

(2024) 04 KAR CK 0034
In the Karnataka High Court
Case No : Criminal Petition No. 2020 Of 2024

Varun Kumar

APPELLANT

Vs

State Of Karnataka, Through Jnanabharathi Police Station,
Bengaluru, Represented By The Special Public Prosecutor,
High Court Building, Bengaluru & Others

RESPONDENT

Date of Decision : 18-04-2024

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 41, 438
Indian Penal Code, 1860 — Section 376, 376(3), 420
Protection Of Children From Sexual Offences Act, 2012 — Section 4(2), 5(L), 6, 29

Citation : (2024) 04 KAR CK 0034

Hon'ble Judges : Rajendra Badamikar, J

Bench : Single Bench

Advocate : Sivarama Krishnan M.S, Sindhu V, K. Nageshwarappa

Final Decision : Allowed

Judgement

Rajendra Badamikar, J

1. The petitioner has filed his petition under Section 438 of Cr.P.C. seeking anticipatory bail in the event of his arrest in Crime No.50/2024 of Jnanabharathi Police Station, Bengaluru, registered for the offences punishable under Sections 376(3) and 420 of IPC as well as under Sections 4(2), 5(L) and 6 of the Protection of Children from Sexual Offences Act, 2012 (for short, 'POCSO Act').

2. The brief allegations made by the complainant ie., the victim disclose that, she was practicing Volley Ball since 2016-17 and in the year 2018, the petitioner/accused recognized as a National Hockey Player, who was in the same location of SAI Bengaluru, started misusing her at instagram and at that time she was just 16 years old. However, it is alleged that, she did not bother to reciprocate, but later, the team mates of the petitioner started patronizing her by stating that they are her brothers, who are there to support her and thereafter petitioner also started pleading her to talk to him and meet him by portraying crocodile tears

under the guise of sincere love. It is alleged that, in July 2019, the petitioner took her to a hotel in Jayanagar 4th Block for Dinner in a room and he tried to touch her and at that time she was 17 years old and later on he repeatedly alleged to have committed rape on her for years together in different locations at Bhuvaneshwar, Delhi and Jalandhar under the guise of uploading intimate pictures taken by him in the social media. It is the contention that due to her innocence she had no knowledge of she being trapped with an evil intent and malicious propaganda to satisfy his lust under the pretext of marriage. It is alleged that, on 14.05.2023, the petitioner took the victim to Taj Hotel in MG road, wherein it is also alleged that he has raped her showing photos and later on he started rejecting her and abusing her instead of fulfilling promise of marriage made to her and hence, a complaint came to be lodged in this regard.

3. On the basis of the complaint, FIR came to be registered and apprehending his arrest, the petitioner has approached the learned Sessions Judge seeking anticipatory bail. However, his bail petition came to be rejected and hence, he is before this Court.

4. Heard arguments advanced by the learned Counsel for the petitioner. The notice was also issued to Respondent No.2 i.e., the victim girl. She appears and submits that the prosecution can prosecute on her behalf also.

5. Learned counsel for the petitioner would contend that the allegations were regarding 420 of IPC. But, the records disclose that it was a consensual relationship from 2021 to 2023 and the victim was a major then. It is also alleged that there is inordinate delay in lodging the FIR and the complainant has concealed filing of earlier complaint and the petitioner though admits the relationship with victim girl/first informant from 2021, by that time, both are majors and it was a consensual relationship. He would also contend that the allegations of trap, false promise, extortion do not have any relevance since the father of the first informant himself was a Senior Police Officer in the State of Telangana and one of her sister is a Police Officer, while her another sister being a Railway Employee and mother is a Member of a Political Party. Hence, he would contend that the victim/complainant hails from a highly reputed as well as influential family, while the petitioner hails from a poor farmer's family and with his own capacity he achieved his career. He would also contend that the petitioner influencing or threatening would not arise, since the victim is in more dominating position being a daughter of a Senior Police Officer and she being politically supported by her family members and hence question of petitioner targeting her does not arise at all. It is also submitted that, in fact it was a pure love affair and families of both victim and petitioner have consented for their marriage and their love affair was known to both families. But, however subsequently due to certain differences, the marriage could not be performed and now the petitioner being victimized for family differences. He would contend that expectation of the family of the victim is that the petitioner has to settle in Hyderabad or Delhi, but the petitioner is not in a position to leave his poor

parents, which has resulted in differences. It is further asserted and that he is not residing either in Bengaluru or in Hyderabad and the dispute started only when he secured the appointment letter from the Government of Punjab and his physical custody is not at all required as nothing is required to be recovered. It is further asserted that breach of promise to marry differs from false promise of marriage and there is no need to collect any forensic material in view of the admitted relationship. He would also contend that the observations of the trial Court are hypothetical and no grounds are forthcoming in the order of the trial Court for rejection of the bail petition. He would also undertake to abide by all the terms and conditions to be imposed by this Court and hence, he would seek for allowing the petition.

