

(2023) 11 KAR CK 0038
In the Karnataka High Court
Case No : Criminal Petition No. 2778 Of 2023

Jayakumar K.L

APPELLANT

Vs

State Of Karnataka By Sringeri Police Station Chikkamagaluru
577139

RESPONDENT

Date of Decision : 20-11-2023

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 164, 439
Protection Of Children From Sexual Offences Act, 2012 — Section 3(a), 4, 17, 19
Immoral Traffic Prevention Act, 1958 — Section 3, 4, 5
Juvenile Justice Act, 2015 — Section 75
Immoral Traffic Prevention Act, 1956 — Section 6
Child Labour (Prohibition And Regulation) Amendment Act, 2016 — Section 3, 14
Indian Penal Code, 1860 — Section 109, 120B, 144, 376

Citation : (2023) 11 KAR CK 0038

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

Bench : Single Bench

Advocate : Ajay Prabhu M, M. Diwakar Maddur

Final Decision : Dismissed

Judgement

H.P. Sandesh, J

1. This bail petition is filed by the petitioner/accused No.24 under Section 439 of Cr.P.C. seeking regular bail in Crime No.12/2021 of Sringeri Police Station, Chikkamagaluru District for the offence P/U/Ss.120-B, 376, 109, 144 of IPC and Section.3(a) r/w 4, 17, 19 of POCSO Act, Sections 3, 4, 5 of Immoral Traffic Prevention Act 1958, Section.75 of Juvenile Justice Act, 2015 pending on the file of the Additional District and Sessions Judge, Chikkamagaluru.
2. Heard the petitioner's counsel and also the High Court Government Pleader appearing for the State.
3. The factual matrix of case of the prosecution is that, the victim was staying along with accused No.16 and accused No.16 having nexus with accused No.1.

The victim was subjected to sexual act by accused No.1, he recorded the same and used to blackmail with her at the instance of accused No.16. This petitioner is the friend of accused No.1 and in the month of October, 2020, accused No.1 called the petitioner and told about the victim. Since she is studying SSLC, he makes payment of Rs.1,000/-, to have the sexual act with a minor girl. His friends are also there, he will arranged for the same. Accused No.1 on 21.10.2020 called him and bring his friends and in turn accused No.24 called accused No.38 and he accepted the proposal and in turn he called accused No.11 and informed the same. This petitioner told accused No.1 that in total three persons are coming. In turn accused No.1 contacted accused No.16 and accused Nos.38 and 11 came in an auto rickshaw and this petitioner also came to the particular spot and all of them followed the instructions of accused No.1. Knowing fully well that victim is a minor girl subjected her for sexual act, taking her to a remote place. The complaint is lodged with the police belatedly through Children Welfare Committee. Police have investigated the matter and filed the charge sheet against this petitioner and also other 52 accused persons who have subjected the victim for sexual act at the instance of accused No.1 and accused No.16. The victim girl is also subjected for medical examination and her statement was recorded before the learned Magistrate and after investigation, now trial is also commenced.

4. The counsel appearing for the petitioner would submit that, the alleged incident has taken place in 2020 and he was arrested in the month of February 2021. The allegation against this petitioner is that, he along with other two accused persons subjected her for sexual act in the month of October, 2020 and there is a delay in conducting medical examination and the medical report discloses that there is no sign of recent sexual act. Now the victim girl is also examined and she was subjected to cross examination and allegation is made against total 52 persons and there is no direct evidence. The victim girl categorically says in the cross examination that she has seen this petitioner only once on the date of the alleged incident and was not having acquaintance with him earlier. The counsel also would submit that when there are 52 accused persons and there are no specific allegations, he may be enlarged on bail. The counsel also in support of his argument furnished the material i.e. charge sheet as well as the deposition of PW1 and brought to notice of this Court paragraph No.63 of cross examination of PW1 and submits that the petitioner may be enlarged on bail.

5. Per contra, the learned HCGP appearing for the State submits that though incident has taken place in the year 2020, the same is at the instance of her aunt, who has been arraigned as accused No.16. The material also discloses that, the victim was taken to Magistrate and she gave the statement before the learned Magistrate under Section 164 of Cr.P.C. The material collected by the prosecution also clearly discloses that she was subjected to sexual act. Though specific allegation is made against accused Nos.1 and 16, it is the specific case of the prosecution that both accused Nos.1 and 16 subjected the victim girl for

sexual act, who is not having parents and making use of the videography, which was recorded when the accused No.1 subjected her for sexual act, blackmailed her and subject her for sexual act by collecting an amount of Rs.1,000/- each from the accused persons. The counsel also would submit that, Test Identification Parade is also conducted and she identifies this petitioner and also specifically deposed before the Court that this petitioner subjected her for sexual act once on the arrangement made by accused No.1 and when the victim deposed before the Court subjecting her for sexual act against him, there is a prima facie material against the petitioner and hence, he is not entitled for bail.

6. Having heard the petitioner's counsel and also the counsel appearing for the State, this petitioner is accused No.24. The specific allegation against this petitioner is that this petitioner along with his two friends subjected her for sexual act in the month of October, 2020. It is also important to note that, subjecting the victim for sexual act by several persons at the instance of accused Nos.1 and 16 was reported to the police in the end of January 2021 and thereafter police have investigated the case and after investigation filed the charge sheet.

7. No doubt there is a gap of almost two months in reporting the same and material also discloses that she was subjected to sexual act and there is tear of hymen and also material discloses that this victim is a orphan, she was staying along with accused No.16 who is her aunt and also the fact comes to light at the instance of her husband who is the uncle of the victim. No doubt, PW1 in the cross examination admits that there is a difference between accused No.16 and her husband. PW1 specifically deposed before the Court subjecting her for sexual act by this petitioner and other two accused and medical evidence also supports the same. It is also important to note that, case is registered against 52 accused persons and all of them subjected her for sexual act at the instance of accused Nos.1 and 16 and also specific allegation against accused No.1 that when he was subjected her for sexual act, recorded the same in the mobile and making use of that recorded video he used to subject the victim girl for sexual act by collecting the money. Taking into note of the circumstances under which the victim girl was sexually assaulted, who is also a minor below the age of 16 years, the counsel appearing for the petitioner would submit that there is a dispute with regard to the age is concerned and when the trial has been commenced and PW1 who is the victim deposed against this petitioner and when the Test Identification Parade is conducted, having taken note of the offences against the petitioner subjecting her for sexual act and invoking the offence under Sections 3, 4 and 5 of POCSO Act, 2012 and also invoking of Section 6 of Immoral Traffic Prevention Act, 1956 and Sections 3 and 14 of Child Labour (Prohibition and Regulation) Amendment Act, 2016, when PW1 herself deposed before the Court against the petitioner that he subjected her for sexual act, it is not a fit case to exercise a discretion in favour of the petitioner. No doubt PW1 was subjected to cross examination at the instance of this petitioner before the Trial Court, the same has to be appreciated after conclusion of the evidence of the victim as well as the medical evidence and

at this juncture, it is not a fit case to exercise the discretion to enlarge the petitioner on bail.

8. In view of the discussions made above, I pass the following

ORDER

The criminal petition is dismissed with liberty to approach the Court after recording of the medical evidence.