IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 3RD DAY OF NOVEMBER, 2023

BEFORE

THE HON'BLE MR JUSTICE S.RACHAIAH

CRIMINAL PETITION NO. 101870 OF 2023

BETWEEN:

MAHAMMADRAFIQ S/O BABUSAB KHUDAVAND
AGE: 29 YEARS, OCC: MASON,
R/AT: SAIDAPUR, TQ: ANNIGERI,
DIST: DHARWAD-582201.

...PETITIONER

(BY SRI. GOURISHANKAR MOT, ADVOCATE)

AND:

1. THE STATE OF KARNATAKA
   NARAGUND POLICE STATION, NARAGUND,
   REP BY ITS STATE PUBLIC PROSECUTOR,
   HIGH COURT OF KARNATAKA,
   DHARWAD BENCH, DHARWAD.

2. SMT. NINGAVVA W/O YALLAPPA AINAPUR
   AGE: 40 YEARS, OCC: AGRICULTURE,
   R/AT: BERENAHATTI, TQ: NARAGUND,
   GADAG-582207,
   MOB.NO:63634 85322.

...RESPONDENTS

V N BADIGER
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Date: 2023.11.08 11:07:29 +0530

(BY SRI. PRAVEENA Y.DEVAREDDIYAVARA, HCGP FOR R1;
R2-NOTICE SERVED)

THIS CRIMINAL PETITION IS FILED U/SEC. 439 OF CR.P.C. SEEKING TO ENLARGE THE PETITIONER/ACCUSED ON REGULAR BAIL AS ATTACHED IN NARAGUND POLICE STATION CRIME NO.112/2022 FOR THE OFFENCE P/U/SEC. 363, 366, 376(2)(i)(n) OF IPC AND SEC. 4 AND 6 OF POCSO ACT, 2012 WHICH IS NOW PENDING ON THE FILE OF ADDITIONAL DISTRICT AND SESSIONS JUDGE, AT GADAG IN S.C. NO.64/2022.

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

ORDER

Heard Shri Gourishankar Mot, learned counsel for the petitioner and Shri Praveena Y. Devareddiyavara, learned High Court Government Pleader for the respondent-State.

2. The petitioner is the sole accused in Crime No.112/2022 of Naragund Police Station for the offences punishable under Sections 363, 366, 376(2)(i)(n) of Indian Penal Code (for short "IPC") and Sections 4 and 6 of POCSO Act, 2012.

3. Brief facts of the case:-

It is the case of the prosecution that the complainant and the victim are the residents of Byaranahatti village. The petitioner being resident of Saidapur, Taluk Annigeri had been to Byaranahatti to construct Anganawadi building. The victim and the accused gradually developed intimacy and both have exchanged telephone numbers. It is further stated that the petitioner herein induced the minor girl stating that he would marry her. In that

context, the petitioner invited her to go to somewhere else and also assured that he would marry her. Believing his version, on 28.07.2022 in the evening 7.30 p.m., the victim girl stated to have eloped along with the petitioner. Both have reached Hubli Railway platform, where it is alleged that the petitioner had sexual intercourse with the victim. Again, they stated to have gone by train and reached Gadag. After reaching Gadag, they have decided to go to temple, it was the time of dusk and the petitioner again stated to have exploited the victim sexually. After the incident, when they were coming back, they have been apprehended by Naragund Police. After hearing the entire episode of the victim, a complaint was lodged by the mother of the victim. The petitioner was arrested in respect of the alleged offences.

4. It is the submission of the learned counsel for the petitioner that the petitioner is innocent of the alleged offences and he has been implicated falsely in this case. The petitioner was doing coolie work at Byaranahatti

village. Due to some difference of opinion between the mother of the victim and the petitioner, a false case has been lodged in order to harass him.

5. It is further submitted that there are no documents produced by the prosecution to show that the victim has gone to Hubli Railway Station along with the petitioner and thereafter both the petitioner and the victim went to Gadag. In fact, there are inconsistencies in respect of the alleged rape against the victim. Therefore, the petitioner may be enlarged on bail by imposing suitable conditions certainly the said conditions would meet the apprehension of the prosecution. Making such submission, learned counsel for the petitioner prays to allow the petition.

6. Per contra, Shri Praveena Y. Devareddiyavara, the learned HCGP vehemently opposed the bail petition and submitted that the alleged offences committed against the minor girl which is heinous and barbaric. The act which is committed against the minor girl would be construed as

scar on her entire life. Inducing the minor girl and using for sexual act, certainly not only against the individual, it affects whole society. Such act has to be condemned and the accused in such cases have to be dealt with very seriously.

7. It is further submitted that in case, if the petitioner is enlarge on bail, there may be chances of committing similar offences and there is chance of fleeing away from justice since the petitioner was working as coolie and working in different localities. Making such submission, the learned HCGP prays to dismiss petition.

8. Having heard the learned counsel for the respective parties and also perused the averment of the charge sheet material, in order to avoid the repetition of facts, it is necessary to mention the facts in brief. The victim is the resident of Byaranahatti village, Nargund Taluk. The petitioner is the resident of Saidapur, Annigeri Taluk. He had visited the Byaranahatti to construct Anganwadi building, where it is stated that the petitioner

had developed intimacy with the victim and phone numbers were exchanged between them and the petitioner has stated to have assured that he would marry her. Having believed his version, the victim stated to have accompanied him. Both have gone to Hubli Railway Station, there it is stated that she had been subjected to sexual act. Further, they went by train to Gadag. From Gadag, they went to visit the temple. There it is stated that the petitioner committed sexual act to the victim. When they were coming back, they have been apprehended by the jurisdictional police.

9. On perusal of the medical certificate, it says that there were no signs of recent sexual act. Admittedly, the police have apprehended both the victim and the accused and she was subjected to medical examination 01.08.2022. If she is really had been subjected to the sexual act, the medical record would not have come in such manner. Whether really the petitioner has committed an offence of rape or not are to be decided in trial. Make

the petitioner to languish in judicial custody probably would not justify cases of this type. Therefore, it is appropriate to grant bail by imposing suitable conditions to face the trial.

10. The principle of 'Bail is a Rule and Jail is exception is applicable to all cases except heinous and barbaric offences.' The Courts while dealing with bail application, life and liberty of individual are required to be considered in order to secure the fundamental rights of the person, which is guaranteed under Article 21 of the Constitution of India.

11. In the light of observation made above, I proceed to pass the following:-

ORDER

The petition is ***allowed.***

The petitioner is ordered to be enlarged on bail in Crime No.112/2022 of Naragund Police Station on executing a personal bond in a sum of Rs.1,00,000/- (Rupees One lakh only) with one surety for the likesum to

the satisfaction of the Trial Court, subject to the following conditions:

i) The petitioner shall not threaten or tamper the prosecution witnesses nor hamper the proceedings of the Court.

ii) The petitioner shall not indulge in any criminal activities till the disposal of the present case.

iii) The petitioner shall appear before the Trial Court on all dates of hearing without fail.

In case, if the petitioner violates any of the bail conditions as stated above, the prosecution will be at liberty to seek for cancellation of bail.

Sd/-
JUDGE

VMB
List No.: 1 Sl No.: 5