

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 1<sup>ST</sup> DAY OF JULY, 2022

BEFORE

THE HON'BLE MR. JUSTICE H.P. SANDESH

**CRIMINAL PETITION NO. 3422/2022**

BETWEEN:

SYED SHABAJ  
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... PETITIONER

(BY SRI JAGADEESHA H., ADVOCATE)

AND:

1.

2. THE STATE OF KARNATAKA  
BY RAJAGOPALANAGARA POLICE  
STATION, BENGALURU,  
REPRESENTED BY  
STATE PUBLIC PROSECUTOR,  
HIGH COURT COMPLEX,  
BENGALURU - 560 001.

... RESPONDENTS

(BY SRI MAHESH SHETTY, HCGP)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 439 OF CR.P.C. PRAYING TO ENLARGE THE PETITIONER ON BAIL IN CR.NO. 396/2021 FOR THE OFFENCE P/U/S. 363, 366A, 376 OF IPC AND SECTIONS 5(L) AND 6 OF POCSO ACT AND SECTION 4 OF CHILD MARRIAGE ACT OF THE RESPONDENT RAJAGOPALANAGARA POLICE, BENGALURU PENDING ON THE FILE BEFORE FTSC-II ADDL. CITY CIVIL AND SESSIONS JUDGE, BENGALURU.

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

**ORDER**

This petition is filed under Section 439 of Cr.P.C. seeking regular bail of the petitioner in Crime No.396/2021 of Rajagopal Nagar Police Station, Bengaluru City, for the offence punishable under Section 363, 366-A and 376 of IPC, Sections 5(L) and 6 of POCSO Act and Section 4 of Child Marriage Act.

2. Heard the learned counsel for the petitioner and the learned High Court Government Pleader appearing for the respondent No.2-State.

3. The factual matrix of the case of the prosecution is that this petitioner subjected the victim for sexual act knowing fully well that she is aged about 15 years in a lodge. Hence, the police have invoked the offence under Sections 363, 366-A and

376 of IPC, Sections 5(L) and 6 of POCSO Act and Section 4 of Child Marriage Act.

4. Learned counsel for the petitioner would submit that the very statement made by the victim is clear that she fell in love with the petitioner. Hence, both of them left the house thinking that their parents will not give consent since, they belong to different religion and stayed in a room and thereafter, went to Darga and marriage has taken place in a Temple and after the marriage, this petitioner subjected her for sexual act. Since both of them are married, at the most, it attracts the offence under Sections 9 and 10 of the Prohibition of Child Marriage Act. Hence, he may be enlarged on bail.

5. Per contra, learned High Court Government Pleader for the respondent No.2-State would submit that, in 164 statement, the victim girl has stated that this petitioner subjected her for sexual act. He also brought to the notice of this Court that hymen is not intact and in the 164 statement, she has categorically stated that she was subjected to sexual act

and she is a minor below the age of 16 years. Hence, there is a *prima facie* case against the petitioner herein.

6. Having heard the respective counsel and also on perusal of the material available on record, in 164 statement of the victim girl, she claims that though they left the house earlier on 15.10.2021, but the marriage was performed on 17.10.2021 and thereafter, they went to Chintamani and had sexual intercourse and the question of consent does not arise. Having considered the material on record, the records disclose that she eloped with the petitioner but, though they left the house on 15.10.2021 itself, no allegation is made that before the marriage, she was subjected to sexual act but, she claims that they went and stayed in a Darga and thereafter, they went to Ramanagar on 17.10.2021 and both of them got married and thereafter, she was subjected to sexual act. No doubt, the medical report also supports the case of the prosecution that hymen is not intact, but the fact is that she was subjected to sexual act after the marriage. Further, when the history was given before the doctor also, she has stated that after the

marriage, this petitioner subjected her for sexual act. Hence, taking note of the peculiar facts and circumstances of the case and that too, after the marriage itself this petitioner subjected her for sexual act, it is a fit case to exercise the powers under Section 439 of Cr.P.C., subject to imposing certain conditions to protect and safeguard the interest of the prosecution. Hence, I pass the following:-

ORDER

The Petition is allowed. Consequently, the petitioner/accused shall be released on bail in Crime No.396/2021 of Rajagopal Nagar Police Station, Bengaluru City, for the offence punishable under Section 363, 366-A and 376 of IPC, Sections 5(L) and 6 of POCSO Act and Section 4 of Child Marriage Act, subject to the following conditions:

- (i) The petitioner shall execute personal bond for a sum of Rs.2,00,000/- (Rupees Two Lakhs only) with two sureties for the like-sum to the satisfaction of the jurisdictional Court.
- (ii) The petitioner shall not indulge in tampering the prosecution witnesses.

- (iii) The petitioner shall appear before the jurisdictional Court on all the future hearing dates, unless exempted by the Court for any genuine cause.
- (iv) The petitioner shall not leave the jurisdiction of the Trial Court without prior permission of the Court, till the case registered against him is disposed of.

**Sd/-  
JUDGE**

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