



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 8TH DAY OF NOVEMBER, 2023

BEFORE

THE HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR

CRIMINAL PETITION NO. 5031 OF 2023

C/W

CRIMINAL APPEAL NO. 1230 OF 2023

IN CRL.P.NO.5031/2023

BETWEEN:

DR. SHIVAMURTHY MURUGHA SHARANARU

...PETITIONER

(BY SRI C.V.NAGESH, SENIOR ADVOCATE FOR
SRI SANDEEP S. PATIL, ADVOCATE)

AND:

1. STATE OF KARNATAKA
THROUGH CHITRADURGA
RURAL POLICE STATION,
CHITRADURGA SUB-DIVISION,
CHITRADURGA
REPRESENTED BY ITS
PUBLIC PROSECUTOR,
HIGH COURT OF KARNATAKA
BENGALURU-560 001
2. SRI. CHANDRAKUMAR C.,

Digitally signed
by VEERENDRA
KUMAR K M
Location: HIGH
COURT OF
KARNATAKA



3. XYZ

...RESPONDENTS

(BY SRI B.N.JAGADEESH, ADDL. SPP, FOR R1 AND R2;
SMT. DEEPA J, ADVOCATE FOR R3)

THIS CRIMINAL PETITION IS FILED U/S. 439 CR.P.C.,
PRAYING TO ENLARGE THE PETITIONER ON BAIL IN
CR.NO.385/2022 REGISTERED BY CHITRADURGA RURAL
POLICE STATION, CHITRADURGA FOR THE OFFENCE P/U/S 17,
5(L), 6 OF POCSO ACT, SECTION 376(2)(n), 376(DA), 376(3),
201, 202, 506 R/W 34 AND 37 OF IPC, SECTION 3(f) AND 7 OF
RELIGIOUS INSTITUTION PREVENTION OF MISUSE ACT AND
SECTION 75 OF JUVENILE JUSTICE (CARE AND PROTECTION
OF CHILDREN) ACT PENDING ON THE FILE OF II ADDITIONAL
DISTRICT AND SESSIONS JUDGE, CHITRADURGA.



IN CRL.A.NO.1230/2023

BETWEEN:

DR. SHIVAMURTHY MURUGHA SHARANARU
S/O. LATE GURUMURTHY,
AGED ABOUT 64 YEARS,
PONTIFF AND CHIEF OF
SRI. JAGADGURU MURUGARAJENDRA
BRUHAN MUTTA, R/AT. M.K.HATTI,
CHITRADURGA -577 502
KARNATAKA.

...APPELLANT

(BY SRI C.V.NAGESH, SENIOR ADVOCATE FOR
SRI SANDEEP S. PATIL, ADVOCATE)

AND:

1. STATE OF KARNATAKA
THROUGH CHITRADURGA
RURAL POLICE STATION,
CHITRADURGA SUB-DIVISION,
CHITRADURGA
REPRESENTED BY ITS
PUBLIC PROSECUTOR,
HIGH COURT OF KARNATAKA
BENGALURU-560 001
2. SRI. CHANDRAKUMAR C.,
S/O. CHAJJEGOWDA,
AGED ABOUT 40 YEARS,
LEGAL CUM PROBATION OFFICER,
DISTRICT CHILD PROTECTION UNIT,
NO. CA-15-17, ANJANADRI MAIN ROAD,
4TH STAGE, II GHATTA VIJAYANAGAR,
MYSORE -570 017.
3. XYZ
D/O. RAJAPPA,
AGED ABOUT 16 YEARS,
BALAKIYARA BALA MANDIRA,



CHITRADURGA-577501.
ALSO RESIDING AT BOMMASAMUDRA
DODDER, CHALLAKERE TALUK
CHITRADURGA-577522.
ALSO RESIDING AT AKKAMAHADEVI HOSTEL
MURUGHAMATHA CHITRADURGA-577502.
SINCE MINOR REPRESENTED BY
HER GUARDIAN RAJAPPA, AGED MAJOR

