

IN THE HIGH COURT OF KARNATAKA
DHARWAD BENCH

DATED THIS THE 19TH DAY OF NOVEMBER 2021
BEFORE

THE HON'BLE MR. JUSTICE SHIVASHANKAR AMARANNAVAR

CRIMINAL PETITION NO.102000/2021

BETWEEN:

BASANAGOUDA @ BASAVARAJ
S/O. SHEKHARAGOUDA MUDIGOUDAR,
AGE: 32 YEARS,
OCC: AGRICULTURIST,
R/O: KALAKABANDI,
YELBURGA TQ,
KOPPAL DISTRICT-583 277.

...PETITIONER

(BY SRI ANWAR BASHA, ADVOCATE)

AND:

THE STATE OF KARNATAKA,
(THROUGH YELBURGA P.S.
KOPPAL),
REPRESENTED BY ITS
STATE PUBLIC PROSECUTOR,
HIGH COURT OF KARNATAKA,
AT DHARWAD-580 001.

... RESPONDENT

(BY SRI RAMESH B. CHIGARI, HCGP)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 439 OF CR.P.C., SEEKING TO ALLOW THE PETITION AND ENLARGE THE PETITIONER/ACCUSED NO.1 ON REGULAR BAIL IN CRIME NO.29/2021 REGISTERED BY YELBURGA P.S. KOPPAL FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 376, 506, 450, 354C OF IPC AND SECTION 67 OF INFORMATION TECHNOLOGY ACT, 2000, PENDING BEFORE PRINCIPAL DISTRICT AND SESSIONS JUDGE, KOPPAL.

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

ORDER

This petition is filed by the sole accused under Section 439 of The Code of Criminal Procedure, 1973 (hereinafter referred to as the 'Cr.P.C.', for brevity) seeking bail in Crime No.29/2021 of Yelburga Police Station, registered for the offences punishable under Sections 354C, 506, 376, 450 of The Indian Penal Code (hereinafter referred to as the 'IPC', for brevity) and Section 67 of the

Information Technology Act, 2000 (hereinafter referred to as 'I.T. Act', for brevity).

2. The case of the prosecution is that the victim lady has filed a complaint stating that she and the petitioner were from the same village and they are relatives and both fell in love. On 03.12.2018 the petitioner committed the sexual intercourse on the complainant in the agriculture field and the petitioner told to the complainant that he will marry her and he will maintain her. Later on again 4-5 times the petitioner went to her house and the land near to her house and had sexual intercourse with her. Apart from it, petitioner took photos of private part of the victim. Later on, parents of the complainant performed her marriage with another person *i.e.* CW.5. Thereafter she begot a child. After that the petitioner again

had sexual intercourse with the victim and he used to make video calls to her between 4 and 5 a.m. early in the morning regularly and asking her to show her private part and used capture the same in his mobile. As the victim stopped calling the petitioner for 15 days the petitioner sent the photos taken through video call to the husband of victim, thereafter the victim has been sent by her husband to her parents' house on 05.04.2021 on the date on which he received the photos on his mobile. On the next day victim filed the complaint. The complaint came to be registered in Crime No.29/2021 for the offences referred above. The petitioner came to be arrested on 07.04.2021 and he was remanded to judicial custody. The petitioner filed Crl. Misc. No.245/2021 seeking bail and the same came

to be rejected by the Principal District and Sessions Judge Koppal, by order dated 07.08.2021. Therefore, the petitioner is before this Court seeking bail.

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

4. It would be the contention of the learned counsel for petitioner that the petitioner and the victim lady were in love affair prior to her marriage with CW.5 and even after marriage the relationship of the petitioner and the victim continued. He submits that the victim is 25 years old and the sexual intercourse between the petitioner and the victim was consensual. He further submits that the very fact that the victim is used make

video call to the petitioner in between 4-5 a.m. shows her consent. It is his further submission that the offence alleged against the petitioner is not punishable with death or imprisonment for life and since the charge sheet is filed petitioner is not required for custodial interrogation. With this, he prayed for allowing the petition.

5. Per contra, learned High Court Government Pleader for the respondent-State contended that the offences alleged against the petitioner is heinous offence. He submits that the petitioner sent photos of the physical acts of petitioner and the victim to the mobile phone of her husband. The mobile phone of her husband has been seized. It is his further submission that charge sheet shows prima facie case against the petitioner and if the

petitioner is granted bail he will threatened the complainant and tamper the prosecution witnesses. With this, he prayed to dismiss the petition.

6. Having regard to the submission made by the learned counsel for the petitioner and the learned High Court Government Pleader for respondent-State, this Court has gone through the charge sheet records.

7. On looking to the averments made in the complaint by the victim lady, there was a love affair between the petitioner and the victim prior to her marriage with CW5 and they had consensual sexual intercourse in the land several times. Even after marriage the said relationship between the petitioner and the victim continued. It is alleged that the

petitioner used to take screen shots when the victim was showing her private parts through video call. The victim was using the mobile phone of her husband to make video call to the petitioner. The very fact that the victim used to make video call to the petitioner in the early morning between 4-5 a.m. shows her consent to the said act. Petitioner had sent the said photos to the mobile phone of the husband of the victim, who saw the same on 05.04.2021 and sent the victim to her parents' house. The offences alleged against the petitioner are not punishable with death or imprisonment for life, but the offence alleged under Section 67 of I.T. Act is punishable with imprisonment for three years and fine of Rs.5.00 Lakhs. Further, whether the victim had given consent under the threat of the petitioner, is a matter of trial.

There are no criminal antecedents of the petitioner. The main objection of the prosecution is that in the event of granting bail, the petitioner is likely to cause threat to the complainant and other prosecution witnesses. The said objection may be met with by imposing stringent conditions.

8. In the facts and circumstances of the case and the submission of the counsel, this Court is of the view that there are valid grounds for granting bail subject to certain terms and conditions. Hence, I proceed to pass the following:

ORDER

The petition filed under Section 439 of Cr.P.C. is allowed. Consequently, the petitioner shall be released on bail in Crime

No.29/2021 of respondent Police Station
subject to the following conditions:

- i) Petitioner shall execute a personal bond for a sum of Rs.1,00,000/- (Rupees One Lakh Only) with one surety for the like sum to the satisfaction of the jurisdictional Court.
- ii) Petitioner shall not indulge in tampering the prosecution witnesses.
- iii) Petitioner shall attend the Court on all the dates of hearing unless exempted and co-operate in speedy disposal of the case.
- iv) Petitioner shall not visit Guledgudda, Taluk Badami, District Bagalkot till disposal of the case.

**Sd/-
JUDGE**

Sbs*