

(2023) 04 KAR CK 0024
In the Karnataka High Court
Case No : Criminal Petition No. 3056 Of 2023

Mohammed Shouib. P @ Shouib. P

APPELLANT

Vs

State Of Karnataka & Others

RESPONDENT

Date of Decision : 21-04-2023

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439

Indian Penal Code, 1860 — Section 109, 114, 120B, 149, 201, 376, 420, 504, 506

Citation : (2023) 04 KAR CK 0024

Hon'ble Judges : V Srishananda, J

Bench : Single Bench

Advocate : Tony Sebastian, Reny Sebastian, Vinayaka.V.S, Umesh.A.N

Final Decision : Allowed

Judgement

V Srishananda, J

1. Heard Sri.Tomy Sebastian, learned Senior Counsel for the petitioner and learned HCGP and Sri.Umesh A.N., learned counsel for the Defacto Complainant.

2. This petition under Section 439 Cr.P.C. with the following prayer:

"WHEREFORE, the petitioner above named prays that this Hon'ble Court be pleased to order the release of the petitioner on bail in Crime No.96/2023 of Kaggalipura Police Station, registered for offences under Sections 376, 420, 504, 506, 201, 109, 114 and 120B read with Section 149 IPC, pending on the file of II Additional Chief Judicial Magistrate, Bengaluru Rural District, Bengaluru, in the interest of justice."

3. The brief facts of the case are as under:

The victim girl lodged a complaint with the Kaggalipura Police Station on 23.02.2023, which was registered in Crime No.96/2023 for the offence punishable under Sections 376, 420, 504, 506, 201 r/w Section 149 of IPC.

4. The gist of the complaint averments reveal that the petitioner herein had a love affair with the victim girl and initially, the same was not accepted by the victim girl and later on, the relatives of the petitioner and friends persuaded her. She had been to a resort in the year 2018 and when she went there, there was no body except the petitioner and petitioner forcibly had a sexual intercourse with the victim lady by tying her hands and legs and gagged her mouth. There afterwards, he also told the victim lady that if she refused to have a company with the petitioner, video clips and photos of the compromising position would be published in the social media. Putting such a fear on the victim girl, he went on having physical relationship with the victim lady and failed to marry her and therefore, sought for action.

5. The police after registering the case are investigated the matter and inter alia, arrested the petitioner on 02.03.2023 and sent him to judicial custody. An attempt made by the petitioner to obtain an order of bail was turned down by the learned District Judge by order dated 24.03.2023 in CrI.Misc.No.482/2023. Thereafter, the petitioner is before this Court.

6. Sri.Tomy Sebastian, learned Senior Counsel for the petitioner vehemently contended that on the issue of marriage, there were cases registered in the very same police station in Crime No.94/2023 and the said complaint was lodged by the father of the victim girl and in that regard, the petitioner and other accused persons appeared before the Court and they were enlarged on bail. On the very same day, the victim lodged the present complaint and the petitioner has been arrested in the said complaint. He contended that mere breach of promise would not result an offence. Physical relationship is consensual in nature. Moreover, the other aspects of the matter can be sorted out if there is a proper offer from the complainant and her relatives.

7. Sri.Tomy Sebastian, learned Senior Counsel submits that if materials are thrashed out in cool and calm manner, there would be every possibility that the petitioner would make possible attempt to explore the marriage of proposal and sought for grant of bail.

8. Per contra, Sri.Umesh, learned counsel representing for Defacto Complainant contended that the proposal of marriage mooted with petitioner resulted the father of the victim lodge a complaint. At that juncture, the petitioner and their family members flatly refused to marry the victim. Thereafter, the victim girl lodged complaint for the above said offences and therefore, the petitioner is not entitled for bail.

9. Learned High Court Government Pleader adopted the arguments of the Defacto Complainant and submits that even though mere promise to marry a person would not result in an offence, the fact of physical relationship that the petitioner had with the victim lady cannot be a ground for entertaining the bail petition and sought for dismissal of the same.

10. In view of the rival contentions of the parties, this Court perused the

materials on record meticulously. Admittedly, there was a love affair between the petitioner and the victim girl and what made the victim girl to file compliant is not forthcoming on record. The petitioner and the victim girl belonging to the Muslim Community. They had also gone to the Jamaat for sorting out their differences.

11. However, since nothing fruitful has resulted. The father of the victim lodged a complaint with the police, which was registered in Crime No.94/2023. In that matter, the petitioner and other accused appeared before the Court and they were enlarged on bail. The second complaint came to be lodged by the victim lady alleging about the incident that occurred in the year 2018-19. The long silence is a relevant factor while considering the bail request. The long silence is not complaining about the incident and since the victim lady is a major. Prima-facie, it appears that alleged act is consensual act. Wherefore, prima-facie, there are materials on record that the complaint is filed on account of refusal to marry the victim lady by the petitioner.

12. Sri.Tomy Sebastian, learned Senior Counsel while addressing the arguments made a submission that the matter can be thrashed out in a cool and calm atmosphere and if there is proper approach by the victim lady and her family members, the petitioner would sill explore the possibility of marrying the victim lady. The statement made by the learned Senior Counsel is reasonable statement. Placing such submission on record, the continuation of the petitioner in judicial custody would only act of obstacle.

13. The apprehension of the prosecution that the petitioner may trouble the victim lady and the alleged photographs and video clips can also be met with by imposing stringent conditions.

14. In view of the above peculiar facts and circumstances of the case, this Court is of the considered opinion that continuation of the petitioner in judicial custody is no longer warranted. Investigation has also progress to the sufficient extent, taking note of the fact that the accused is in custody on and from 02.03.2023 and if the petitioner enlarged on bail would create an atmosphere for the amicable settlement.

Accordingly, the following;

ORDER

The criminal petition is allowed subject to the following conditions:

- (i) The petitioner shall execute a bond in a sum of Rs.2,00,000/- (Rupees Two Lakhs Only) with two sureties for the like sum to the satisfaction of the learned trial Judge;
- (ii) The petitioner shall not commit the similar offence;
- (iii) The petitioner shall not tamper with the prosecution witnesses in any manner;

(iv) The petitioner shall not threaten the victim lady - complainant or her family members in any manner including blackmailing the victim lady publishing the alleged photographs or video clips.

(v) The petitioner shall attend the Court regularly;

(vi) The petitioner shall mark his attendance before the Investigating Officer on every 3rd Sunday between 10.00 a.m. and 2.00 p.m., till final report filed.

(vii) The petitioner shall not leave the jurisdiction of Ramanagara District without prior permission.

Violation of any one of the above bail conditions would entitle the prosecution to seek for cancellation of bail.