6. Per contra, the learned HCGP has argued for both on behalf of the State as well as the complainant and contended that, further statement of the victim discloses the nature of the offences and the records disclose that the victim was born on 25.02.2002 and in 2019, the first incident was said to have taken place and at that time, she was a minor. It is also asserted that mobile is in the custody of the petitioner and it is required to be seized and for medical examination also the petitioner is required. It is also asserted that the victim has lost her father recently and hence, he would contend that there is every possibility of the petitioner tampering prosecution witnesses. Hence, he would seek for rejection of the bail petition.

7. Having heard the arguments and perusing the records, the allegations made in the complaint disclose that, the petitioner and the first informant have developed intimacy in 2019 and continued the same for four years. The first allegation of rape or development of physical relationship under the guise of marriage is in July 2019. If the date of birth of the victim is taken into consideration, she was 17½ years when the first incident has taken place and at that time she was capable of understanding the things. Apart from that, subsequently the parties maintained the relationship even after the victim attaining the age of majority till 14.05.2023. Prior to May 2023, admittedly father of the victim passed away and thereafter, the 14th May of 2023 appears to be their last day of meeting or physical relationship. For four years, they continued their relationship even after the victim attaining the age of majority. But, during this period the victim nowhere complained regarding she being enticed or exploited by the petitioner. Admittedly both victim and petitioner were residing in the same location at SAI Bengaluru. The allegations made in the complaint further disclose that, they had physical relationship at different locations in SAI Bengaluru, Delhi, Jalandhar etc., This itself clearly disclose that, both the parties were having a love affair and both of them were sports persons and they developed relationship with each other and now after four years, allegations are made regarding the offences under the provisions of the POCSO Act, which appears to be very strange.

8. The other contentions disclose that, the parties visited their respective families also and initially there was no objection for their relationship. At the same time,

it is also an undisputed fact that the father of the first informant was a retired Assistant Commissioner in State of Telengana, while her other sister is a Police Officer, one more sister is admittedly serving in Railway Department and her mother is attached to a political party. This clearly discloses that the family of the victim is a highly reputed as well as highly influential family. Under such circumstances, question of petitioner blackmailing the victim girl under the guise of certain photographs etc., holds no water.

9. Much arguments have been advanced regarding abscondance of the petitioner. But, no evidence is placed by the Investigating Agency to show that any attempt has been made to serve notice under Section 41 of Cr.P.C., to the petitioner. As regards medical evidence, there was nothing to be tested, as the petitioner has nowhere disputed his potentiality. As regards recovery of mobile, the Court is empowered to direct the petitioner to deposit his mobile and that will not be a problem. Even there is inordinate delay of 4 to 5 years in lodging the complaint and excuses given appear to be a sarcastic one. Though there is an attempt made to incorporate a presumption in favour of prosecution under Section 29 of the POCSO Act, but however, the said presumption cannot be made applicable at this juncture since the matter is still at the stage of investigation and that presumption would arise only during the course of trial. Further, when the parties continued their consensual physical relationship for a considerable long time, then the allegation of rape does not carry much importance. What is the real intention of the complainant-victim in prosecuting this matter is not at all forthcoming.

10. Learned counsel for the petitioner has placed reliance on following citations:-

1.

Surender Vijay Paswan V. State of Maharashtra & Anr.

Crl. Bail Application No.1979/2022 decided by the Hon'ble Bombay High Court on 10.11.2023

2.

Dharmander Singh @ Saheb v. The State (Govt. of NCT, Delhi) 2020 SCC Online Del 1267

3.

Dhruvaram Murlidhar Sonar v. State of Maharashtra, (2019) 18 SCC 191

4.

Dhruvaram Murlidhar Sonar v. State of Maharashtra, (2019) 18 SCC 191

5.

Pramod Suryabhan Pawar v. State of Maharashtra, (2019) 9 SCC 608

6.

Danish Khan v. State of Karnataka

(Crl.P.No.7148/2022 decided by Karnataka High Court on 08th September 2023)

7.

Anil Meena v. State of Rajasthan (order dated 14.09.2022 in SLP (Crl) No.6378/2021)

8.

