

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 27th DAY OF OCTOBER, 2022

BEFORE

THE HON'BLE MR.JUSTICE RAJENDRA BADAMIKAR

CRIMINAL PETITION NO. 8711 OF 2022

BETWEEN:

FARDDIN
S/O FAKRUDDIN
AGED ABOUT 19 YEARS
PAINTER
R/O 2ND CROSS,
PAMPANAGARA
CHIKMAGALUR TOWN: 577101.

... PETITIONER

(BY SRI. RAVIKUMAR N.R., ADVOCATE)

AND:

1. STATE BY WOMEN POLICE STATION
CHIKMAGALUR TOWN
REPRESENTED BY
STATE PUBLIC PROSECUTOR
HIGH COURT OF KARNATAKA
BANGALORE-01
2. SMT. ZUBEDA
W/O FAYAZ
AGED ABOUT 30 YEARS
R/O CHRISTIAN COLONY
CHIKMAGALUR-577101.

... RESPONDENTS

(BY SRI. RASHMI JADHAV, HCGP)

This Criminal petition is filed under Section 439 of Cr.P.C. praying to enlarge the petitioner on bail in Cr.No.42/2022 (Spl.C(P) No.92/2022) of Chikkamagaluru Women P.S., Chikkamagaluru District for the offence punishable under Sections 363,342,354D, 376(2)(n), 376(3) of IPC and Sections 6,12,17 of POCSO Act and etc.,

This Criminal Petition coming on for Orders, this day, the Court made the following:-

ORDER

This petition is filed by the petitioner/accused No.1 under Section 439 of Cr.P.C for enlarging him on bail in Crime No.42/2022 of Women Police Station, Chikmagalur, registered for the offences punishable under Sections 363, 342, 354D, 376(2)(n), 376(3) of I.P.C and Sections 6,12, 17 of the POCSO Act,2012.

2. Heard the learned counsel for petitioner and learned HCGP for State and perused the records.

3. The brief factual matrix leading to the case is that on 06.04.2022 the petitioner having knowledge that the victim is a minor he has induced her and has taken her on

a Pulsor Motor Cycle bearing registration No.KA-18-EJ-8117 to Indian Residency, Krishnarajasagara Village, Srirangapatna Taluk and with the help of accused No.2, he has obtained Room No.106 by giving his Aadhar Card. There he stayed along with the victim for one day and committed penetrated sexual assault on her twice on that night. Subsequently, he brought back the victim and dropped her at Belur bus stand and then the victim approached her mother and narrated the incident. In the meanwhile, the complainant has lodged a complaint of missing and a crime was initially registered under Section 363 of IPC. Subsequently, the Investigating Officer has recorded 161 Statement of the victim wherein, she is alleged to have narrated that she had voluntarily accompanied the petitioner and she had sexual relationship with petitioner. On the basis of these aspects the Investigating Officer has incorporated the provisions of 376(2)(n), 354D and Sections 6 and 12 of the POCSO Act. Later the victim was also produced before the Magistrate wherein, she has given statement under Section 164 of

Cr.P.C asserting that the petitioner has forcibly and by enticing took her to Mysore and there he has committed Penetrated sexual assault.

4. After conducting investigation the Investigation Officer is said to have submitted the charge sheet. The petitioner was arrested and was remanded to judicial custody. He has moved a regular bail petition before the learned Sessions Judge and his bail petition came to be rejected. Hence, he is before this Court.

5. Having heard the arguments and perusing the records it is an undisputed fact that the victim was a minor aged about 16 years, residing in Chikmagalur. It is evident from the records and statement of the victim recorded under Section 164 of Cr.P.C that, on 06.04.2022 she was attending SSLC examination and the present petitioner came there and took her forcefully on his bike to Mysore and there in a lodge they stayed wherein he has committed the penetrated sexual assault on her. Thereafter, it is also alleged that he brought her back to

Belur Bus Stand and dropped her and then she came to Chickmagalur and narrated the incident to her mother. In between her mother has also lodged a missing complaint on the earlier evening itself.

6. Admittedly, the victim is a minor, aged about 16 years. The learned counsel for petitioner has invited the attention of the Court to 161 statement of the victim wherein she is said to have stated that she has voluntarily accompanied the petitioner and has voluntarily indulged in sexual relationship with him. But her 164 statement speaks a different story wherein she has specifically asserted that she was taken by the present petitioner forcibly and he had committed sexual intercourse with her and he has also troubled her.

7. This statement Prima-facie disclose that the consent of the victim was not there. Even if the consent is said to be there, since the victim is a minor her consent become irrelevant.

8. The learned counsel for petitioner argues that the age of puberty is required to be taken note off as parties are Mohammedans. But it is to be noted here that the POSCO Act and IPC are substantive acts and they prevail over personal law and under the guise of personal law the petitioner cannot seek regular bail. The statement of the victim under Section 164 itself clearly establishes that she was forced to have sexual relationship and that too after abducting her from custody of lawful guardian. Under these circumstances, there is prima-facie material evidence against the present petitioner and the medical evidence further discloses that the hymen was not intact and it establish that there is a sexual relationship. No doubt Investigation is completed and charge sheet has been laid down but however mere submission of the charge sheet does not give any right to the present petitioner to claim bail as a matter of right. There is possibility of tampering the prosecution witnesses. Looking to these facts and circumstances, the petition is devoid of

merits and needs to be rejected. Accordingly, the petition is ***rejected***.

**Sd/-
JUDGE**

VS