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**IN THE COURT OF ADDITIONAL DISTRICT AND SESSIONS
JUDGE, UDUPI (SITTING AT KUNDAPURA)**

DATED THIS THE 21ST DAY OF AUGUST, 2023

PRESENT:

**Sri Abdul Rahim Hussain Shaikh,
B.Sc., B.Ed., LL.B.(Spl.)
Addl. District and Sessions Judge,
Udupi (sitting at Kundapura)**

Spl.Case.No.508/2023

Accused/ petitioner	Roni D Souza @ Ronald D Souza, 42 years, S/o Ruzariyo D Souza, R/o 2-14, Satwadi, Kandavara Village, Kundapura Taluk, Udupi District. (By Sri/Smt: M.D.Shetty, Advocate)
	AND
Respondents	1. State by Kundapura Rural police station. (By the learned Public Prosecutor) 2. Smt. Lakshmi, 28 years, D/o Babu, R/o Korgu Nilaya, Janatha Colony, Moodlakatte, Kandavara Village, Kundapura Taluk, Udupi District.

ORDER ON BAIL PETITION FILED U/S.439
OF Cr.P.C.,

The accused has filed this bail petition U/s.439 of Cr.P.C., to release him on bail consequent upon his remand to judicial custody in the case registered against him by the Kundapura Rural police on the complaint of Smt. Lakshmi (hereinafter referred to as complainant) for the offences punishable U/s.417, 376, 504, 506, 427 of IPC and Sections 3(1)(r)(s), 3(1)(w)(i), 3(2) (va), 3(2)(v) of The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015 in their Crime No.37/2023 in the interest of justice. After the investigation, the charge sheet has been filed for the offences under Sections 417, 376(2)(N), 504, 506 of IPC and Sections 3(1)(r)(s)(w-i), 3(2)(v-a), 3(2)(V) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989.

2. The accused has been arrested and produced before Magistrate on 02-07-2023 and was remanded to judicial custody.

3. The petitioner claims innocence and submit that he has been falsely implicated in the said case even though he has not committed any offences as alleged in the complaint. The petitioner contended that charge sheet is already filed and further detention of the accused would cause hardship to his family. He is ready to abide by any conditions that would be

imposed by this Court. Therefore, the petitioner has prayed for allowing this petition.

4. Learned Public Prosecutor has filed objection to this bail petition in detail along with report of I.O., by submitting that this petition is not maintainable in law or on facts and for the reasons stated in the objection. Further contended that if the accused is granted bail, then the accused will again commit similar type of offences and would not be available for the trial. There is no justifiable grounds for grant of bail to the accused since the accused has committed the cognizable and non-bailable offences. The accused has committed the offences against member of an scheduled caste and scheduled tribes. Accordingly, prayed to dismiss the petition.

5. Heard the arguments on both sides and perused the materials on record.

6. The following points that arises for my consideration are :

1. Whether the accused has made out any grounds for his release on bail in Cr.No. 37/2023 of Kundapura Rural police station at this stage as sought for?

2. What order?

7. My answer to the 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:On perusal of the documents, placed before the Court, it reveals that based on the complaint that has been lodged by the complainant- Smt Lakshmi, the Kundapura Rural police have registered case against the accused in Crime No.37/2023 for the offences punishable U/s. 417, 376, 504, 506, 427 of IPC and Sections 3(1)(r)(s), 3(1)(w)(i), 3(2)(va), 3(2)(v) of The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015. After completion of investigation, the respondent police have submitted charge sheet against the petitioner/accused before the jurisdictional Court for the offences under Sections 417, 376(2)(N), 504, 506 of IPC and Sections 3(1)(r)(s)(w-i), 3(2)(v-a), 3(2)(V) of SC/ST ACT 1989.

9. It is the case of the prosecution that the complainant and accused/petitioner knew each other since few years and the accused inspite of knowledge that the complainant belongs to schedule caste and tribe residing alone with the children, promised to marry her and by misrepresentation had intercourse with her since from last 1½ years. Further it is the case of the complainant that when the complainant on 25-05-2023 requested the accused to marry, he denied, abused in filthy languages and threatened to kill her.

10. The petitioner contended that he has been falsely implicated in the said case even though he has not committed any offences as alleged in the complaint. It is contended by the

accused that there is inordinate delay in filing the complaint and invoking of Section 376 is not attracted. Further it is contended that there is no prima facie materials to prove that the accused has committed alleged offences and only ill-will and with an intention to harass the petitioner, a false case is filed against the petitioner. The petitioner contended that charge sheet is already filed and further detention of the accused would cause hardship to his family. He is ready to abide by any conditions that would be imposed by this Court. Per contra, the learned Public Prosecution has argued that this petition is not maintainable in law or on facts and for the reasons stated in the objection. It is also contended in the objection filed by the prosecution that inspite of knowledge that the complainant belongs to schedule caste, on a pretext of false promise of marriage, has subjected her to criminal assault on several occasions against her consent and on 25-05-2023 at 1.00 p.m., when she enquired with the accused regarding his illicit act, the accused abused her in filthy language, defamed her caste, threatened her for life and damaged her mobile phone. Further it is contended that if he is released on bail, he would cause harm to the complainant and by absconding would not be available for trial.

