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**IN THE COURT OF THE 2<sup>nd</sup> ADDL. DISTRICT & SESSIONS  
JUDGE, UTTARA KANNADA, KARWAR**

**DATED THIS THE 28<sup>th</sup> DAY OF NOVEMBER, 2023**

**SPECIAL CASE NO:75/2023**

**PRESENT:** **Sri MAYANNA. B. L.,**  
**B.A., LL.B.,**  
II Addl., District & Sessions Judge,  
Uttara Kannada, Karwar.

**ACCUSED NO.1:** Prasad Kumar Prakash Bhadangakara,  
Aged 21 years, Occ: Agriculturist,  
R/o Mainalli, Yellapur Road,  
Taluk : Mundgod, U.K.

(By. Sri. N.V.N., Advocate.)

Vs.

**RESPONDENTS:** 1. The State of Karnataka,  
Represented by Public Prosecutor,  
Uttara Kannada, Karwar.

2. The P.S.I.,  
Mundgod Police Station,  
Mundgod.  
Represented by Public Prosecutor,  
Uttara Kannada, Karwar.

3. Girija Paramesh Lamani,  
Age : 19 years, Occ: Coolie,  
R/o. Kandebasur, Rattihalli,  
Taluk : Haveri, District: Haveri.

## **ORDER**

The Accused No.1 has filed this bail Application under Section 439 of Cr.P.C., seeking regular bail for the offences punishable under Sections 313, 376(2)(n), 417, 504 of IPC and Section 3(1)(r), 3(1)(s), 3(1)(w), 3(2)(va) of the Schedule Caste and Schedule Tribes (Prevention of Atrocities) Amendment Act, 2015.

2. In the bail Application the Accused No.1 has contended that he is permanent resident of Mainalli of Mundgod Taluk, having good respect and strong roots in the society and so far the Accused No.1 not involved in any offence. The Complainant has filed false complaint against the Accused No.1 for the offences punishable under Section 354-A, 376 of IPC and Sections 3(1)(r), 3(1)(w)(i), 3(2)(va) of the Schedule Caste and Schedule Tribes (Prevention of Atrocities) Amendment Act, 2015. The Accused No.1 is innocent and he has not committed any offence against the Complainant. Now the Police have investigated the matter and have filed the chargesheet against the Accused No.1 for the offence punishable under Sections 313, 376(2)(n), 417, 504 of IPC and Sections 3(1)(r), 3(1)(s), 3(1)(w), 3(2)(va) of the Schedule Caste and Schedule Tribes (Prevention of Atrocities) Amendment Act, 2015.

3. The brief averments made in the Application that, the alleged incident is occurred on 29/08/2022 but the

Complaint was registered on 18/05/2023 and hence, there is a long gap of delay in filing the complaint and the delay is not satisfactorily explained by the Complainant. Hence, delay is fatal to the prosecution case and same is one of a ground for grant of bail. The Complainant fell in love with the Accused No.1 and it was one way love. After that she started to harass the Accused No.1. When the Accused No.1 refused to love the Complainant, she started to blackmailing and subsequently lodged this false complaint against the Accused No.1. Even if the allegations are true, the Complainant is consenting party and hence, the allegation under Section 376 of IPC is not coming within the purview of rape. If there is a promise to marry and had intercourse, cannot be considered as rape. Further, there is a contradiction between the complaint and statement given under Section 164 of Cr.P.C. The Complainant not at all came to the house of the Accused No.1 and no incident is occurred on 15/05/2023 as stated in the complaint. The Accused No.1 has not abused the Complainant by using the caste name. The Complainant is resident of Haveri which is more than 60 kms from the house of the Accused No.1. The Accused No.1 did not know the caste of the Complainant. Under these circumstances, abusing the Complainant or committing the offence as mentioned in the complaint did not arise. The Accused No.1 was arrested on 20/05/2023 and from the date of arrest he is in judicial custody. Now the Police have investigated the matter and have filed the chargesheet. Hence, the Accused

No.1 is not required to Police for any other purpose. Hence, it is prayed to allow the bail Application and grant the regular bail.

