

**IN THE COURT OF II ADDITIONAL DISTRICT AND
SESSIONS JUDGE AT DAVANAGERE**

**PRESENT:- SRI. SREEPADA N., B.Com., L.L.M,
II ADDL. DISTRICT & SESSIONS JUDGE, DAVANAGERE**

DATED THIS THE 28th DAY OF MARCH, 2022,

SC. No.186/2021

COMPLAINANT:- State by Vidyanagara Police Station,
(By Public Prosecutor, Davanagere)

- Vs. -

ACCUSED : Kiran Kumar.K.S,
S/o. Late Shivappa, 24 years,
R/o.Shyagale village,
Davanagere taluk,

(By Sri. S.S.S., Advocate)

ORDER ON BAIL APPLICATION FILED U/S.439 Cr.P.C.

This is a bail application filed by the accused U/s.439 of Cr.P.C., for grant of bail and to release him on bail.

2) The brief averments of the bail application are that, the complainant police have registered the case in Crime No.98/2021 against the accused alleged to have committed the offences under Sec. 363, 365, 366, 384, 376 & 506 of IPC.

The accused is in Judicial Custody since 22.7.2021. The accused is innocent and has not committed any offences as alleged. The complainant police have completed the investigation and have filed Charge sheet. The accused is working at a private service and he is the only son to his parents. He is the sole earning member of his family and he has to look after his family members out of his earnings. The allegations made in the complaint are all false and incorrect. There is no prima facie case against the accused for any of the offences alleged in the case. The offences alleged are not punishable with death or imprisonment for life. He is the permanent resident of Davanagere taluk, and having deep roots in the society. He is ready to offer surety and to abide by any conditions that may be imposed by the court. He is also ready to appear before the court as and when directed. Hence, he prayed to allow the bail application.

3) To the contrary, Learned Public Prosecutor has filed objections contending inter-alia that, the petition is not maintainable and the grounds urged therein are all false and incorrect. The IO has completed the investigation and has

filed Charge sheet. There are prima facie materials as against the accused for the offences alleged in the Charge sheet. The offences alleged are heinous and against the interest of the society. At this stage if the accused is enlarged on bail, there is every chance for him to tamper or threaten the prosecution witnesses, and also he may abscond and commit similar offences. The accused knowingly that the victim is a married woman, he has harassed her by making phone calls and also sending her photos in Facebook and WhatsApp, and further the accused has kidnapped her and committed sexual assault on her repeatedly. Therefore, it is prayed to reject the bail application in the interest of justice.

4) Heard the arguments of learned counsel for the accused, and learned P.P for the prosecution.

5) The points arise for consideration of this Court are: -

1) Whether the accused has made out grounds for grant of bail U/Sec.439 of Cr.P.C.?

2) What Order ?

6) My findings to the above points are as follows : -

1. Point No.1 : In the Negative,

2. Point No.2 : As per final order,
for the following :-

R E A S O N S

7) **Point No.1** :- According to the Charge sheet the complainant police have registered a case against the accused in Cr.98/2021 for the offences punishable under Sec. 365, 366, 384, 363, 376, 506 IPC.

8) The Charge sheet allegations are that earlier the accused was working as driver in Lalitha International School of CW.1, and thereafter he was working in the house of CW.17, where he came in contact with the victim /CW.15. The accused was in touch with the victim and he used to talk with her over mobile phone continuously, and also pestered her. In the meanwhile the victim got married, and even then the accused continued his contact with her and forced her to bring money. Again on 16.7.2021 at about 7 PM the accused forced the victim to bring Rs. 2 Lakhs and gold from her house, and accordingly he received said amount and gold ornaments from the victim and then he has taken her in a Car to Belgaum, and then took her to a room in Sheetal Lodge and committed

forcible sexual intercourse on her against her will and without her consent.

