

(2015) 11 KAR CK 0112
In the Karnataka High Court
Case No : Criminal Petition No. 101705/2015

Sanjay

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 13-11-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 164, 438, 439
Penal Code, 1860 (IPC) — Section 354, 363, 376, 504, 506
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3(2)(v), 3(i)(iii)(ix)

Citation : (2015) 11 KAR CK 0112

Hon'ble Judges : Budihal R.B., J.

Bench : Single Bench

Advocate : Srinand Pachhapure, Advocate, for the Appellant; Veena Hegde, HCGP, for the Respondent

Final Decision : Allowed

Judgement

Budihal R.B., J.—This is a petition filed by the petitioner/accused under Section 439 of the Code of Criminal Procedure seeking his release on bail of the alleged offences punishable under Sections 376 , 363 , 354 , 509 , 504 , 506 of the Indian Penal Code and Sections 3(i)(iii)(ix) & 3(2)(v) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989, registered in the respondent Police Station Crime No. 299/2015.

2. The brief facts of the prosecution case as per the averments in the petition are that the complainant lodged a complaint on 16.09.2015 at 8.15 p.m. before the Kakati Police Station alleging that she was studying in Kittur Rani Channamma Kannada Convent School, Kakati, in 7th standard during 2005-06, at that time, the petitioner was working as assistant teacher in the said school. It is further alleged that at that time an educational trip was arranged and the petitioner also went to the said trip. It is further alleged that when the complainant had gone to take bath at that time, the petitioner had taken the video of the complainant and shown it to the complainant and blackmailed saying that, if the complainant did

not support him then the petitioner will upload the said video in the internet. It is further alleged that on 08.09.2015, the complainant was kidnapped by the petitioner and she was sexually harassed till 12.09.2015 and also that the petitioner threatened the complainant that if she disclosed the said fact to anybody, he will not leave her alive and also the petitioner abused the complainant by taking her caste. On the basis of the said complaint, the respondent-police have registered the case in Crime No. 299/2015 for the alleged offences.

3. Heard the arguments of the learned counsel appearing for the petitioner/accused and also the learned Government Pleader for the respondent-State.

4. Counsel for the petitioner, during the course of the arguments, submitted that the complaint lodged by the complainant is a detailed complaint of 11 pages. He submitted that the contents of the complaint goes to show that petitioner started sexually harassing the complainant from the year 2005-06 itself. He submitted that the materials goes to show that the complainant as on today is aged 24 years and in the year 2011 the complainant and the present petitioner got married in the Registrar's Office which is evidenced by the document dated 16th May 2011. It is also his submission that the complainant has been shown as a nominee of the accused herein and in this regard he drew the attention of this Court to page 56 of the petition, the copy of HDFC Standard Life Insurance Company with regard to the schedule of premium and the nomination schedule wherein the name of the life insured is shown as Sanjay R. Shivappanavar i.e., the present petitioner herein at Sl. No. 1 and at Sl. No. 2 the name of Mrs. Shivaleela S. Shivappanavar who is the complainant herein. In the nomination schedule of the said document, the name of the complainant is mentioned. It is also his further submission that health privilege cards of the accused as well as the complainant are produced in this case. Hence, it is his contention that both the complainant and the accused got married since 2011 itself and they are living as husband and wife, but now at the instigation of the parents and also other persons, the complainant has filed the complaint making false allegations against the present petitioner. Learned counsel further made submission that if at all alleged sexual harassment started in the year 2005 itself, all along for a period of 10 years i.e., up to 2015, the complainant kept mum and now she has come up with the present complaint and hence learned counsel submitted that the time of the alleged harassment and the date of filing the present complaint i.e., after a lapse of 10 years may also be taken while appreciating the allegations of the complaint in this case. In this connection, learned counsel for the petitioner relied upon the judgment of the Hon'ble Supreme Court in the case of Bhadresh Bipinbhai Sheth Vs. State of Gujarat and Others . He submitted that the present petitioner is also serving as a teacher. He has undertaken to abide by any conditions to be imposed by this Court and is ready to co-operate with the investigating officer and hence the petition be allowed and the petitioner may be granted with bail.

