

KAUP010018102021



IN THE COURT OF THE PRINCIPAL DISTRICT & SESSIONS JUDGE,
UDUPI

PRESENT:- Sri. J.N. Subramanya,
B.A., LL.M.

Principal Dist & Sessions Judge

Dated this 6th day of December, 2021

Sessions Case No.39/2021

Complainant State by PSI, Udupi Women Police Station
(By Public Prosecutor, Udupi)

Vs

Accused Aryan Chandwani,
Aged about 22 years,
S/o Ekthan Chandawani,
R/at Room No.601, D.Wing,
Aksharadham Building, Link Road,
Opp:Goragoan Sports Club,
Rajan Pada Malad West,
Mumbai-400 060.

(By Sri S.A., Advocate)

ORDER

Accused got filed application under section 439 of Cr.P.C. seeking bail on the following grounds:

- (a) Allegation and averment made in the prosecution papers are false and baseless. Documents placed by the complainant do not disclose/explain the role played by the accused. There are no materials to connect the accused to the alleged crime.
- (b) There are no reasonable grounds to believe that the accused has committed offence punishable with either death penalty or imprisonment for life.
- (c) Accused is completely innocent and ignorant about the alleged crime.
- (d) Complainant is known to the accused in the college who proposed her love many times with the accused, however, accused refused the same when the accused came to Manipal to collect convocation certificate and related documents,

complainant invited the accused for the lunch, after lunch complainant took the accused to her room which is not known to the accused, at that time, complainant herself forced the accused to stay for two years till completion of her education, the accused convinced her about his employment/salary/career, but complainant is not ready to listen, she told that her father is a income tax commissioner, had huge money, if the accused is not ready to accept proposal, she threatened him that she knows to stop him at Manipal, then created a false story by colluding with her friends namely Junaid Khan and Harsh Joshi.

- (e) Accused has been fixed in the case by the complainant only for ego, selfishness and possessiveness.
- (f) Police have filed charge sheet by completing investigation, therefore, detention of the accused

is not required. Accused is ready to appear before the court on each and every date of hearing.

(g) Since 17.10.2021 accused is in J.C.

(h) FIR is highly suspicious, unnatural beside being false.

(I) Accused is ready to abide the conditions that may be imposed by the court.

2) The learned public prosecutor received notice of the petition and filed objections along with report of the Investigating Officer asserting following points:-

- a) The petition is not maintainable either in law or on facts.
- b) The grounds urged in the petition are not entitle to be believed unless proved.
- c) On the basis of a complaint police have registered Crime No.42/2021 against the accused for the offence punishable under section 328, 342, 376 of I.P.C. investigated the case and filed the charge sheet.

- d) Offence alleged to have been committed by the accused is heinous, cognizable and non-bailable punishable with imprisonment for life.
- e) In case of granting of bail, there is likelihood of flee from the process of the Court, tampering the prosecution witnesses, and destruction of evidence.

3) On 3.01.2022 learned advocate appearing for the accused produced print of 93 down loaded instagram messages. I heard arguments submitted on behalf of both the parties and perused records. On the basis of materials on record, the following points would arise for my consideration:

1) Whether accused made out sufficient grounds to grant bail under Section 439 of Cr.P.C. as sought in the petition?

2) What order?

4) On the basis of materials on record, my finding on the above points are as under:-

1) In the affirmative

2) As per final order for the following reasons:-

REASONS

5). POINT No.1:- Copy of the FIR shows that on 17.10.2021 at 15.00 hours on the basis of the complaint of a 20 years aged female student, Udupi Women police have registered Crime No.42/2021 against the accused for the offence punishable under section 328, 342, 376 of I.P.C. and started investigation.

6) In the lengthy complaint, it is noted that on 17.10.2021 at about 14.30 hours at K.M.C. Hospital, Forensic Medicine Department in the presence of three medical Officers and other two, the complainant handed over the complaint to the police i.e. P.S.I., Women Police Station, Udupi alleging that on 16.10.2021 along with petitioner and others went to Bacchuss Inn Hotel, Manipal wherein had food and gimlet drinks then by sitting in an Auto-rickshaw along with petitioner proceeded towards hostel, petitioner took her to a room situated at Surabhi Apartment wherein locked her hands with handcuffs, did forcible physical relationship, restrained from leaving the

room etc., (in the complaint the complainant narrated the incident in several words)

7) During investigation on 17.10.2021 at 4.30 p.m. police have arrested accused, then on 18.10.2021 at 3.30 p.m. produced before the jurisdictional court. Since 3.30 p.m. of 18.10.2021 accused is in J.C.