9) During the course of investigation, the IO has conducted mahazar at the place of offence and has recorded the statement of the witnesses. Further the IO has arrested the accused on 22.7.2021, when he was kidnapping the victim in a train to Bombay from Belgaum, and then he was remanded to Judicial Custody. Further the IO has recorded the statement of the material witnesses and has conducted mahazar at various places of offence in the presence of panchas. Further the IO has sent the victim for medical examination and also has sent the victim before the Magistrate for recording her 164 statement. Further the IO has recovered some amount from the accused in the presence of panchas. Further the IO has seized the mobile phone used by the accused, and also collected the CDR of the mobile phone / Sim.

10) It is pertinent to note here that the victim in her 164 statement given before learned JMFC, has clearly stated that the accused was in touch with her before her marriage, and even after her marriage he used to talk with her and pestered her to love him and also he was blackmailing her showing her

naked photos and threatening that he would upload her obscene photos in the social media. Further she has stated that the accused has taken her in a Car to Belgaum, and kept her in a lodge and committed sexual intercourse on her forcibly, and thereafter he was taking her in a Train to Delhi. Further she has stated that the accused was in touch with some other girls and he was also blackmailing said girls to cooperate with him.

11) Learned counsel for the accused submitted that the allegations made in the charge sheet are all false, as the victim is aged about 22 years and she was in love with the accused, and has eloped with the accused on her own will and wish. Further he submitted that there are no prima facie materials against the accused for any of the offences alleged in the case. In support of his arguments he has produced some photos and also relied upon the following decisions ;-

- 1) 2021 AIR (Criminal), 546, Supreme Court of India,
- 2) 2017 Cr.R, 979, Karnataka High Court (Dharwad Bench),

3) 2013 Cr.R., 216, Karnataka High Court,
(Gulbarga Bench),

4) 2020 AIAR Criminal, 346, Supreme Court
of India,

12) I have gone through the aforesaid decisions. With great respect to Their Lordships in the aforesaid decisions, I hold that the principles laid down in the said decisions are not applicable to the case on hand. Because in the case on hand, the accused knowingly that the victim is a married woman and also having a baby, has pestered her by calling over mobile phone repeatedly and made her to come out of her husband's house, and further he has received huge amount of cash and also some gold ornaments from her, kidnapped her to Belgaum, kept her in a lodge and committed forcible sexual intercourse against her will and without her consent, and further he has taken her obscene photos and blackmailed her saying that he would upload her photos in the social media and took control over her. Further he was trying to take her to Delhi, and in the meanwhile the police have arrested the accused and brought back the victim. Moreover the victim in her 164 statement has clearly stated about the overt act of

the accused in detail. Even though learned counsel has produced some photos stating that the victim and accused were in love with each other and the allegations made against the accused are all false and incorrect. However, on seeing the photos it appears that they were taken when the victim/CW.15 was still minor, and the accused was in touch with the victim since many years, and he being a driver in the house of CW.17, has misused her innocence for his sexual lust.

13) Further, on perusal of the case papers affixed to the Charge sheet at this stage it cannot be said that there are no prima facie materials as against the accused for the offences alleged in the case. Further, in this case this court after framing of Charge, has to record evidence of the witnesses. At this stage, if the accused is released on bail, there is every chance for him to tamper or threaten the prosecution witnesses, or to abscond and to commit similar offences, cannot be ruled out, as rightly submitted by the learned PP. Therefore, I do not find any valid grounds to enlarge the accused on bail. Consequently, the bail application filed by

the accused deserves to be dismissed. Accordingly, I answer point No.1 in the Negative.

14) **Point No.2** :- In view of all these reasons, this Court proceed to pass the following :-

O R D E R

The application filed by the accused
U/s.439 of Cr.P.C., is hereby dismissed.

(Dictated to the Judgment Writer directly on the
computer, transcript corrected, signed and then pronounced
by me in the open court on this the 28th day of March, 2022)

**(SREEPADA N.)
II ADDL. DISTRICT & SESSIONS JUDGE,
DAVANAGERE**