
(2011) 03 KAR CK 0189
In the Karnataka High Court
Case No : Criminal Petition No. 1006 of 2011

K.S. Ravikumar

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 04-03-2011

Acts Referred:

Penal Code, 1860 (IPC) — Section 376, 506

Citation : (2011) 03 KAR CK 0189

Hon'ble Judges : A.S. Pachhapure, J

Bench : Single Bench

Advocate : S.K. Venkata Reddy, for the Appellant; G.M. Sreenivas Reddy, HCGP, for the Respondent

Final Decision : Allowed

Judgement

A.S. Pachhapure, J.—The Petitioner is a science teacher at Higher Primary School, Nagasandra. On 14.11.2010, C.W.2-Anis Fathima, informed the complainant (victim) and took her to the school at about 10.00 a.m. as the Petitioner had called her to the school. At about 10.30 a.m. when both the complainant and her classmate went to the school, the Petitioner is said to have asked C.W.2-Anis Fathima, to go for breakfast. Thereafter when the complainant was alone, the Petitioner is said to have threatened her, stuffed her mouth with kerchief and had a forcible sexual intercourse. It is further stated that the Petitioner threatened the complainant with the dire consequences, if she informs the incident to the others. After the incident, the complainant came out of the room of the school and found her father C.W.3-Nayaz Ahmed, who questioned the accused as to why the complainant was secured to the school on a holiday and threatened him to lodge a complaint. Thereafter, the complainant and her father went back to the home, wherein the complainant washed her clothes. On the next day she went to her grandmother's house at Chakenahalli and informed the incident. It is thereafter a complaint came to be lodged against the Petitioner for the offence punishable under Sections 376 and 506 IPC.

2. The Petitioner submits that he is innocent and no sexual assault has been committed by him on the complainant, who is in between 16 and 18 years of age and further that there is no medical evidence, of forcible sexual intercourse and the presence of the spermatozoa were not found on the clothes either of the complainant or the Petitioner. Furthermore, it is the contention that there is delay in lodging the complaint and that the complainant did not inform about the incident to her parents and the allegation that the complainant informed about the incident on the next day to her grandmother is false.

3. During the course of the investigation, the Petitioner was arrested and after the investigation is completed, it appears that the charge sheet has been filed by the police against the Petitioner for the above said offences.

4. The learned Counsel for the Petitioner would contend that there is no medical evidence and further spermatozoa or semen was not found either on the clothes of the Petitioner or the victim. The fact that there is a delay itself leads to an inference that the Petitioner is falsely implicated. So also, the counsel contended that the age of the victim is in between 16 and 18 years as certified by the Radiologist and there are no signs of sexual assault. The father who was present near the school on the date of the incident, though alleged to have slapped the Petitioner, did not lodge the complaint and that the incident was not disclosed to the parents itself leads to an inference of the Petitioner's innocence. Hence, he submits that the Petitioner is entitled to the bail sought for.

5. Undisputedly, the complainant/prosecutor was a student of the VII standard, wherein the Petitioner was a science teacher. So, the relationship between the Petitioner and the prosecutor was that of a teacher and student. It is no doubt true that on the basis of the Radiologist report, the age of the prosecutor has been assessed in between 16 and 18 years but that it is not a ground to grant the bail. Furthermore, after the incident, the Petitioner is said to have threatened the complainant with dire consequences, if she discloses the incident to the others. It is under these circumstances that the prosecutor did not inform her father, who was outside the school or the mother in the house and therefore, on the next day in the morning she went to the house of her grandmother at another village and informed the incident. So, merely because that the prosecutor did not disclose the incident to the parents, at this stage does not lead to any inference of innocence of the Petitioner.

6. No-doubt, the Petitioner's presence is not necessary for the purpose of investigation as the charge sheet has been filed. But, that itself is not a ground to consider the grant of bail. So also, the mere fact that there were no injuries on the person of the victim or that no spermatozoa were found on her clothes, is also not a ground to consider the grant of bail. So far as the offence is u/s 376 IPC is concerned, generally the victim do not immediately disclose the incident to their near relatives, having fear of the consequences and the fear of stigma on her reputation. Taking into consideration the nature and the gravity of the accusation made against the Petitioner, prima face there is a material against the

Petitioner for the offence punishable u/s 376 IPC. It may be that there is no medical evidence, but prima facie considering the fact that the prosecutor was in between 16 and 18 years, may not have sustained any injury and that is a matter, which will have to be taken into consideration during the course of the trial.

7. As stated supra, the relationship admittedly that of the Petitioner and the victim is as a teacher and student and in these circumstances if the impact of grant of bail in cases of large magnitude, affecting the large number of people is considered, really the Petitioner do not deserve the bail for the offence of rape. The statement of the prosecutor has been supported by her classmate C.W.2-Anis Fathima. So also, her father was there near the school at the time of the incident and it is who slapped the Petitioner. But, he may not be aware at that time as to the actual incident that has been committed. The prosecutor in her complaint has narrated the incident with all details of forcible sexual intercourse despite the resistance. Even before the commission of the offence kerchief was stuffed into the mouth of the prosecutor and she was not able to cry for the help and thereafter the incident is said to have been committed. So, the perusal of the statements of the witnesses including that of the prosecutor, there is prima facie material for the offence punishable u/s 376 IPC by the Petitioner, who is a teacher as against the victim, who is a student. I do not think it is a fit case wherein the bail could be granted. In the result, the petition is dismissed.

Any how, the learned Sessions Judge, to whom the matter will be committed for trial shall frame the charge/s immediately and complete the trial preferably within a period of 6 [six] months from the date of framing the charge/s.