

(2022) 06 KAR CK 0014
In the Karnataka High Court
Case No : Criminal Appeal No. 251 Of 2022

Keshav Koteshwara

APPELLANT

Vs

State Of Karnataka & Others

RESPONDENT

Date of Decision : 03-06-2022

Acts Referred:

Indian Penal Code, 1860 — Section 376(c), 376(3), 506
Protection Of Children From Sexual Offences Act, 2012 — Section 5(f)(o)(l)(p), 5(f)(o)(p)(l), 6, 19, 21(2)
Scheduled Castes And The Scheduled Tribes (Prevention Of Atrocities) Act, 1989 — Section 3(1)(w(i)(ii), 3(2)(v), 3(2)(va)

Citation : (2022) 06 KAR CK 0014

Hon'ble Judges : S. Sunil Dutt Yadav, J

Bench : Single Bench

Advocate : Ganesha .K, Sudhanva D.S, R.D Renukaradhya

Final Decision : Allowed

Judgement

S. Sunil Dutt Yadav, J

1. The appellant/accused no.2 has called in question the correctness of the order dated 30.08.2021 passed in Spl. Case No.69/2019 and seeks for enlarging the appellant/accused no.2 on bail in light of his continued detention as regards the proceedings in Crime No.16/2019 registered for the offences punishable under Sections 376(3) and 506 of IPC, Section 5(f)(o)(p)(l), 6, 21(2) of Protection of Children from Sexual Offences Act, 2012 (POCSO) and Section 3(1)(w(i)(ii), 3(2)(v), 3(2)(v-a) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989.

2. It is the case of the Prosecution that the victim was residing in 'Spoorthidhama' and one Hanumantha used to come to visit an inmate girl who was a resident of 'Spoorthidhama' and she had introduced the said Hanumantha to the victim girl.

3. It is further made out in the complaint that Hanumantha had lured the victim

that he would marry her and committed sexual offences on her and that the said Hanumantha was committing similar offences on other inmates also. In light of the allegations made against said Hanumantha, FIR was lodged against the said Hanumantha and also against the appellant/accused no.2 alleging that he had also committed sexual offences alongwith the other accused.

4. The investigation is complete and the charge sheet has been filed. The charges framed against the appellant/accused no.2 are as follows:-

"FIRSTLY.... offence punishable U/s 376(c) of IPC.

SECONDLY: ... offence of criminal intimidation punishable U/s 506 of IPC.

THIRDLY:offence U/s 5(f)(o)(l)(p) punishable U/s 6 of POCSO Act.

FOURTHLY: ...offence U/s 19 punishable U/s 21(2) of POCSO Act.

FIFTHLY:offence U/s 3(1)(w)(i)(ii) of Scheduled Caste Scheduled Tribe (Prevention of Atrocities) Act, 1989.

SIXTHLY: ... offence punishable under IPC mentioned in the Schedule of Scheduled Caste Scheduled Tribe (Prevention of Atrocities) Act and thereby committed the offence punishable U/s 3(2)(v) and 3(2)(va) of Scheduled Caste Scheduled Tribe (Prevention of Atrocities) Act 1989."

5. It is submitted that the appellant/accused no.2 has been in custody since three years two months and that the trial is at an advanced stage. The witnesses have been examined and the victim and other important witnesses have already been examined.

6. It is the further case of the appellant that during trial, the victim in the examination-in-chief recorded on 09.10.2020 had expressed hesitancy to continue the evidence and on being pacified by the Presiding Officer and recording of evidence having commenced, the victim has remarked that except accused no.1, nobody else had troubled her.

7. It is further submitted that in the examination-in-chief that appellant/accused no.2 who was running the institution had not troubled her in any manner. It is submitted that at the intervention of the Public Prosecutor, the evidence was deferred, and on the next date, i.e. on 04.12.2020, the witness had made certain imputations against the appellant contrary to the earlier evidence recorded on 09.10.2020 and accordingly, it is submitted that the contradiction in the evidence needs to be kept in mind.

8. The learned High Court Government Pleader appearing on behalf of the respondent State on the other hand submits that in the further evidence and examination-in-chief recorded on 04.12.2020, the victim had stood her ground, while making allegations against the appellant/accused no.2 and that therefore the contradiction in the cross-examination recorded later, are all matters to be considered in trial and cannot be looked into at the present stage. It is further

submitted that direction may be given that the trial itself can be concluded expeditiously.

9. Heard both sides. It must be noticed that this Court in the earlier order dated 22.01.2020 passed in CrI.P No.6676/2019 c/w CrI.P No.7543/2019 had observed that trial was required to be concluded expeditiously taking note of the mandate under Section 35(2) of the POCSO Act, 2012 and though the period of more than two years has lapsed, the trial still remains to be concluded.

10. As per the memo filed by learned Government Pleader insofar as Spl.Case No.68/2019 (Crime No.14/2019) and Spl.Case No.16/2019 (Crime No.16/2019), 11 witnesses including the victim have been examined and cross-examined and admittedly, only the witnesses who remain to be examined are the public witnesses. The appellant/accused no.2 has been in custody since three years two months.

11. It is to be noticed that the present proceedings cannot be treated to be punitive in nature. The main witnesses of the Prosecution have been examined. There is no warrant for continued detention of the appellant/accused no.2.

12. It must be noticed that the appellant/accused no.2 has been enlarged on bail in the other matter, viz., CrI.A.No.247/2022 disposed off today (03.06.2022).

13. In the result, the appeal filed by appellant/accused no.2 (Keshav Koteshwara) is allowed and the appellant/accused no.2 is enlarged on bail in Crime No.16/2019 (Spl.Case No.69/2019) registered for the offences punishable under Sections 376(3) and 506 of IPC, Section 5(f)(o)(p)(I), 6, 21(2) of Protection of Children from Sexual Offences Act, 2012 (POCSO) and Section 3(1) (w(i)(ii), 3(2)(v), 3(2)(v-a) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989, subject to the following conditions:

(i) The appellant/accused no.2 shall execute a personal bond of Rs.1,00,000/- (Rupees one Lakh only) with one surety for the likesum to the satisfaction of the concerned Court.

(ii) The appellant/accused no.2 shall fully co-operate for the expeditious disposal of the trial.

(iii) The appellant/accused no.2 shall not tamper with evidence, influence in any way any witness.

(iv) The appellant/accused no.2 shall mark his attendance on 1st of every month between 10.00 a.m. and 5.00 p.m., before the jurisdictional police till trial is concluded.

(v) In the event of change of address, the appellant/accused no.2 to inform the same to the concerned SHO.

(vi) The appellant/accused no.2 shall not indulge in any criminal activities of like nature.

Any violation of the aforementioned conditions by the appellant/accused no.2, shall result in cancellation of bail.

Any observation made herein shall not be taken as an expression of opinion on the merits of the case.