4. After issuance of notice, the Complainant/Victim has not appeared before the Court and also not filed any objections to the bail Application. However, the Public Prosecutor has filed objections to the bail Application contending that the bail Application filed by the Accused No.1 is contrary to the law and hence, same is liable to be dismissed. It is contended that while Complainant was undergoing training in DDUGKY Centre, Ranebennur regarding Marketing and Sales, the Accused No.1 even after knowing that the Complainant is of Schedule Caste Lamani Community, assuring the Complainant that he will marry her, on 29/08/2022 at 1.00 p.m., in the house of Smt. Jareena at Mainalli Village the Accused No.1 touched the chest and abdomen of the Complainant and also forcibly had sexual intercourse with her and on 13/03/2023 at 3.00 p.m., in the house of Sri. Sugandhan Ravi Naik at Mainalli Village, the Accused No.1 forcibly had sexual intercourse with the Complainant, and when the Complainant disclosed that she is pregnant, the Accused No.1 by assuring the Complainant that he will marry her, has given contraceptive pills to her to get her to have an abortion and on 18/05/2023 when the Complainant asked the Accused No.1 to marry her, he abused the Complainant that he will not marry her as she

belongs to low caste and told her to do whatever she wants and when the Complainant went to the house of Accused No.1 at Mainalli for marriage proposal, the Accused No.2 and 3 have abused the Complainant in filthy language by taking caste name as such, the FIR came to be registered against the Accused persons. From the perusal of the chargesheet there is a prima facie that the Accused No.1, knowingly the Complainant belongs to schedule caste, has committed the sexual assault on the Complainant. If the Accused No.1 is released on bail, there is chance of abscondence, he may commit similar offences, give threat to the witnesses and may delay the trial. On these grounds, the learned Public Prosecutor sought for rejection of the bail Application.

5. Heard the arguments of the learned counsel for the Accused No.1 and the learned Public Prosecutor.

6. The points that arise for the consideration of the Court are as under:

1) Whether the Accused No.1 is entitled for bail under section 439 of Cr.P.C.?

2) What Order?

7. The findings of the Court on the above points are as under:

Point No.1: In the Affirmative,

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

### **REASONS**

8. **Point No.1**:- I have perused the bail Application, Objections filed by the Public Prosecutor and Charge sheet. Based on the complaint filed by the Complainant, the Mundgod Police have registered the case against the Accused Persons in Crime No.61/2022 for the offences punishable under Sections 376, 354-A of IPC and Sections 3(1)(r), 3(1)(w)(i), 3(2)(va) of SC and ST (Prevention of Atrocities) Amendment Act 2015. The allegation made in the Complaint that when the Complainant was undergoing training in Ranebennur regarding Marketing and Sales, the Accused No.1, even after knowing that the Complainant belongs to Schedule Caste Lamani Community, started to love the Complainant and took the victim girl to his village. Thereafter, the Accused No.1 by assuring that he will marry her, on 29/08/2022 at 1.00 p.m., in the house of CW-8, the Accused No.1 touched her chest and abdomen and also forcibly had sexual intercourse with the Complainant. Again on 13/03/2023 at 3.00 p.m., the Accused No.1 forcibly had sexual intercourse with the Complainant in the house of CW-10 and when the Complainant informed the Accused No.1 that she is pregnant, the Accused No.1 assuring the Complainant that he will marry her, given contraceptive pills for abortion and on 18/05/2023 when the Complainant asked

the Accused No.1 to marry her, he abused the Complainant that he will not marry her as she belongs to low caste and told her to do whatever she wants and when the Complainant went to the house of Accused No.1 for marriage proposal, the Accused No.2 and 3 have abused the Complainant in filthy language by taking caste name. Hence, the Complainant filed the Complaint against the Accused Persons and accordingly FIR came to be registered. After the registration of the FIR, the Accused Persons were arrested on 20/05/2023 and they were remanded to judicial custody. During the crime stage the bail application filed by the Accused No.1 to 3 came to be rejected by this Court. Hence, the Accused No.1 to 3 have filed the Appeal before the Hon'ble High Court of Karnataka, Dharwad Bench in Criminal Appeal No.100291/2023. Upon hearing, the Hon'ble High Court has granted bail to the Accused No.2 and 3 and rejected bail in so far as Accused No.1 holding that FSL report is awaited, investigation is not yet completed and chargesheet has not been filed.

9. The Counsel for the Accused No.1 argued that the Complainant is consenting party and hence, promise to marry and committing rape will not attract Section 376 of IPC. Now the FSL report is received, the Police have investigated the matter and have filed the chargesheet. The Accused No.1 has not committed any offences as alleged in the Complaint. There are no ingredients for the alleged offences in the Complaint. Though the offence punishable

under Sections 376(n), 313 of IPC and Section 3(1)(r), 3(1)(s), 3(1)(w), 3(2)(va) of SC ST (Prevention of Atrocities) Amendment Act, 2015 are non-bailable in nature, the same are not punishable exclusively with death or life imprisonment. The Accused No.1 undertakes that he will not hamper the investigation and also ready to furnish adequate surety and abide by the conditions imposed by this Court. Therefore, it is prayed to allow the application and grant the regular bail.