...RESPONDENTS

(BY SRI B.N.JAGADEESH, ADDL. SPP, FOR R1 AND R2;
SMT. DEEPA J., ADVOCATE FOR R3)

THIS CRIMINAL APPEAL IS FILED U/S.14(A) (2) OF SC/ST (POA) ACT, 2015 PRAYING TO SET ASIDE THE ORDER DATED 31.01.2023 IN CRL.MISC.P.NO.1394/2022 PASSED BY THE SPECIAL II ADDITIONAL DISTRICT AND SESSIONS JUDGE, CHITRADURGA AND CONSEQUENTLY ENLARGE THE APPELLANT ON REGULAR BAIL IN CR.NO.387/2022 REGISTERED AS SPL.C(POCSO) NO.181/2022 REGISTERED BY THE RESPONDENT CHITRADURGA RURAL POLICE FOR OFFENCE P/U/S 17, 5(1), 6 OF POCSO ACT 2012, SECTIONS 376(2)(n), 376(DA), 376(3), 201, 202, 506 R/W SECTIONS 34 AND 37 OF IPC SECTION 3(1)(w)(i)(ii), 3(2)(v)(va) OF SC/ST (POA) ACT 1989, SECTION 3(f) AND 7 OF THE RELIGIOUS INSTITUTION PREVENTION OF MISUSE ACT AND SECTION 75 OF JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT 2015 PENDING ON THE FILE OF THE SPECIAL 2nd ADDITIONAL DISTRICT AND SESSIONS JUDGE, CHITRADURGA

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



ORDER

Criminal Petition No.5031/2023 is filed under Section 439 of Cr.P.C., Criminal Appeal No.1230/2023 is filed under Section 14(A)(2) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as 'Atrocities Act' for short), challenging the order dated 31.01.2023 in Crl.Misc.No.1394/2022. The petitioner in Crl.P.No.5031/2023 and the appellant in Crl.A.No.1230/2023 is the same person (he is referred to accused No.1 for the sake of convenience). He filed two criminal miscellaneous petitions 1394/2022 and 1395/2022 under Section 439 of Cr.P.C., before the II Additional District and Sessions Judge and Special Court, Chitradurga, seeking bail and as they were dismissed, he has approached this court. As two cases arise out of FIR No.387/2022 registered by Rural Police



Station, Chitradurga, they are disposed of by a common order.

2. The prosecution case, stated briefly, is as follows:

Two girls, A and B were inmates of Akkamahadevi Hostel run by Murugharajendra Mutt, Chitradurga when they were students of a high school. On 24.07.2022, A and B left the hostel around 04.30pm and reached Bengaluru around 10.00pm. An auto rickshaw driver took them to Cottonpet police station. The police telephoned Smt. Soubhagya Basavarajan of Chitradurga, who came over to Bengaluru around 04.00am on 25.07.2022 and took the girls to Chitradurga. The girls stayed in her house for a few days and during their stay in her house, the girls disclosed about the sexual harassment on them by accused No.1 who is the head of Murugharajendra Mutt being a pontiff. On



26.08.2022, Smt. Soubhagyamma took the girls to an organization called 'Odanadi' at Mysuru. As the girls revealed of sexual harassment on them, the office bearers of Odanadi produced the girls before the Child Welfare Committee, Mysuru. After the counseling of the girls, the Probation Officer, Mysuru District, pursuant to an order passed by the District Child Welfare Officer, Mysuru made a report to Nazarabad police station at 10.30pm on 26.08.2022 about sexual harassment on the two girls. Based on the report, FIR was registered in Crime No.155/2022 at Nazarabad police station, Mysuru, for the offences punishable under Section 376(2) of IPC, Section 5(I) read with Section 6 and Section 17 of the POCSO Act. In this report apart from implicating accused No.1, there were also allegations against Basavadithya, Gangadharaiah, an Advocate by profession, Smt. Rashmi, the warden of the hostel and one Paramashivaiah. It is stated that these persons helped accused No.1



