

(2022) 06 KAR CK 0013
In the Karnataka High Court
Case No : Criminal Appeal No. 247 Of 2022

Keshav Koteshwara

APPELLANT

Vs

State Of Karnataka & Others

RESPONDENT

Date of Decision : 03-06-2022

Acts Referred:

Indian Penal Code, 1860 — Section 354A, 376(1)
Protection Of Children From Sexual Offences Act, 2012 — Section 5, 6, 8, 12, 21(2), 35(2)
Scheduled Castes And The Scheduled Tribes (Prevention Of Atrocities) Act, 1989 — Section 3(1), 3(1)(w)(ii), 3(2), 3(2)(v), 3(2)(va)

Citation : (2022) 06 KAR CK 0013

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, whereby the bail application filed by the appellant/accused no.2 came to be rejected.

2. The appellant is seeking to be enlarged on bail as regards his continued detention pursuant to the registration of FIR in Crime No.14/2019. Though FIR was registered with respect to an offence punishable under Section 376 (1) of IPC, Section 5 and 6 of the Protection of Children from Sexual Offences Act, 2012 ("POCSO Act", for short), the charges were framed only with respect to Section 12 and 21(2) of the POCSO Act and Section 3 (1) and 3 (2) of SC/ST (Prevention of Atrocities) Act, 1989.

3. It is the contention of the learned counsel for appellant that appellant has been in custody since 14.03.2019 and that an offence under Section 12 of the POCSO Act, is punishable with imprisonment of upto three years with fine, and

Section 21(2) of the POCSO Act is punishable with imprisonment upto one year with fine and Section 3 (1) of SC/ST (Prevention of Atrocities) Act, 1989 is punishable with imprisonment upto five years and fine.

4. It is further contended that the victim and other main witnesses have been examined and cross-examined as is evident from the memo filed by the prosecution which indicates that 12 witnesses have been examined and cross-examined. Accordingly, it is submitted that the appellant is entitled to be enlarged on bail.

5. On behalf of the prosecution, it is pointed out that though the main allegation is as regards accused no.1 and insofar as present accused is concerned, the trial is at an advanced stage and the trial itself may be permitted to be concluded expeditiously.

6. The learned counsel for appellant has further relied on the observation made by this court in Crl.P No.6676/2019 c/w 7543/2019 dated 22.02.2020, wherein the petitions were disposed off while observing that the Special Court was required to conclude the trial keeping in mind the mandate under Section 35 (2) of the POCSO Act, and it is submitted that though the order was passed on 22.01.2020, the trial has not been concluded.

7. Heard both sides.

8. The case of the prosecution is that the inmate of Spoorthi Dhama, a shelter home for destitute children was given in adoption to CW.30 and CW.31 and the child was returned back by the adopted parents to Spoorthi Dhama. The child when being counselled had revealed that one Hanumantha used to visit Spoorthi Dhama and used to have sexual intercourse with other girls and she had seen the acts and staff knows of the above fact.

9. It is further submitted that during the course of investigation, the investigating authorities have come across material to implicate the appellant herein and charge-sheet has been filed after investigation. Admittedly, charges as against the appellant in the present case is only under Section 12 and 21 (2) of the POCSO Act and Section 3 (1) and 3 (2) of SC/ST (Prevention of Atrocities) Act, 1989 and the above said offences are punishable as follows:

POCSO ACT :

Section 12 - Punishment for sexual harassment - Whoever, commits sexual harassment upon a child shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine.

Section 21 (2) - Any person, being in-charge of any company or an institution (by whatever name called) who fails to report the commission of an offence under sub-section (1) of section 19 in respect of a subordinate under his control, shall be punished with imprisonment for a term which may extend to one year

and with fine.

The Scheduled Castes And The Scheduled Tribes (Prevention Of Atrocities) Act, 1989

Section 3 (1) - Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to five years and with fine."

10. According to the memo filed by the learned HCGP appearing for the State insofar as the present case is concerned, 12 witnesses have been examined and cross-examined and the crucial witnesses including the victim has been examined and cross-examined. What remains in the trial is evidence of the official witnesses. It must be noted that this court had observed that the mandate of Section 35(2) of the POCSO Act requires expeditious conclusion which provides that trial should be concluded within a period of one year. I do not intend to enter into the merits of the matter and its appreciation of evidence, but noticing that the appellant has been in custody for 03 years 02 months and the trial has not concluded and also looking into the punishment prescribed for the offences as made out, any further continuance may probably result in appellant completing his sentence even before the judgment is passed by the trial court, which possibly cannot be ruled out.

11. Taking note of the peculiar facts of the case, though the trial is at an advanced stage and taking note of the punishment prescribed and noticing that the present proceedings cannot be treated to be punitive in nature, the contention of the prosecution that the appellant should be continued in custody till conclusion of the trial is not warranted.

12. The learned counsel for appellant has also contended that there are two 164 statements and the first statement under Section 164 recorded of the victim does not make any imputation against the appellant is also a matter that cannot be brushed aside though recording 164 statement requires to be appreciated during trial. As it is stated that the subsequent Section 164 statement implicates the appellant, taking note that the order appealed is also on 30.08.2021 and the appellant is continued to be in custody, in light of the discussion made above, the appellant is entitled to be enlarged on bail.

13. In the result, the appeal filed by appellant/accused no.2 (Keshav Koteswara) is allowed and the appellant/accused no.2 is enlarged on bail in Crime No.14/2019 (Spl.Case No.68/2019) registered for the offences punishable under Sections 376(1) and 354A of IPC, Section 5, 6, 8, 21(2) of Protection of Children from Sexual Offences Act, 2012 (POCSO) and Section 3(1)(w)(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) In the event of change of address, the appellant/accused no.2 to inform the same to the concerned SHO.

(v) The appellant shall mark his attendance on the 1st day of every month between 10.00 a.m., and 5.00 p.m., before the jurisdictional police till the trial is concluded.

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

(vii) 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.