

(2022) 06 KAR CK 0023

In the Karnataka High Court

Case No : Criminal Petition No. 200337 Of 2022

Rafiq S/O Hajaratsab Hundekar

APPELLANT

Vs

State Of Karnataka

RESPONDENT

Date of Decision : 13-06-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439
Indian Penal Code, 1860 — Section 363, 376, 506

Citation : (2022) 06 KAR CK 0023

Hon'ble Judges : M.G. Uma, J

Bench : Single Bench

Advocate : Shivanand.V.Pattanashetti, Gururaj V. Hasilkar

Final Decision : Allowed

Judgement

M.G. Uma, J

1. The petitioner-accused is before this Court seeking grant of bail under Section 439 of Cr.P.C. in Crime No.81/2020 of Vijayapura Women Police Station, pending on the file of IV Additional District and Sessions Judge, Vijayapura District, Vijayapura, registered for the offences punishable under Sections 363, 376 and 506 of the Indian Penal Code (for short 'IPC'), on the basis of the first information lodged by the informant-Shainaj.

2. Heard Sri. Shivanand.V.Pattanashetti, learned counsel for the petitioner and Sri. Gururaj V Hasilkar, learned High Court Government Pleader for the respondent-State. Perused the materials on record.

3. Learned counsel for the petitioner submitted that the petitioner is the sole accused and he has not committed any offences as alleged. He has been falsely implicated in the matter without any basis. The petitioner was apprehended on 27.09.2020. Since then, he is in judicial custody. The complaint was not filed by the victim but on the other hand, CW.1-sister-in-law of the victim has lodged the first information. The victim was aged 30 years as on the date of incident. The

informant, victim, panchas, father of the victim and owner of the shop, in which the victim said to have been working are already examined as PWs.1 to 6. None of these witnesses have supported the case of the prosecution. Under such circumstances, there is absolutely no material to connect the petitioner to the offence in question. Detention of the petitioner in custody would amount to pre-trial punishment. He is the permanent resident of the address mentioned in the cause title to the petition and is ready and willing to abide by any of the conditions that would be imposed by this Court. Hence, he prays to allow the petition.

4. Per contra, learned High Court Government Pleader opposing the petition submitted that serious allegations are made against the petitioner-accused for having committed the offences. After due investigation, charge sheet came to be filed for the above said offences. Even though PWs.1 to 6 are examined, still there are other material witnesses to be examined. Under such circumstances, the petitioner is not entitled for grant of bail. Hence, he prays for dismissal of the petition.

5. In view of the rival contentions urged by the learned counsel for both the parties, the point that would arise for my consideration is:

“Whether the petitioner is entitled for grant of bail under Section 439 of Cr.P.C.?”

My answer to the above point is in ‘Affirmative’ for the following:

REASONS

6. The informant-Shainaj, who is the sister-in-law of the victim, lodged the first information against the accused for the offences punishable under Sections 363, 376 and 506 of IPC. Accordingly, the FIR was registered in Crime No.81/2020 and the investigation was undertaken. After investigation, the charge sheet came to be filed for the above said offences. The allegation made against the petitioner is of serious nature. However, the depositions of PWs.1 to 6 are produced before the Court. PW.1, the informant herself, PWs.2 and 3 are the panch witnesses, PW.4 is victim and PW.5, the owner of the shop, where the victim is said to be working and PW.6 is the father of the victim. None of these witnesses have supported the case of the prosecution and said witnesses were treated hostile. Even, during cross-examination, nothing has been elicited from them by the prosecution to disbelieve their version. It is pertinent to note that PW.4, the victim had even refused to identify the accused. Remaining witnesses are only the circumstantial witnesses or the official witnesses. Under such circumstances, I do not find any reason to detain the petitioner in custody. His detention in custody would amount to infringement of his right to life and liberty. Hence, I am of the opinion that the petitioner is entitled to be enlarged on bail subject to conditions, which will take care of the apprehension expressed by the learned High Court Government Pleader that the petitioner may abscond or may tamper or threaten the prosecution witnesses.

7. Accordingly, I answer the above point in the affirmative and proceed to pass the following:

ORDER

The petition is allowed.

The petitioner is ordered to be enlarged on bail in Crime No.81/2020 of Vijayapura Women Police Station, on obtaining the bond in a sum of Rs.2,00,000/- (Rupees Two Lakhs only) with two sureties for the likesum to the satisfaction of the jurisdictional Court, subject to the following conditions:

- a). The petitioner shall not commit similar offences.
- b). The petitioner shall not threaten or tamper with the prosecution witnesses.
- c). The petitioner shall appear before the Court as and when required.

If in case, the petitioner violates any of the conditions as stated above, the prosecution will be at liberty to move the Trial Court seeking cancellation of bail.

On furnishing the sureties by the petitioner, the Trial Court is at liberty to direct the Investigating Officer to verify the correctness of the address and authenticity of the documents furnished by the petitioner and the sureties and a report may be called for in that regard, which is to be submitted by the Investigating Officer within 5 days. The Trial Court on satisfaction, may proceed to accept the sureties for the purpose of releasing the petitioner on bail.