commit sexual abuse on the girls. Later-on the FIR registered at Mysuru was transferred to Chitradurga Rural police station as the latter police station had territorial jurisdiction. Chitradurga Rural police registered FIR in Crime No.387/2022. The investigation led to filing of charge sheet for the offences under Sections 376(2)(n), 376(DA), 376(3), 201, 202 and 506 read with Sections 34 and 37 of IPC, Section 5(l) read with Section 6 and Section 17 of the POCSO Act, Section 3(1)(w)(i)(ii) and Section 3(2)(v)(va) of SC/ST Act, Section 3(f) and Section 7 of Religious Institutions (Prevention of Misuse) Act, 1988 and Section 75 of the Juvenile Justice (Care and Protection of Children) Act, 2015. Since one of the girls belongs to scheduled caste, the provisions of Atrocities Act were invoked.

3. I have heard the arguments of Sri C.V.Nagesh, learned senior counsel appearing on



behalf of Sri Sandeep Patil learned counsel for accused No.1 and Sri B.N.Jagadeesh, learned Additional State Public Prosecutor for respondents No.1 and 2/State, Sri Srinivasa D C, learned counsel for respondent No.3 in Crl.A.No.1230/2023 and Smt. Deepa J, learned counsel for respondent No.3 in Crl.P.No.5031/2023.

4. The trial court rejected the bail applications ascribing the reasons that the materials produced before the court would prima-facie indicate involvement of accused No.1 in subjecting the girls to sexual harassment when they were staying in the hostel. Accused No.1 being the head of the Mutt, had control over the hostel where the girls were staying. The statements given by the girls before the police as also before the Magistrate indicate very clearly the manner in which they were being abused sexually by accused No.1. When the girls were taken to



hospital for medical examination, they gave history before the doctor about sexual harassment. It is true that the medical report shows that the hymen of the girls were intact. Merely for the reason that the hymen was intact, it cannot be said that the girls were not subjected to sexual abuse in as much as medical report is not a conclusive evidence and it has only a corroborative value. Moreover according to Section 3(c) of the POCSO Act, actual penetration of the penis is not necessary, penetration of penis to any extent into the vagina, mouth, urethra or anus, or insertion of an object or any part of the body is sufficient to hold that an offence of penetrative sexual assault has taken place. This can be decided only after holding trial. At this stage there are clear allegations against accused No.1. The materials on record indicate that accused No.1 not only subjected the two girls to sexual harassment, but also harassed the other inmates of the hostel.



5. The trial court has further held that one of the girls belongs to scheduled caste and it appears that accused No.1 had the knowledge of it. If accused No.1 did not have knowledge of the caste of one of the girls, it is a matter to be decided after full fledged trial. Therefore the provisions of Atrocities Act are also attracted. Section 75 of the Juvenile Justice (Care and Protection of Children) Act can also be invoked for the reason that accused No.1 had actual charge or control over the children staying in the hostel. Thus prima-facie materials are forthcoming. In addition, accused No.1 being the Peetadhipati of Murugharajendra Mutt is very influential. If he is released on bail, he may tamper with evidence and threaten the witnesses. For all these reasons, accused No.1 is not entitled to be released on bail.

6. The foregrounds of the argument of Sri C.V.Nagesh, learned senior counsel, are:



- (i) Materials collected by the investigator do not indicate existence of prima-facie case against accused No.1.

- (ii) The conduct of two girls in coming over to Bengaluru in the wee hours on 24.07.2022 cannot be ignored. There is no explanation as to why they came to Bengaluru. If for any reason, they had any problem in the hostel, they should have gone home and disclosed their problems to their parents. One of the girls has stated that both of them went to her aunt's house; the aunt opened the window door and closed it without allowing them inside; then they would come to Cottonpet police station; the police would make a call to Basavarajan and his wife, who would come in the early morning on 25.07.2022 and take two girls with them to their house. And from there,



they would visit an organization called "Odanadi" at Mysuru, which in turn would take up the cause of two girls and get filed a complaint on 26.08.2022 through Child Welfare Officer at Nazarabad police station, Mysuru alleging sexual assault on the girls by accused. All these events appear to be quite strange and abnormal indicating involvement of Basavarajan and his wife in registration of FIR against accused No.1.

