IN THE HIGH COURT OF KARNATAKA

DHARWAD BENCH

DATED THIS THE 8TH DAY OF SEPTEMBER, 2023

BEFORE

THE HON'BLE MS. JUSTICE J.M.KHAZI

CRIMINAL PETITION NO. 101703 OF 2023 (439-)

BETWEEN:

KUMAR S/O. MALLESHAPPA BASARGI
AGE: 35 YEARS, OCC: PRIVATE WORK,
R/O. H.NO.2233, JIDDI ONI, MUNAVALLI,
TQ: SAUNDATTI, DIST: BELAGAVI-591126.

…PETITIONER

(BY SRI. SANTOSH B. RAWOOT, ADVOCATE)

AND:

1. STATE OF KARNATAKA,
   THROUGH SAUNDATTI P.S.
   BY IT'S STATE PUBLIC PROSECUTOR,
   HIGH COURT OF BUILDINGS,
   DHARWAD BENCH DHARWAD-580001.

2. SMT. SUNITA W/O. SHRISHAIL PATTAR
   AGE: 51 YEARS, OCC: GOVERNMENT SERVICE,
   R/O: SAUNDATTI, TQ: SAUNDATTI,
   DIST: BELAGAVI-590001.

…RESPONDENTS

(BY SMT. GIRIJA S. HIREMATH, HCGP FOR R1,
R2- SERVED)

Digitally signed by CHANDRASHEKAR LAXMAN KATTIMANI
Date: 2023.09.12 14:46:42 +0530

THIS CRIMINAL PETITION IS FILED U/SEC. 439 OF CR.P.C. SEEKING TO ALLOW THE PETITION AND THE PETITIONER/ACCUSED NO.1 MAY BE ENLARGED ON BAIL IN CONNECTION WITH SAUNDATTI PS CRIME NO.177/2023 FOR THE OFFENCE PUNISHABLE U/S 376(1), 376(2), 109, 506 R/W 149 OF IPC AND SEC.4, 6 AND 17 POCSO ACT 2012 AND

SECTION 9, 10 AND 11 OF THE PROHIBITION OF CHILD MARRIAGE ACT 2006.

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

ORDER

1. The petitioner who is arraigned as accused No.1 has filed this petition under Section 439 Cr.P.C. to grant him bail in Crime No.177/2023 for the offences punishable under Sections 376(1), 376(2)(n), 109, 506 read with Section 149 of Indian Penal Code ('IPC', for short), Sections 4, 6 and 17 of The Protection of Children from Sexual Offences Act, 2012 ('POCSO Act', for short) and Sections 9, 10 and 11 of the Prohibition of Child Marriage Act, 2006 ('Act of 2006', for short).

2. In support of his petition, the petitioner has contended that the allegations made in the complaint are false, frivolous and vexatious. He has not committed the alleged offences. His marriage with the prosecutrix was performed by falsely stating that the prosecutrix is a major. The family members of the prosecutrix have played fraud on the petitioner and his family members. The

petitioner has stated that his family members consist of aged parents. He is the only earning member of the family. The offences alleged are not punishable with death or imprisonment for life. The petitioner is ready and willing to abide by any conditions that may be imposed and prays to allow the petition.

3. Learned High Court Government Pleader submitted oral objections stating that the complaint in question is lodged by Smt.Sirilalita Shrishail Pattar, Supervisor of Child Welfare Department, Saundatti. On 04.05.2023, Smt.Sunita S. Patil, Child Welfare Project Officer, Saundatti informed her that she has received credible information regarding the marriage of the prosecutrix, aged 17 years with the petitioner aged 35 years and the prosecutrix is now in Bal Mandir of Saundatti and she should visit and collect information.