Girish Pawar v. State of Chattisgarh reported in MANU/CG/0712/2022 (order dated 20.07.2022 of the Hon'ble High Court of Chattisgarh)

9.

Madhav Krishna Vasave v. The State of Maharashtra, (order dated 11.06.2021 in Anticipatory Bail Application No.1217/2021)

10

Santhosh Soni v. State (Govt. of NCT)

(Order Dated 16.12.2020 by the Hon'ble High Court of Delhi in Bail Application No.3654/2020)

11.

X v. State of Kerala,

(By Order dated 07.06.2023 in Bail Application No. 2817 of 2023)

11. All the above noted citations were also placed before the learned Sessions Judge. But, the learned Sessions Judge without considering the applicability of the principles has straightaway rejected those citations. The Hon'ble Supreme Court in Dharmendar Singh's case (cited supra) has clearly held that, though the victim was minor, but is capable of understanding the things, then it is to be treated as consensual sex only. But, in the instant case, the parties have maintained relationship for nearly four years even after the death of victim's father, which discloses that it was not on a ground of a false promise to marry. But, for the reasons such as culture between the families, certain issues might have triggered in breaking down the relationship. The Apex Court in the cases of Shivashankar and Pramod Suryabhan Pawar, referred to above, has clearly held that term of breach of promise to marry is not the same as of false promise to marry. In the instant case, there is no material evidence placed to show that the relationship of the parties was developed under false promise of marriage. Further, the parties have continued their consensual physical relationship for a long term and hence, it cannot be termed as rape. Merely because the allegations are made regarding provisions of POCSO Act or the provisions under Section 376 of IPC are quoted, the anticipatory bail cannot be rejected, as

observed by the Apex Court in the above referred decisions. The conduct of the victim is also not above the suspicion and they having strong connection in the State machinery being influential persons, it is difficult to accept the version of the prosecution that the victim was apprehending something or some fear from the petitioner.

12. Considering all these facts and circumstances and inordinate delay in lodging the complaint and continuing long term consensual relationship till July 2023, it is evident that for various other reasons, the relationship has broken, which has resulted in the litigation.

13. As observed above, the medical examination of the petitioner is not at all essential as he has not disputed his potentiality and admitted the consensual relationship with the victim. Further, the other contention is regarding recovery of the mobile wherein certain pictures of victim are forthcoming. But, it can be directed to be deposited with the Investigating Agency, which would serve the purpose.

14. Looking to the above facts and circumstances, I do not find any impediment for admitting the petitioner on anticipatory bail. Merely because he is a National Hockey Player or he is about to get a job or he was awarded with the President Medal, cannot be termed as a influential person, but whatever the achievement made by him is because of his hard work and that cannot be termed as an influence. On the contrary the records disclose that the family of the victim itself is a highly influential family. Further, Right of Freedom is a fundamental right and merely on the basis of allegations, the Fundamental Right cannot be curtailed and the matter requires a detailed trial and if the petitioner is found guilty during the course of the trial, then the law will take its own course. However, the pre-trial detention is unwarranted as it will be a serious stigma on the character of a person. Considering these facts and circumstances, in my opinion, the petition needs to be allowed and accordingly, I proceed to pass the following:

ORDER

I. The petition is allowed.

II. The petitioner is directed to be enlarged on bail in the event of his arrest in Crime No.50/2024 of Jnanabharathi Police Station, Bengaluru, registered for the offences punishable under Sections 376(3) and 420 of IPC as well as under Sections 4(2), 5(L) and 6 of the Protection of Children from Sexual Offences Act, 2012 (for short, 'POCSO Act'), on his executing personal bond for a sum of Rs.2,00,000/-(Rupees Two Lakhs only) with one surety for the like-sum to the satisfaction of the Investigating Officer or the concerned trial Court, subject to the following conditions:

(i) He shall surrender himself before the concerned Investigating Officer within fifteen days from the date of receipt of a certified copy of this order and in the event of surrender, Investigating Officer/SHO shall release him on bail as

directed.

(ii) He shall not directly or indirectly tamper with any of the prosecution witnesses.

(iii) He shall not indulge in any similar offences.

(iv) He shall make himself available to the Investigating Officer for interrogation whenever called for during course of investigation.

(v) He shall mark his attendance before the concerned Investigating Officer/SHO between 9.00 a.m. and 5.00 p.m., on 1st Sunday of every month, till the final report is submitted.

(vi) The petitioner shall deposit his mobile phone with the Investigating Officer on the date of his surrender before the Investigating Officer for the purpose of investigation and the Investigating Officer shall take appropriate steps regarding testing mobile or recovery of the data etc.