

IN THE SPECIAL COURT FOR POCSO AND I-ADDL. SESSIONS

JUDGE, RAICHUR

PRESENT: Sri. Kudavakkaliger.M.G.,

B.Com., LL.M.,

I-Addl. Sessions Judge,

Raichur.

DATED THIS THE 13TH DAY OF OCT.-2022

Spl. Case (P) No.1158/2022

(Cr. No.146/2022 of Manvi PS)

Petitioners/

A-1 & 2:

1. *Prasad @ Ajay S/o Shrinivas, Age: 27 yrs, Occ: Canter lorry driver, R/o Kanakapur, Dist. Ramanagar, now residing at near Nityananda School, Jigani Tent, Bengaluru.*
2. *Maruthi S/o Rangadamayya, Age: 25 yrs, Occ: Canter lorry driver, R/o Sunnakallur Beedi, Koratagerre, Dist. Tumakuru, now residing at Somanahalli, Naganayakanahalli, Kanakapur road, Bengaluru.*

(By Sri. S.G.K., Adv.)

- Vs. -

Common respondent:

The State through SHO of Manvi PS, Dist. Raichur.

(By Sri.M.Manjunath, learned SPP)

COMMON ORDER

Since these petitions connected to one crime, both the petition have been taken up for common discussion and common order.

2. Respective petitioners/A-1 and 2 have filed separate petition U/Sec.439 of Cr.P.C for the grant of regular bail seeking direction to release them on bail in the above crime registered for the offences punishable U/Sec.3660A, 376 and 506 of IPC and U/Sec.4 & 6 of the Pocso Act, 2012. They are in JC since 30.6.2022.

3. In view of provisions of Sec.33(7) of the Pocso Act, 2012 and directions issued by Hon'ble Apex Court in the case of *Nipun Sexana and another -Vs- Union of India and others*¹ that special Courts shall ensure that the name and identity of the victim/prosecutrix should not be disclosed at any time during the course of investigation and/or trial. As such, this court being the Special Court,

¹ (2019) 2 SCC 703.

the name and identity of the alleged victim child is hidden while delivery of the order/judgment.

4. Respective petitioners pray to enlarge them on bail U/Sec.439 of Cr.P.C. on the common grounds that they are innocent, law abiding citizens and they are no way concerned to the alleged offences. Victim prosecutrix themselves voluntarily went along with them. Material on record do not disclose the ingredients of alleged offences against him. No purpose will be served by keeping them in custody. They are ready and willing to abide any of the conditions that may be imposed by the court and to furnish sufficient surety to the satisfaction of this court. He further contended that already IO has laid charge sheet against them and they are no more required for interrogation and hence prays to allow the bail petition.

5. Learned Spl. Public Prosecutor opposes bail petition through his common objection statement wherein inter-alia while reiterating the substance of allegation of prosecution would contend that materials collected by IO

prima facie show the involvement of this accused persons in commission of alleged offences against victims and the they will continue to indulge with same act and they have come up with these petitions without any sufficient reason and hence they are not entitled for bail. He prays to dismiss the bail petitions.

6. After service of notice, both victims appeared before the court and orally consented for release of the petitioners on bail.

7. Heard the arguments on both sides and perused the materials placed on record.

8. In the light of above grievance of the accused, following points arise for consideration of this court;

1. Whether the A-1 & 2/petitioners deserve regular bail?

2. What order?

9. This court upon appreciation and examination of materials and nature and consideration of prevailing law on the point of bail, give findings to the above points as follow;

Point No.1: In the affirmative.

Point No.2: As per final order on the following:

REASONS

10. Point No.1:- Crime in question came to be registered against the accused for investigation of above offences. After investigation of the case, the IO has laid charge sheet/final report against the petitioners/accused. This court is yet to frame charge and fix the trial. As per Sec.35(1) of the Pocso Act, the evidence of child victim has to be recorded within a period of thirty days from the date of taking cognizance and Sec.35(2) of the Act further mandates the Special Court to conclude the trial within a year from the date of taking its cognizance. It is the strong contention of learned SPP that if the accused are enlarged on bail, there is every possibility of they being fleeing from justice and tampering the prosecution witnesses and materials.

11. As per prosecution papers, the victim is aged 16 years and 13 years and CW-9 and 10 victims have mentioned their as age as 17 years and 14 years years

while giving their statements before the JMFC. The statements of victim were recorded as required U/Sec.164 of Cr.P.C. on 4.7.2022. Now, the IO has laid charge sheet against both accused and this court has taken cognizance of the offences against them.

12. The learned counsel for petitioners has submitted that IO has laid final report and investigation is completed and petitioners are not required for interrogation or otherwise, petitioners are young and if they kept in prison for long time, their future prospects will be spoiled.

13. Per contra, the learned SPP has contended that the victims are aged below 18 years and medical records discloses that they were subjected to sexual act and the doctor has opined in the report that "*hymen ruptured.*" Even if the victims have given the consent, the same does not amount to a consent at all since, they are a minor. He further contended that under Section 2(d) of POCSO Act, it is specific that below age of 18 is a minor and hence, the petitioners are not entitled for bail.