(iii) After transfer of FIR from Mysuru to Chitradurga, the statements of the girls were taken by the investigator. They have given statements that like them some other girl inmates were also sexually abused by accused No.1. The investigator interrogated those girls and many of them stated they were not at all sexually abused. Conversely, once in a week, accused No.1



used to teach them English and Sanskrit. The statements of other girls falsify the statements of girls 'A' and 'B'.

(iv) In the statements given by 'A' and 'B' under Section 164 of Cr.P.C., before the Magistrate, the revelation made by them do not depict ingredients of offences punishable under Section 6 of POCSO Act and Section 376 of IPC and its other variant forms. What they have disclosed may constitute an offence of sexual harassment punishable under Section 7 of POCSO Act or Section 354 of IPC. These offences are not grave like the offence falling within the ambit of Section 5(l) read with Section 6 of POCSO Act. This is another ground which can be considered for enlarging accused No.1 on bail.



- (v) Section 75 of the Juvenile Justice (Care and Protection of Children) Act, 2015 is not at all applicable because the first accused was only a pontiff of the Mutt. He did not have actual control over the children. The allegation of assaulting or abusing the girls A and B is against the warden of the hostel.
- (vi) In W.P.No.2331/2023 filed by the first accused, it is clearly held that the provisions of the Religious Institutions (Prevention of Misuse) Act are not applicable and cannot be invoked against accused No.1.
- (vii) Accused No.3 filed a criminal appeal before this court challenging the dismissal of his application for bail by the trial court. The co-ordinate bench while allowing the appeal has clearly held that Section 5(I) read with Section 6 of the POCSO Act appears to be



ground less in view of the hymen of the victim girls being intact. When already a finding is there by the co-ordinate bench, that finding has a bearing on these two cases also.

(viii) The fact that the entire case against accused No.1 is foisted becomes clear from another FIR No.484/2022 of Chitradurga Rural Police Station registered against S.K. Basavarajan, Basavarajendra Devaru and Smt. Gayathri, 'Odanadi' Organization and others. In this FIR the allegations are that all the named accused were involved in compelling another girl inmate of the hostel to give a statement that she too was sexually abused by the pontiff of Muruga Math. But the girl refused to give a false statement. The telephonic conversation between the girl and Basavarajendra



Devaru has been produced. The conversation clearly shows the involvement of the named accused in FIR No.484/2022 in manipulating the documents to see that the accused no.1 would not get bail. Once it came to light that there was a conspiracy to intentionally fix accused No.1 in a false case, the junior pontiff of the Mutt gave a complaint to the police and this led to registration of FIR in Crime No.484/2022. Though this FIR is unconnected with the present cases, it can be very much looked into to assess the truth in the materials collected by the investigator while investigating the case in FIR No.387/2022 in accordance with judgment of Supreme Court in ***IQBAL @ BALA AND OTHERS V. STATE OF UTTAR PRADESH AND OTHERS [2023(5) SCC 497]***. The prosecution cannot dispute the registration of FIR



No.484/2022. Therefore, a clear conclusion can be drawn that the allegations against accused No.1 appear to be false. This is also a ground that this court can consider.

(ix) Accused No.1 has been in custody since the date of his arrest on 02.09.2022. Charge sheet has been filed. His presence in the custody is no longer necessary. In the light of the judgment of the Supreme Court in the case of **NAVAL DIPAKKUMAR THAKKAR V. STATE OF GUJARAT AND ANOTHER [2023(3) SUPREME 458]**, accused no.1 is entitled to be released on bail.

(x) It is false that accused No.1 will try to influence or threaten the witnesses. The contents of FIR No.484/2022 clearly show that it is not accused No.1 herein, instead S.K.Basavarajan, his wife and Odanadi



Samsthe of Mysuru have influenced the girls to give false statements. However, the accused No.1 is ready to abide by any condition that this court imposes on him. Therefore, accused No.1 is to be released on bail.