5. Per contra, learned Government Pleader during the course of her arguments, strenuously argued that by taking the photographs of the complainant when she was taking bath, the present petitioner started to blackmail and exploit the complainant herein. It is also her submission that he posed life threat to her that in case she disclosed the acts of the accused, he will not leave her and also her brother who was studying in the same college/school. Hence, the learned Government Pleader made the submission that it is because of the threat posed by the present petitioner, the complainant kept mum all along and did not make any complaint before her parents or anybody else about the acts said to have been committed by the petitioner/accused. She further made the submission that the complainant lodged the complaint on 16.09.2015 and 3 days thereafter i.e., on 19.09.2015 she gave her statement under Section 164 of the Cr.P.C. before the Magistrate wherein also she narrated about all the acts done by the present petitioner/accused and she has also explained how and in what manner he was exploiting and blackmailing her in the matter. Hence, the learned Government Pleader submitted that looking to all these activities of the present petitioner, it clearly goes to show, how the petitioner has taken the disadvantage and how he blackmailed the complainant after taking her photographs when she was taking bath. Hence, she submitted merely on the ground that there is delay in lodging the complaint the entire case of the prosecution cannot be brushed aside or it cannot be ignored at this stage. She also submitted that investigation is still going on. Hence, at this stage, petitioner is not entitled for grant of bail.

6. I have perused the averments made in the bail petition, FIR, complaint and the materials produced by the learned Government Pleader which contains the medical opinion of the doctors, who examined the victim girl and so also the petitioner/accused and also the statement of the victim girl recorded under Section 164 of Cr.P.C. before the Magistrate Court.

7. Looking to the allegations made in the complaint which consists of 11 pages, the complainant therein has narrated in detail about the present petitioner and what he has done to her since 2005-06 till she lodged the complaint on 16.09.2015. Looking to her statement given before the Magistrate Court at Belagavi dated 19.09.2015, there also she has narrated about the acts done by the present petitioner of taking her photographs when she was taking bath when they went to the trip and on the basis of the said photographs how he went on exploiting and blackmailing her for his sexual lust. It is alleged that by giving life threat to the complainant, the present petitioner used to have sexual intercourse with her and because he posed life threat she was not disclosing the same to anybody else, she has not informed to her family members about the acts of the present petitioner that he was doing the said acts since 12-13 years. It is also alleged in her statement recorded under Section 164 of Cr.P.C. before the Magistrate Court that on 05.09.2015, he assaulted her and told her to say that as if she herself came out of her house. On 07.09.2015, she called the petitioner over phone and on 08.09.2015, the petitioner told her she has to follow his vehicle and asked her to come near Killa from Kakati village. Then on

08.09.2015, he took the complainant forcibly, with his friends and their wives, to Karwar and on 09.09.2015 from Karwar to Idagunji and Murudeshwar and from there to a lodge in Kundapur. On the said night, he committed sexual intercourse on her and next day, he took her to Udupi and from there to a lodge in Mudagere wherein also the petitioner committed sexual assault. On 11.09.2015 with the help of her friends she came to know that there is a publication in the newspaper that she is missing and on that night, petitioner insisted the complainant that she has to give the statement before the police in his favour and not in favour of his parents. It is also told by him that if she made the statement in favour of her father, then she will be taken to the house and her parents will get her married with someone else. On 11.09.2015, he took her to Kumta and committed forcible sexual intercourse on her. So, about all these things she has narrated in her statement under Section 164 Cr.P.C.