8) After completion of the investigation, police have filed the charge sheet alleging that accused has committed offence punishable under section 328, 342, 376(1) of I.P.C. by making allegation in the following words:

"ಈ ಆರೋಪಣ ಪತ್ರದ ಅಂಕಣ ನಂಬ್ರ 12 ರಲ್ಲಿ ಹೆಸರು, ವಿಳಾಸ ನಮೂದಿಸಿದ ಆರೋಪಿ ಮತ್ತು ಸಾಕ್ಷಿ 1 ನೇಯವರು ಉಡುಪಿ ಜಿಲ್ಲೆಯ ಮಣಿಪಾಲದ ಮಣಿಪಾಲ ಇನ್‌ಸ್ಟಿಟ್ಯೂಟ್ ಆಫ್ ಟೆಕ್ನಾಲಜಿಯಲ್ಲಿ, ವಿದ್ಯಭ್ಯಾಸ ಮಾಡಿಕೊಂಡಿದ್ದು, ಸ್ನೇಹಿತರಾಗಿರುತ್ತಾರೆ. ಹೀಗಿರುತ್ತಾ, ದಿನಾಂಕ: 16/10/2021 ರಂದು ಆರೋಪಿ ಸಾಕ್ಷಿ 1 ನೇಯವರ 7827785473 ನಂಬ್ರಕ್ಕೆ 8779112018 ದಿಂದ ಕಾಲ್ ಹಾಗೂ ಮೆಸೇಜ್ ಮಾಡಿ ಸಾಕ್ಷಿ 1 ನೇಯವರಲ್ಲಿ ಹೊಟೇಲಿಗೆ ಊಟಕ್ಕೆ ಬರುವಂತೆ ಒತ್ತಾಯಿಸಿದ್ದು, ಆರೋಪಿಯ ಒತ್ತಾಯಕ್ಕೆ ಮಣಿದ ಸಾಕ್ಷಿ 1 ನೇಯವರು ಹೊಟೇಲಿಗೆ ಊಟಕ್ಕೆ ಬರುವುದಾಗಿ ಒಪ್ಪಿ ದಿನಾಂಕ: 16/10/2021 ರಂದು ಮಧ್ಯಾಹ್ನ 02:05 ಗಂಟೆ ಸಮಯಕ್ಕೆ ಸಾಕ್ಷಿ 1 ನೇಯವರು ಆರೋಪಿಯೊಂದಿಗೆ ಮಾನ್ಯ ನ್ಯಾಯಾಲಯದ ವ್ಯಾಪ್ತಿಯ ಉಡುಪಿ