7. Sri B.N.Jagadeesh, learned Additional State Public Prosecutor argued that the accused No.1 being the pontiff of the Mutt wields power and influence. This can be noticed from the fact that as long as the girls stayed in the hostel, they did not dare to disclose the harassment on them. It's not that the two girls came out of the hostel immediately after they were sexually abused for the first time; the harassment on them was continuously going on for quite a long time. They had been threatened not to disclose the harassment to anybody. So if bail is granted it is sure that he will try to influence the girls and



other witnesses not to depose against him once the trial commences.

7.1. In the statements given by the girls before the investigator and the Magistrate, it is clearly found that the two girls were subjected to aggravated sexual harassment by accused no.1. Merely for the reason that the medical reports indicate the hymen to be intact, no conclusion can be drawn that the offence had not taken place. The testimonies of the girls constitute primary evidence; the medical report is only a corroborative factor. This is a settled principle and in this connection he relies on the judgments of the Supreme Court in the cases of **WAHID KHAN V. STATE OF MADHYA PRADESH [(2010) 2 SCC 9]** and **STATE OF JHARKHAND V. SHAILENDRA KUMAR RAI [2022 SCC ONLINE SC 1494]**.

7.2. His further argument is that the history mentioned in the medical report is very important.



Their statements under section 164 are very important at this stage. The girls have not stated that they were not sexually abused.

7.3. The statements of the girls are about the sexual harassment on them before 24.07.2022. The statement of one witness namely Venkatalakshamma shows that the girls appeared dull. It was an abnormal behaviour of the girls and it was because of continuous sexual exploitation on them. Like that the statements of other witnesses also indicate the manner in which accused No.1 was exploiting the girl students.

7.4. The statements of the employees of the Mutt, namely, Karibasappa, Mahalingappa, Mallikarjuna and Prajwal are all sufficient enough at this stage to hold that there is prima facie case against accused No. 1.



7.5. If bail is granted, it sends a wrong signal to the society and therefore the trial court has come to right conclusion to deny bail to accused No.1.

8. Advocates, namely, Sri D.C.Srinivasa and Smt. Deepa J adopted the arguments of Sri B.N.Jagadeesh, Additional SPP.

9. The principles governing the grant of bail are now well settled. To reiterate, the primary considerations are:

- (i) The gravity and seriousness of the offence.*
- (ii) Existence of prima facie materials indicating involvement of an accused in commission of a crime.*
- (iii) Likelihood of accused fleeing from justice.*
- (iv) Chances of accused influencing prosecution witnesses and tampering with evidence.*



10. No doubt of the several offences charged against accused No.1, the offences punishable under Sections 376(2)(n), 376(3), 376(DA) of IPC and Section 5(l) read with section 6 of POCSO Act are grave and very serious. But the materials collected by the investigator must prima-facie indicate the involvement of accused No.1. At the stage of deciding an application for bail, it is not necessary to hold a mini trial to arrive at a conclusion whether after completion of trial the case will necessarily end in conviction. There are many instances of recording conviction against an accused even though he was enlarged on bail. Therefore, deciding an application for bail stands on a different pedestal than deciding a criminal case after conclusion of trial.

11. In the beginning itself it may be stated that the provisions of the Atrocities Act are wrongly invoked in the charge sheet just because



one of the girls belongs to schedule caste. This is a routine procedure that the police are accustomed to register an FIR or file charge sheet for the offences under the Atrocities Act without verifying and applying mind whether the incident in question has taken place in the background of caste-based animosity or atrocity. The materials placed before the court do not indicate the intention of accused No.1 to humiliate or exploit the girls belonging to schedule caste/schedule tribe sexually on the ground of caste factor. If accused No.1 had such an intention to exploit the members of schedule caste or schedule tribe, the girls belonging to those castes would not have been admitted to the hostel. Therefore, so far as the offences under the Atrocities Act mentioned in the charge sheet can be unhesitatingly said to be groundless.

