IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 25TH DAY OF MAY, 2023

BEFORE

THE HON'BLE MR JUSTICE V.SRISHANANDA

CRIMINAL PETITION NO. 100417 OF 2023

BETWEEN:

SRI. RENUKACHARYA S/O JADIYAYYA MATAD,
AGE: 20 YEARS, OCC: COOLIE,
R/O: HIRESINDOGI,
TQ: AND DIST: KOPPAL-582114.

...PETITIONER

(BY SRI. ANAND R. KOLLI, ADVOCATE)

AND:

1. THE STATE OF KARNATAKA,
   REP.BY STATE PUBLIC PROSECUTOR,
   HIGH COURT OF KARNATAKA
   THROUGH PSI, KUSHTAGI POLICE STATION,
   DIST: KOPPAL.

2. SRI. RAMAPPA S/O. KANAKAPPA HURIKEN,
   AGE: 43 YEARS, OCC: COOLIE,
   R/O: ADAVIBHAGI,
   R/AT PRESENT: THYVIGUPPA VILLAGE,
   TQ: KUSHTAGI, DIST: KOPPAL.

...RESPONDENTS

(BY SMT. GIRIJA S. HIREMATH, HCGP FOR R1
NOTICE TO R2 IS SERVED)

THIS CRIMINAL PETITION IS FILED U/SEC. 439 OF CR.P.C. SEEKING TO ENLARGE THE PETITIONER/ACCUSED ON REGULAR BAIL IN PURSUANCE OF CRIME NO. 163/2022 REGISTERED BY THE KUSHTAGI POLICE STATION DISTRICT KOPPAL PENDING BEFORE ADDITIONAL DISTRICT AND SESSIONS JUDGE FTSC-1 AT KOPPAL IN SPL. S.C. POCSO NO.

CHANDRASHEKAR LAXMAN KATTIMANI
Digitally signed by CHANDRASHEKAR LAXMAN KATTIMANI
Date: 2023.05.31 12:08:28 -0700

63/2022 FOR AN OFFENCE PUNISHABLE U/SEC. 363, 344, 376 OF IPC AND SEC. 4 AND 6 OF POCSO ACT, 2012.

THIS PETITION COMING ON FOR ORDERS, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

Heard Sri Anand R.Kolli, learned counsel for the petitioner and learned High Court Government Pleader for the respondent-State. Perused the records.

2. The present petition is filed under Section 439 of Cr.P.C. with the following prayer :-

> "To enlarge the petitioner/accused on regular bail in pursuance of Crime No.163/2022 registered by the Kushtagi Police Station District Koppal pending before Additional District and Sessions Judge FTSC-1 at Koppal in Spl. S.C. POCSO No.63/2022 for an offence punishable u/sec. 363, 344, 376 of IPC and Sec. 4 and 6 of POCSO Act, 2012."

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

Father of the victim girl lodged a complaint with Kushtagi Police on 21.08.2022 which was registered

in Crime No.163/2022 initially for the offence punishable U/sec.363 IPC. The gist of the complaint averments reveal that the victim girl is aged 17 years and belonging to Valmiki community and had passed 10th standard examination and did not pursue her education further. The father of the victim girl had been to Goa for eaking out his livelihood and victim girl was all alone in the house. On 07.08.2022 at about 10.30 p.m. after having dinner, all the members of the family went to sleep as father of the victim girl had returned to his native on account of Mohram festival. On 08.08.2022 at about 4.00 a.m. wife of the complainant woke up the complainant and intimated that victim girl is not found in the house. Initially they thought that she must have gone out for attending the nature call and when she did not return, they kept a search for the victim girl in the vicinity of their house, enquired the friends and relatives and when all their attempts rendered futile, they approached the police with the missing

complaint. Police after registering the case, investigated the matter and traced victim girl and accused. After so tracing the victim girl, investigation agency recorded the statement of victim girl and noticed that the petitioner herein had the company of the victim girl and they had physical relationship. Based on such statement, the police invoked the provisions of POCSO Act and filed charge sheet against the accused for the offences punishable U/sec.363, 344, 376 IPC and Section 4 and 6 of the POCSO Act.

The attempt made by the petitioner to obtain an order of grant of bail is turned down by the learned Special Judge by order dated 12.12.2023 in Spl.SC POCSO No.63/2022. Thereafter petitioner is before this Court.

4. Reiterating the grounds urged in the petition, Sri Anand R.Kolli, learned counsel for the petitioner vehemently contended that victim girl aged 17 years 5 months and she knew the

consequences of having the physical relationship with the petitioner and on their volition, petitioner and victim girl have roamed around different places and they had the physical relationship which was consensual in nature and hence no offence whatsoever is made out as against the petitioner and sought for grant of bail.

5. *Per contra*, learned HCGP vehemently contended that the material on record disclose that victim girl is a minor and her consent if any is immaterial while appreciating the case of the prosecution especially for the offence punishable U/sec.4 and 6 of the POCSO Act and in the absence of legal consent, prima facie materials indicate that the accused guilty of the aforesaid offences and sought for rejection of the bail petition.

6. In view of the rival contentions of the parties, this Court perused the material on record meticulously.

7. On such perusal, it is seen that victim girl aged 17 years as per the complaint and as per the counsel for petitioner she is aged 17 years 5 months. Admittedly she is a minor.

8. The material on record disclose that there was a physical relationship between the petitioner and the victim girl. The theory put forwarded on behalf of the petitioner that it is consensual act cannot be countenanced in law in view of the authoritative legal principles enunciated in the case of ***Independent Thought V/s Union of India and another*** reported in ***(2017) 10 SCC 800.***.

9. Thus, when the theory of consent fails, as is rightly contended by the learned HCGP, the material on record would prima facie indicate that petitioner is guilty of the aforesaid offences.

10. Anyway it is for the trial Court to form a definite opinion about the guilt or otherwise of the petitioner after the full-fledged trial. Material on

record at this stage when viewed cumulatively, this Court is of the considered opinion that the grounds urged in the petition are hardly sufficient to entertain the request for grant of bail by resorting the special powers vested in this Court U/sec.439 Cr.P.C.

11. It is always open for the petitioner to file successive bail application if there is a positive changed circumstance in the case of petitioner especially after the examination of victim girl.

12. Reserving such liberty for the petitioner, following order is passed.

ORDER

The petition is rejected.

Sd/-
JUDGE

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List No.: 1 Sl No.: 2