ಜಿಲ್ಲೆಯ ಉಡುಪಿ ತಾಲೂಕಿನ ಮಣಿಪಾಲದ ಲಕ್ಷ್ಮೀಂದ್ರ ನಗರದಲ್ಲಿರುವ ಬ್ಯಾಕ್ಸ್ ಇನ್ ಹೊಟೆಲಿಗೆ ಬಂದಿದ್ದು, ಆರೋಪಿ ಸದರಿ ಹೊಟೆಲಿನಲ್ಲಿ, ಸಾಕ್ಷಿ 1 ನೇ ಯವರಿಗೆ ಗಿಮ್ಲಿಟ್ ಹೆಸರಿನ Cocktile ಮದ್ಯವನ್ನು (ಅಮಲು ಪಧಾರ್ಥ) ವನ್ನು ಒತ್ತಾಯ ಪಡಿಸಿ ಕುಡಿಸಿರುತ್ತಾನೆ. ಅಮಲು ಪಧಾರ್ಥವನ್ನು ಕುಡಿದ ಪರಿಣಾಮ ಸಾಕ್ಷಿ 1 ನೇಯವರು ಅಮಲೇರಿದಾಗ ಅನಾರೋಗ್ಯಕ್ಕೆ ತುತ್ತಾಗಿದ್ದು, ಆರೋಪಿ ಸಾಕ್ಷಿ 1 ನೇ ಯವರನ್ನು ಹಾಸ್ಪಿಲಿಗೆ ಬಿಡುವುದಾಗಿ ಹೇಳಿ ಸಾಕ್ಷಿದಾರರಾದ ಸೈಮಂಡ್ ಡಿಸೋಜಾ ಇವರ KA20 AA 5849 ಆಟೋ ರಿಕ್ಷಾದಲ್ಲಿ ಸಾಕ್ಷಿ 1 ನೇಯವರನ್ನು ಮಾನ ನ್ಯಾಯಾಲಯದ ವ್ಯಾಪ್ತಿಯ ಉಡುಪಿ ಜಿಲ್ಲೆಯ ಉಡುಪಿ ತಾಲೂಕಿನ ಶಿವಳ್ಳಿ ಗ್ರಾಮದ ವಿದ್ಯಾರತ್ನ ನಗರದಲ್ಲಿರುವ ಸುರಭಿ ಪ್ರೌಡ್ ಬಿಲ್ಡಿಂಗ್ ನಲ್ಲಿ ಆರೋಪಿ ವಾಸ್ತವ ಇರುವ ರೂಂ ನಂಬ್ರ 102 ಕೆ 14 :57 ಗಂಟೆ ಸಮಯಕ್ಕೆ ಕರೆದುಕೊಂಡು ಹೋಗಿ ಆಕೆಯನ್ನು ರೂಮಿನಲ್ಲಿ, ಕೂಡಿ ಹಾಕಿ 16:00 ಗಂಟೆ ಸುಮಾರಿಗೆ ಬಲತ್ಕಾರವಾಗಿ ದೈಹಿಕ ಸಂಪರ್ಕ ನಡೆಸಲು ಮುಂದಾದಾಗ ಸಾಕ್ಷಿ 1 ನೇ ಯವರು ಪ್ರತಿಭಟಿಸಿದ್ದು, ಆಗ ಆರೋಪಿ ಸ್ವತ್ತು ಪಟ್ಟಿ ಸಂಖ್ಯೆ: 45/2021 ರ ಕ್ರಮ ಸಂಖ್ಯೆ: 4 ರಲ್ಲಿ ನಮೂದಿಸಿದ ಹ್ಯಾಂಡ್ ಕಫ್ ಅನ್ನು ಸಾಕ್ಷಿ 1 ನೇಯವರ ಎರಡು ಕೈಗಳಿಗೆ ಸೇರಿಸಿ ಹಾಕಿ ಸಾಕ್ಷಿ 1 ನೇ ಯವರೊಂದಿಗೆ ಬಲತ್ಕಾರವಾಗಿ ಲೈಂಗಿಕ ಸಂಪರ್ಕ (ಲೈಂಗಿಕ ಹಲ್ಲೆ) ನಡೆಸಿರುವುದು ತನಿಖೆಯಿಂದ ದೃಢಪಟ್ಟಿರುತ್ತದೆ,

- 9) In the argument learned advocate appearing for the accused by analysing print of 93 down loaded instagram message/photos produced along with memo dated:3.01.2022

submitted that accused and the complainant are known to each other had several type of relationship.

10) During argument learned Public Prosecutor by appreciating print out of downloaded instagram messages produced by the learned advocate appearing for the accused submitted that the complainant and the accused being known person had several type of relationship and the complainant has not furnished her mobile to the investigating officer for verification/examination from RFSL expert.

11) Above referred materials shows that the complainant and the accused being highly educated persons and students of Manipal Institute of Technology had several type of relationship including love affair. Police have already filed charge sheet.

12) Hence, I have inferred that it is fit and proper to release the accused on bail by imposing suitable conditions to protect the interest of investigating agency and the complainant.

13) Hence, I came to the conclusion that the accused has made out sufficient grounds to grant bail under section 439 of Cr.P.C. Hence, I pass the following:

ORDER

The petition filed U/Section.439 of Cr.P.C. on behalf of the accused is hereby allowed.

Accused is entitle to be released on bail by executing personal bond Rs.2,00,000/- (Rupees two lakhs only) with two sureties for the likesum undertaking to abide the following conditions:

(1) Accused shall appear before the SHO, Women Police Station, Udupi either physically or virtual on every 3rd Sunday between 10.00 am. And 2.00 p.m. for a period of 2 years or till conclusion of case whichever is earlier.

(2) Accused shall appear before the court of law (this court) on each and every date of hearing by either virtually or physically.

(3) Accused shall appear before I.O. (physically) whenever called for.

(4) Accused shall not cause any trouble to the complainant.

(5) Accused shall neither tamper the prosecution witnesses nor make effort to destroy the evidence.

(6) Accused shall surrender his passport to the court. In case he is not having passport either himself or any person of his family shall file an affidavit to that effect.

Call 12.01.2022

(Dictated to the Judgment Writer, who transcribed and computerized, then , print taken, corrected, pronounced in the open court on 6th day of January, 2022)

(J.N. Subramanya)
Principal Dist & Sessions Judge
Udupi.