12. The co-ordinate bench of this court has already held in W.P.No.2331/2023 that Section



8(2) of the Religious Institutions (Prevention of Misuse) Act, 1988 cannot be invoked against accused No.1. The clear observation of the coordinate bench is, "The offences alleged against the petitioner-pontiff apparently lack the nature and kind of the acts contemplated by the Act although what is alleged against him are grave. Therefore, this act is not applicable". The order in the writ petition is not challenged by the State. In this view as rightly argued by Sri C.V.Nagesh that, Section 8(2) of Religious Institutions (Prevention of Misuse) Act, 1988 cannot be sustained against accused No.1.

13. In regard to offences punishable under Sections 376(2)(n), 376(3) and 376(DA) of IPC and Section 5(l) read with Section 6 of POCSO Act, if the materials collected by the investigator are assessed for the limited purpose of deciding the



application for bail, the obtaining picture is like this.

(a) The statements of the two girls recorded by the investigator under Section 161 of Cr.P.C., as also the history given by them before the doctor who examined them show that they used to be sexually exploited by accused No.1. Before the doctor, the girls complained of penetration and that they were subjected to that kind of abuse three or four times. If the statements and history revealed before doctor are considered, undoubtedly an offence of aggravated penetrative sexual assault falling within the ambit of Section 5(I) and punishable under Section 6 of the POCSO Act can be made out. The girls were minors during that time. But when they gave statement before the Magistrate, they did not state that they



were subjected to aggravated sexual assault, their statements would only indicate a kind of sexual assault within the meaning of Section 7 of the POCSO Act and punishable under section 8 for imprisonment the period being minimum of 3 years but extendable upto 5 years and fine. But Section 6 prescribes rigorous imprisonment for a term which shall not be less than 20 years and the imprisonment for life can also be imposed. The degree of credibility attachable to statement under section 164 Cr.P.C., is higher than the statement under Section 161 Cr.P.C. Thus seen, the first doubt in the materials collected by the investigator arises.

(b) Secondly, the two girls gave further statement to the effect that more than eight other girls of the hostel were also



sexually abused by accused No.1 like them. They have named eight girls. The statements of those girls are available in the records. If those statements are perused none of the girls named by the girls A and B has complained of being sexually abused by accused No.1. In contrast their statements are that accused No.1 used to treat them well and teach English and Sanskrit once in a week.

(c) Thirdly, though it is true that unruptured hymen does not always lead to an inference that penetrative sexual assault has not taken place, at the stage of deciding bail application, it may be considered to assess whether the inculcation against accused No.1 is believable ex-facie. After conclusion of trial, even though the medical report indicates hymen being intact, if the



testimony of the prosecutrix appears trustworthy, her evidence can be acted upon to convict an accused. Medical report has only a corroborative value. But now the indication in the medical report that the hymen of the two girls were intact is to be viewed in the light of the statements of eight other girls who do not complain of sexual harassment and also the statements of the girls A and B under Section 164 of Cr.P.C. Juxtaposing the statements under Section 161 Cr.P.C., and, statements under Section 164 Cr.P.C, the statements of other eight girls and medical report about hymen, it can be stated that a doubt really arises in the contents of Section 161 Cr.P.C., statements. These aspects cannot be ignored at this stage.



(d) The statement of a witness, namely, Venkatalakshamma, as argued by Sri B.N.Jagadeesh show that the girls looked dull and abnormal and they used to give evasive answers when they were questioned about their dullness. But the investigator has recorded the statements of the father of one of the girls and in his statements it is found that whenever their daughter used to come home she never complained of any kind of harassment on her in the hostel. In the statement of the grandmother of that girl, it is written that whenever the girl used to come home for festivals, she looked happy and never complained of harassment on her. The father and the grandmother of the girl have stated that they came to know about harassment on the two girls from the news telecast on the television.