14. At present the best piece of evidence available is in the form of statement of child victim recorded U/Sec.164 of Cr.P.C. She has deposed on oath before the JMFC as required U/Sec.80 of the Evidence Act in consonance with the FIS contents, wherein the victim with unequivocal terms has testified before the JMFC, Raichur that they have voluntarily left with the petitioners. But they have not whispered anything about the sexual offences by the respective petitioner.

15. Thus, victim themselves voluntarily left with the petitioners. Though, consent or otherwise though does not matter in the case of Pocso, but the same is matter of trial. Petitioners are facing grave charges of commission of heinous offences of rape and penetrative sexual assault. Majority of offences are non-bailable and triable by this court. Though, the punishment prescribed for the above offences is severe in nature, same needs to be proved with beyond all reasonable doubt by the prosecution. It is premature to arrive at any conclusion. Protection of the

interest of child is paramount consideration under the Pocso Act.

16. Our Hon'ble High Court dated 5.7.2019 in Crl. Petition No.3972/2019 in case of *Rajesh Vs. The State of Karnataka*, wherein at para-5, it has been observed as under;

"5. It is noticed that the victim has also made a statement before the learned Magistrate under Section 164 Cr.P.C. A bare perusal of the said version would indicate that the victim does not support the case of the prosecution in so far as the alleged offence of 376 IPC is concerned. However, it would be premature to express any conclusive opinion nevertheless in the light of the stand taken in 164 statement, the question of continuance of petitioner in judicial custody may not be appropriate. The question of the weight of the 164 statement as well as proof of commission of offence is a matter of trial. Hence, at this stage, without expressing any conclusive finding, it could be stated that a case is

made-out for the petitioner being enlarged on bail. Where there is an element of voluntariness, the question as to mens rea for commission of offence is a matter to be proved during trial.”

(emphasis made by me)

17. In the instant case also, the tenor of statement made by the victims U/Sec.164 of Cr.P.C. wherein they specifically admitted that they voluntarily left with petitioners. Therefore, as observed in the above referred decision, element of voluntariness of victim or otherwise, has to be proved at the time of trial. The court should adopt a liberal approach and properly balance individual liberty and possibility of accused interdicting fair trial if released on bail, which is a social or public interest and social interest should outweigh personal interest. Hence, the above decision is aptly applicable to the case on hand.

18. The trial of case will take its own course. At present, the petitioner is able to produce facts contrary to rebut the presumption available U/Sec.29 of the Pocso Act. Moreover, our Hon’ble High Court of Karnataka,

Bengaluru through order dated 27.4.2018 in Crl. Petition No.9797/2017 on consideration of circumstances which similar to the facts and circumstances of the present case was pleased to grant bail in favour of accused of an offence under the Pocso Act on the ground that there are no prima facie materials forthcoming because there is love affair with the accused and victims.

19. In the light of above order of Hon'ble High Court granting bail in favour of accused in the above circumstances, it is proper to grant bail in favour of the petitioners also. It is not the claim of IO that personal interrogation of the petitioners is necessary in the instant case. They have no bad antecedents. They are not convicted by any court of law. Apprehension of PP can be dispelled by imposing conditions in the bail order. In view of the decision of Hon'ble Apex Court in case of *Dataram Singh Vs. State of Uttar Pradesh and another*², freedom of an individual cannot be curtailed for indefinite period, especially when their guilt has not been proved and

² 2018 (2) AICLR (SC) 204.

a person is believed to be innocent until found guilty. They are having permanent abode in the above described address and there is no chance of his escape. They undertake to abide by the conditions imposed by the court and offer sufficient surety to the satisfaction of this court. They are presumed to be innocent till alleged guilt is established as per law, their appearance can be ensured before any authority including this court and investigating agency. Having considered the above nature and gravity of offences alleged, non-existence of prima facie case for the offences under the Pocso Act against the petitioners and there is no strong circumstance to reject the prayer of petitioners, it is proper to admit them for grant of regular bail. Accordingly, this point is answered in affirmative.

20. Point No.2: - In view of my finding on the above point, this court proceed to pass the following;

ORDER

Both bail petitions of petitioners/A-1 & 2 filed U/Sec.439 of Cr.P.C. are hereby allowed. They are released on bail on the following:

CONDITIONS:

1. *Petitioners/A-1 & 2 shall execute their personal bonds for Rs.50,000 each with a surety for the like sum to the satisfaction of this court.*
2. *They shall furnish proof of their residential, occupational and communicational addresses including the E-mail and cell phone, if any.*
3. *They shall not tamper with the prosecution materials and witnesses in any manner.*
4. *They shall not indulge in any criminal act including the act of atrocity.*
5. *They shall be regular on all dates of hearing.*

(Dictated to J/Wr., directly on Computer, thereafter corrected and pronounced by me in the Open Court, on this 13th day of Oct.-2022)

(Kudavakkaliger.M.G),
I-Addl. Sessions Judge, Raichur.

*UCT/-...