8. I have also perused the medical certificates of the District Hospital at Belagavi about the examination of the complainant wherein it is stated that as per the radiological examination and as per the dentist opinion, she was aged about 20 years. So far as external genitalia examination regarding the pubic hairs, labia majora, labia minora, clitoris, fourchette is mentioned as "normal", but in the column hymen it is mentioned as "not intact". So far as the medical certificate in respect of the present petitioner/accused, who was examined on 21.09.2015, it is mentioned that the accused gave the history that he got married about four years back and stayed together till 11.09.2015. I have also perused the documents issued by the Composite Pre-University College, Belgaum, dated 07.10.2015 issued by the Vice-Principal of the said college addressed to the Assistant Commissioner of Police, Gramin Sub-Division, Belgaum City, wherein it is stated that the bona fide certificate of Shivaleela Basavraj Bhajantri, as required by the said police Officer, was being enclosed. The said college issued bona fide certificate wherein the date of birth of the complainant is mentioned as 01.05.1993. So this certificate goes to show that as on today complainant is aged 22 years. I have also perused the documents produced by the petitioner herein i.e. LIC policy wherein the complainant's name is mentioned as a nominee of the present petitioner, health privilege cards of the petitioner as well as of the complainant produced along with the petition. So also, I have perused the certificate with regard to the registration of the marriage of the present petitioner with the complainant and it is issued from the Office of the Registrar of Marriage dated 16th May 2011. Perusing these materials on record, prima facie go to show that in the year 2011 itself, the complainant and the petitioner got married, which is supported by the documentary evidence. The said materials i.e., LIC, nomination of the complainant and health privilege cards all go to show and support the contention of the present petitioner that there was a marriage between himself and the complainant. It is no doubt true that there is a contention taken by the complainant through out her complaint that it is because of the life threat posed by the present petitioner she agreed for all the things but when there is a specific allegation by the complainant that the present petitioner

started these activities since 2005-06, the complainant ought to have informed her parents and her brother who was studying in the same college/school and also other girl friends about the activities of the present petitioner, but continuously for a period of 10 years, she kept mum and there afterwards she has come up with the present complaint making all such allegations against the present petitioner. I have also perused the decision of the Hon'ble Supreme Court relied upon by the learned counsel for the petitioner referred to above. Headnote "C" of the said judgment is as under:

"C. Criminal Procedure code, 1973, Sec. 438 -Anticipatory bail granted by trial Court-Cancellation thereof by High Court-Propriety of-Where allegations of rape against the accused pertained to the period which was almost 17 years ago and no charge was framed under Sec. 376 , IPC in the year 2001 and even the prosecutrix did not take any steps for almost 9 years and the charge under Sec. 376 , IPC was added only in the year 2014-No reason could be seen why the accused/applicant should not be given the benefit of anticipatory bail-Merely because the charge under Sec. 376 , IPC, which is a serious charge, is now added-Benefit of anticipatory bail could not be denied when such a charge is added after a long period of time and inaction of the prosecutrix is also a contributory factor-Under the circumstances, the impugned judgment of the High Court whereby the anticipatory bail granted by the Sessions Judge had been cancelled, set aside and the order of Sessions Judge granting anticipatory bail to the applicant restored on the conditions mentioned in the order of the Sessions Judge."

9. Therefore looking to all these materials placed on record, I am of the opinion that the present petitioner has made out a case for his release on bail. So far as apprehension of the prosecution that if the petitioner is released on bail, he may threaten the complainant, the witnesses and also that he may not co-operate with the investigating agency is concerned, conditions can be imposed to safeguard the interest of the prosecution. In case, the petitioner violates any of the conditions that would be imposed, the prosecution is at liberty to move this Court for cancellation of bail.

10. Accordingly, petition is allowed. Petitioner is ordered to be released on bail for the alleged offences registered in Crime No. 299/2015 of Kakati Police Station, subject to the following conditions.

"i) Petitioner shall execute personal bond for a sum of Rs. 1,00,000/- with two solvent sureties for the likesum to the satisfaction of the concerned Court.

ii) Petitioner shall not tamper with any of the prosecution witness directly or indirectly.

iii) He shall co-operate with the Investigating Agency as and when called for.

iv) He shall not leave the jurisdiction of the concerned Court without its prior permission."