10. The learned Public Prosecutor argued that the alleged offences are serious in nature. Pursuant to the registration of the FIR, the Accused Persons were arrested and they were remanded to judicial custody. Though the Hon'ble High Court has granted bail to the Accused No.2 and 3, there is a prima facie evidence against the Accused No.1 in the chargesheet. At this stage, if the Accused No.1 is released on bail, there is chance of abscondence from the jurisdiction of this Court and he may delay the trial and in such an event, it will hamper the prosecution witnesses as well as the trial and hence, the learned PP prayed to reject the bail Application.

11. Having heard the arguments of the counsel for Accused No.1 and learned P.P. and from the perusal of the chargesheet, the allegation against the Accused No.1 that by promising the Complainant that he will marry her, he had sexual intercourse with the Complainant and thereafter given

tablets for abortion and also abused the Complainant in filthy language by taking caste name, even after knowing the caste of the Complainant. Now the Police have investigated the matter and have filed the charge sheet. Further, the FSL report also received.

12. Pursuant to the bail application filed by the Accused No.1, this Court has issued notice to Complainant and same was served and she is absent and also she has not filed any objections to the bail application. The Accused No.1 was arrested on 20/05/2023 and he is in judicial custody from the date of his arrest. However, till today the Police have not sought for custody of the Accused No.1 for any interrogation. Further, the Complainant admits in her 164 Cr.P.C. statement that there was love affair between the Complainant and Accused No.1. The alleged sexual intercourse was taken place on 29/08/2022 and on 13/03/2023 and complaint was filed on 18/05/2023.

13. It is relevant to mention here that the offence punishable under Sections 376(n), 313 of IPC and Section 3(1)(r), 3(1)(s), 3(1)(w), 3(2)(va) of SC ST (Prevention of Atrocities) Amendment Act, 2015 are non-bailable. However, the said offences are not punishable exclusively with death or imprisonment for life. It is well settled principles of law that at the time of considering the bail application, the Court cannot go into merits of the case in deep. Whether the

Accused No.1 has committed the offences as alleged against him or not, has to be thrashed out during trial. At the time of considering the bail application, the Court has to consider whether the Accused No.1 is required for investigation and his presence could be secured at the time of trial.

14. The apprehension of the Prosecution that if the Accused No.1 is released on bail, he may delay the trial and also he will tamper the prosecution witnesses and also hamper the trial, can be met out by imposing stringent conditions. Further, since the Accused No.1 is permanent resident of Mainalli, Mundgod Taluk and in order to bind the Accused No.1, the suitable conditions can be imposed. Therefore, the objection raised by the Public Prosecutor that the Accused No.1 should not be released on bail is not sustainable. Under these circumstances, this Court of the opinion that the bail Application filed by the Accused No.1 under Section 439 of Cr.P.C., deserves to be allowed by imposing stringent conditions. Hence, this Court answers Point No.1 in the **Affirmative.**

15. **Point No.2:-** In view of the findings on Point No.1, this Court proceed to pass the following:

**:ORDER :**

The bail Application filed by the Accused No.1 under Section 439 of Cr.P.C., is hereby allowed subject to the following conditions:

1. The Accused No.1 shall be released on bail on his executing personal bond for Rs.1,00,000/- with two sureties for like sum.
2. The Accused No.1 shall not tamper with the prosecution evidence as well as witnesses and also shall co-operate with the investigation, if it is required.
3. The Accused No.1 shall appear before the Court regularly till the conclusion of the trial.
4. The Accused No.1 shall not repeat the similar offences.
5. The Accused No.1 shall not leave the jurisdiction of the Court without permission of the Court.

In case of any of these conditions are violated, the prosecution is at liberty to seek for cancellation of bail.

(Dictated to the stenographer directly on computer, typed by her, revised and corrected by me, signed and then pronounced in the open court on this the 28<sup>th</sup> day of November, 2023.)

**(MAYANNA. B.L.)**

2<sup>nd</sup> Addl. District & Sessions Judge,  
Uttara Kannada, Karwar.