(e) The conduct of two girls in going to Bengaluru on 24.07.2022 leaving the hostel at 4.00pm assumes importance. Though it was argued by Sri B.N.Jagadeesh that sexual harassment on them by accused No.1 in connivance with the hostel warden was the reason for girls deciding to leaving the hostel on 24.07.2022, there is a statement of another witness which shows that the two girls were wayward and the hostel warden had to discipline them. This made them quit the hostel. Even in the statements of the girls under Section 161 Cr.P.C., they state that they had to leave the hostel because the warden scolded them. Be that as it may, there is no explanation as to why they decided to go to Bengaluru instead of returning their respective homes which were very near to the hostel. Sri S.K.Basavarajan and his wife



would come into picture after they received information from Cottonpet Police Station about the two girls. They took the girls to their house and almost for about a month they kept them in their house. There is no explanation whether they made any effort to inform the parents of the respective girls when they were staying in the house. They took them to Odanadi Samsthe at Mysuru for counselling and thereafter complaint at Nazarabad police station, Mysuru, was registered. When the girls were staying in the house of S.K.Basavarajan, he could have produced the girls before the Child Welfare Committee of Chitradurga District. Complaint could have been given to Chitradurga police. Instead they went to Mysuru. Till 26.08.2022, no FIR was registered. All these events look mysterious.



(f) Regarding FIR in Crime No.484/2022 registered at Chitradurga Rural police station, certainly it has a bearing on the two cases against first accused. But yesterday (07.11.2023), Sri D.C.Srinivasa, learned counsel for respondent No.3 in Crl.A.No.1230/2023 made a submission with reference to order of the Co-ordinate Bench in Crl.P.No.12350/2022 c/w W.P.No.1280/2023 that FIR No.484/2022 has been quashed and therefore the said FIR cannot be used for granting bail to accused No.1. I have perused the order in Crl.P.No.12350/2022 c/w W.P.No.1280/2023. FIR No.484/2022 has been quashed. Even if this order is taken in to consideration, the other aspects as discussed above cannot be ignored.



14. Certainly bail can be denied if the accused is in such a position as to influence the witnesses and try to tamper with evidence. Of course Sri B.N.Jagadeesh has expressed this apprehension. It is no doubt true that accused No.1 is the Chief of a Mutt which has a large number of devotees and followers. His position itself cannot be a reason for drawing an inference that he will try to meddle with the evidence. Mere allegation to this effect cannot be considered if a case for a bail is otherwise made out. Bail is not an absolute liberty; conditions are always imposed while granting bail. If he misuses the liberty and violates the conditions of bail the same may be considered for cancellation of bail. Therefore, I now arrive at a conclusion that the Criminal Appeal and the Criminal Petition filed by him deserve to be allowed. Hence the following:



ORDER

- i. Crl.A.No.1230/2023 is allowed.*
- ii. The order dated 31.01.2023 in Crl.Misc.No.1394/2022 on the file of Special II Additional District and Sessions Judge, Chitradurga is set aside. Crl.Misc.No.1394/2022 filed under Section 439 Cr.P.C., is allowed.*
- iii. Crl.P.No.5031/2023 is allowed. The application under Section 439 of Cr.P.C., is granted.*
- iv. In connection with cases, namely, Spl.C.(POCSO) No.181/2022 and Spl.C.(POCSO) No.182/2022 on the file of Special II Additional District and Sessions Judge, Chitradurga, accused No.1 Dr. Shivamurthy Muruga Sharanaru is hereby directed to execute two bonds each for Rs.2,00,000/- with two sureties for the*



*like sum to the satisfaction of the
Special Court.*

Accused No.1 is subjected to following other
conditions:

- i. He shall not try to influence the witnesses and tamper with evidence.*
- ii. He shall not enter Chitradurga District till the conclusion of trial in the two cases.*
- iii. He shall appear before the Special Court during trial through video conferencing without fail.*
- iv. He shall not get involved in any criminal case in future.*
- v. If he possesses a passport, he shall surrender the same to the trial court.*
- vi. He shall not abuse the order of bail in any manner either directly or indirectly.*
- vii. Violation of any of the above conditions will be viewed seriously for cancellation of bail.*



The trial court shall decide the case on merits, without being influenced by any of the observations made in this order.

Pending applications, if any, shall stand disposed of.

SD/-
JUDGE

KMV
List No.: 1 Sl No.: 1