

(2022) 02 KAR CK 0009
In the Karnataka High Court
Case No : Criminal Petition No. 8782 Of 2021

Wasim Akram

APPELLANT

Vs

State By Hulimavu Police Station & Others

RESPONDENT

Date of Decision : 01-02-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 439
Indian Penal Code, 1860 — Section 363, 366A, 376
Protection Of Children From Sexual Offences Act, 2012 — Section 5(L), 6

Citation : (2022) 02 KAR CK 0009

Hon'ble Judges : H.P. Sandesh, J

Bench : Single Bench

Advocate : Suyog Herele E, Krishna Kumar K.K

Final Decision : Dismissed

Judgement

H.P. Sandesh, J

1. This petition is filed under Section 439 of Cr.P.C. seeking regular bail of the petitioner/accused in Crime No.60/2021 of Hulimavu Police Station,

Electronic City Sub-Division, Bengaluru City, for the offences punishable under Sections 366-A and 376 of IPC and Sections 5(L) and 6 of POCSO

Act.

2. Heard the learned counsel for the petitioner and the learned High Court Government Pleader appearing for the respondent-State.

3. The factual matrix of the case is that the mother of the victim girl, who is aged below 14 years lodged a complaint stating that the her daughter was

not found. Hence, an allegation is made against this petitioner that he took her. Based on the complaint, at the first instance, the police have invoked

the offence punishable under Section 363 of IPC and thereafter, investigated the

matter and filed the charge-sheet invoking the offences punishable

under Sections 366-A and 376 of IPC and Sections 5(L) and 6 of POCSO Act, when she was subjected to sexual act.

4. Learned counsel appearing for the petitioner would submit that 164 statement of the victim girl clearly disclose that both the victim girl and this

petitioner fell in love and the victim girl herself eloped with this petitioner and nowhere in 164 statement, she has stated with regard to the fact that she

was subjected to sexual act. The medical records also disclose that there is no recent signs of sexual act and the petitioner is aged about 19 years and

the investigation has been completed and there is no need of custodial trial.

5. Per contra, learned High Court Government Pleader appearing for the respondent-State would submit that the date of birth of the victim girl is

03.04.2008 and she is below the age of 18 years. In the 164 statement of the victim girl, she has stated that the petitioner subjected her for sexual act

once. The medical report also disclose that she was subjected to sexual act but, there is no recent signs of sexual act. He would also submit that the

victim girl also not co-operated for examination.

6. Having heard the respective counsel and also on perusal of the material available on record, the learned counsel appearing for the petitioner would

submit that it is a consensual sex and she herself eloped with the petitioner and the Court has to take note of the age of the petitioner also into

consideration. The material on record, particularly, the date of birth document disclose that the victim girl was born on 03.04.2008 and she is below the

age of 18 years. Apart from that, in 164 statement, the victim girl has categorically stated that once they had sex. The medical report though is not

suggestive of recent signs of sexual act, however, she was subjected to sexual act by this petitioner. When such being the factual aspects of the case,

the petitioner is in custody from 05.04.2021, is not a ground to enlarge him on bail, when a serious offence of subjecting a minor girl, who is aged 14

years was subjected to sexual act, is alleged against the petitioner. Hence, it is not a fit case to exercise the discretion in favour of the petitioner.

7. In view of the discussions made above, I pass the following:

ORDER

(i) The criminal petition is rejected.

(ii) The Trial Court is directed not to disclose the name of the victim girl in any of the proceedings.