3.1. Accordingly, she visited the Bal Mandir, Saundatti and enquiry the prosecutrix. The prosecutrix revealed that on 12.12.2021 at 7.30 p.m., her marriage was performed with the petitioner in the house of one Pranesh Kulkarni of

Sindogi. The said marriage was performed by accused Nos.2 to 5. At the time of the marriage, the prosecutrix was age 16 years 7 months. Though she was reluctant to marry, the mother of the prosecutrix and other accused forced her to marry him. On 14.12.2021, the prosecutrix went to the matrimonial home. There the petitioner had sexual intercourse with her against her will. After 4 months, when the prosecutrix missed the menstrual cycle, she was taken to Siddi Hospital, Belagavi, where she underwent appendix operation. Thereafter, the prosecutrix was again forced to go to her matrimonial home. As she was not willing, she left the house and went to Dharwad. Since then she has been kept in Balakiyara Bal Mandir.

On the basis of this information, Smt. Sunita, Officer of Child Welfare Department has lodged a complaint. The case is registered in Crime No.177/2023 and investigation is taken up. During investigation, petitioner was arrested and he was remanded to judicial custody. The remaining accused Nos.3 to 5 have secured anticipatory bail and accused No.2 is granted regular bail. After completing

investigation, charge sheet is filed for the offences under Sections 9, 10 and 11 of the Act of 2006, Sections 376(1), 376(2)(n), 109, 506 read with Section 149 IPC and Sections 4, 6 and 17 of the POCSO Act. Charge sheet makes out a strong prima facie case against the petitioner. If released on bail, petitioner may insist upon the prosecutrix to join him in the matrimonial home. He may also threaten or tamper with the prosecution witnesses and prays to reject the petition.

4. Heard arguments and perused the record.

5. The date of birth of prosecutrix is 03.05.2005. As on 12.12.2021, she was aged 16 years 7 months. From the material placed on record, it is evident that as on the date of her marriage, she was a minor. After the marriage, she was forced to stay in the matrimonial home and during this period, petitioner has committed sexual intercourse on her. After 4 months, when she missed her menstrual cycle, she was taken to Siddi Hospital, Belagavi, wherein she underwent appendix operation. Being reluctant to join to the petitioner in the matrimonial home,

she has gone to Dharwad and is sheltered in Balakiyara Bal Mandir. After coming to know about the incident, the incharge of the Child Welfare Department have taken action and lodged the complaint.

6. After completing investigation, charge sheet is filed. Accused No.2 is the sister, accused No.3 is the mother, accused No.4 is the mediator and accused No.5 is the purohit, who performed the marriage and they are on bail. Though the charge sheet makes out a prima facie case for the offences punishable under Sections Sections 9, 10 and 11 of the Act of 2006, Sections 376(1), 376(2)(n), 109, 506 read with Section 149 IPC and Sections 4, 6 and 17 of the POCSO Act, having regard to the fact that already charge sheet is filed, the custodial presence of the petitioner is no longer required. However, the apprehension of the prosecution that the petitioner may threaten or tamper with the witnesses, more particularly, petitioner may force the prosecutrix to join him in the matrimonial home, is to be overcome by imposing stringent conditions.

7. For the above reasons, this Court is of the considered opinion that the petitioner is entitled for bail and accordingly the following:

ORDER

Petition is allowed.

Petitioner/accused No.1 is released on bail, in Crime No.177/2023 for the offences punishable under Sections 376(1), 376(2)(n), 109, 506 read with Section 149 IPC, Sections 4, 6 and 17 of the POCSO Act and Sections 9, 10 and 11 of the Act of 2006, subject to following:

CONDITIONS

a) The petitioner/accused No.1 shall execute a personal bond in a sum of Rs.1,00,000/- with two sureties for the like-sum.

b) Petitioner/accused No.1 shall not contact the prosecutrix in person or otherwise or even through other accused and family members of the prosecutrix.

c) Petitioner/accused No.1 shall furnish his residential address proof and shall inform

the investigating officer/Court if there is any change in the address.

d) Petitioner/accused No.1 shall not tamper with the prosecution witnesses either directly or indirectly.

e) Petitioner/accused No.1 shall not indulge in any criminal activities.

f) Petitioner/accused No.1 shall be regular in attending the Court proceedings.

Sd/-
JUDGE

KGK
List No.: 1 Sl No.: 20