereafter, the victim girl was subjected to medical examination and her statement under Section 164 of Cr.P.C., was also recorded. Before the Doctor who had medically examined the victim girl and also before the jurisdictional Magistrate who had recorded her statement under Section 164 of Cr.P.C., the victim girl had stated that she was in love with the petitioner and on 29.04.2023 she had accompanied the petitioner and traveled to Tamil Nadu State. On the said date, they had married and had stayed together in a room. She has also stated that prior to the same, her relationship with the petitioner was known to her family members and her brother had scolded her and the petitioner. She has also stated that after their marriage was performed at Tamil Nadu she had sex with the petitioner, but she has not stated that the petitioner had sexual intercourse with her against her wishes. She has also stated that after coming to know about the complaint lodged by her mother, the petitioner's father had brought her to the Police Station. Investigation in the case is completed and charge sheet has been already filed. Material on record would go to show that the petitioner and the victim girl who has aged about 17 years got

married.

8. Under these circumstance, I am of the view that, the prayer of the petitioner for grant of anticipatory bail has to be answered in affirmative. Hence, the following:

ORDER

Criminal petition is allowed.

The respondent - police or any other police in the State of Karnataka are directed to release the petitioner in the event of his arrest in Crime No.75/2023 registered by Somwarpet Police Station, Kodagu for the offences punishable under Sections 363, 376 and of IPC, subject to the following conditions:

1. The Petitioner shall appear before the Investigating Officer within 15 days from the date of receipt of the copy of this order and shall execute a personal bond for a sum of Rs.1,00,000/-(One lakh only) with two sureties for the likesum to the satisfaction of the investigating officer.
2. Petitioner shall regularly appear before the Trial Court without fail unless exempted by the Trial Court for valid reasons.
3. Petitioner shall not tamper with the prosecution witness and he shall co-operate with the police for investigation and appear before them whenever called upon.
4. The petitioner shall not involve in similar offences in future;