11. It is pertinent to note that even for the sake of argument, it is accepted that there is prima facie case against the accused petitioner for the offences punishable U/s. 417, 376(2)(N), 504, 506 of IPC and Sections 3(1)(r)(s)(w-i), 3(2)(v-a), 3(2)(V) of SC/ST (POA) Act 1989, the said offences though non-bailable,

but are not punishable with death or imprisonment for life, but it is exclusively triable by this Court.

12. I have carefully considered the submissions made by the Learned counsel for the petitioner/accused and the Learned Public Prosecutor. It is found that the accused is already in custody from 02-07-2023 and chargesheet is already filed, for which, the detention of the accused is not required and if the stringent conditions are imposed, the purpose of prosecution objection would be met with.

13. However, it is well settled principle of law that the granting of bail is discretionary power of the Court and every case should be considered on the basis of facts of each case. At this juncture, I would like to go through the dictum of law laid down by the **Hon'ble Supreme Court in (2012) 1 Supreme Court cases 40 (Sanjay Chandra Vs. CBI)-**, where in the Hon'ble Supreme Court held that:

"wherein the Hon'ble Court opined that "every person detained or arrested is entitled to speedy trial-Trial may take considerable time and accused will have to remain in jail longer than the period of detention – Therefore, it is not in the interest of justice that the accused should be in jail for an indefinite period – Court will have to consider while granting bail about the seriousness of charges and severity of punishment – Merely the offence alleged against the accused is serious one itself should not deter the Court from enlarging on bail

when there is no serious contention from the prosecution that if the accused is released on bail, they would interfere with the trial or tamper with the witness.”

And also I would like reproduce the the ruling reported in-

(2011) 1 SCC 784: (2011) 1 SCC (Cri) 409 in state of Kerala V. Raneef has stated (SCC P.789 para 15).

"In deciding bail applications an important factor which should certainly be taken into consideration by the Court is the delay in concluding the trial. Often this takes several years, and if the accused is denied bail but is ultimately acquitted, who will restore so many years of his life spent in custody? Is Article 21 of the Constitution, which is the most basic of all the fundamental rights in our Constitution, not violated in such a case? Of course this is not the only factor, but it is certainly one of the important factors in deciding whether to grant bail. In the present case the respondent has already spent 66 days in custody(as stated in para two of his counter-affidavit), and we see no reason why he should be denied bail. A doctor incarcerated for a long period may end up like Dr. Manette in Charles dickens's novel A tale of two cities, who

forgot his profession and even his name in the Bastille."

14. By applying the above dictum of law and guidelines laid by the Hon'ble Supreme Court of India, the present fact of the case has to be analyzed and considered. I have perused the averments made in the application, order sheet, complaint, F.I.R., charge sheet and other materials produced on record. Though at this stage, this Court cannot conclude that the accused/petitioner is innocent of the offences alleged against him until full-fledged trial, but considering the fact that the charge sheet is filed and the accused is in custody since 02-07-2023, by imposing stringent conditions, if the accused is released, the purpose of prosecution objection would be met with. At this juncture, there are no reasons to reject the bail petition as it is the settled principle of law that bail is not to be withheld as a punishment, but that the requirements as to bail are merely to secure the attendance of the accused at trial. Therefore, relying on the above decision of the Hon'ble Supreme Court, I am of the opinion that generally it is the rule to allow bail rather than to refuse bail. The dictum of law is clear that though the offences are serious one does not afford a sufficient ground to refuse bail. Since the respondent police have laid charge sheet before the concerned Court after completion of investigation, there are absolutely no question of retaining petitioner/accused in custody arises. As already stated, the petitioner/accused is in judicial custody for a period of more than 1 month. Considering the age of the

petitioner/accused, the question of retaining him in judicial custody without any reason does not arise from the facts and circumstances of this case. The petitioner/accused has undertaken to obey any conditions which may be imposed on him by this Court and hence, the apprehension of the prosecution can be suitably addressed by imposing proper and necessary conditions upon him. Therefore, the petitioner/accused has made out sufficient grounds for his release on bail at this stage as prayed for. Accordingly, I answer point No.1 in the **affirmative**.

15. **Point No.2:** In view of answer of this Court on point No.1, this court pass the following:-

ORDER

The bail petition filed by the accused/petitioner U/s.439 of Cr.P.C. is hereby allowed.

Consequently the accused/petitioner is hereby ordered to be released on bail on his executing personal bond for Rs.1,00,000/- with two sureties for the like sum to the satisfaction of the jurisdictional Court in Crime No.37/2023 of Kundapura Rural Police Station, subject to the following conditions:-

1.The accused/petitioner shall appear before the Court as and when directed without fail.

2.He shall not directly or indirectly holdout threats to the prosecution witnesses or lure them in any manner.

3.He shall not tamper with prosecution witnesses in any manner.

4.He shall not commit similar offences or any offence during the pendency of the case.

5.He shall not leave the jurisdiction of the Court without prior permission of the Court.

6.He shall not change his place of residence outside the jurisdiction of concerned Court without prior intimation to that Court, and

7.He shall furnish his residential ID address proof.

(Typed to my dictation by the Stenographer directly on Computer, corrected by me and then pronounced in open Court on this the **21st day of August, 2023**)

(Abdul Rahim Hussain Shaikh)
Addl. District and Sessions Judge,
Udupi, (sitting at Kundapura)