

KAMD010041512022



**IN THE COURT OF THE IV ADDL. DISTRICT &
SESSIONS JUDGE, MANDYA**

Dated this the 4th day of November, 2022

PRESENT

Smt.Nirmala.K, B.A., M.L.,
IV Addl. District & Sessions Judge,
Mandya.

Crl.Misc.No.1011/2022

- Petitioners :
1. Shwetha W/o Puttaswamy, Aged about 33 years, (**Accused No.2**)
 2. Rathnamma @ Nagarathnamma W/o Late Krishnegowda, Aged about 60 years, (**Accused No.3**)
 3. Venkatesha S/o Puttaswamy, Aged about 19 years, (**Accused No.9**)

All are R/o Ballekere Village,
Bukanakere Hobli, K.R.Pet Taluk,
Mandya District.

(Rep. by Sri.M.R.Prashanthkumar-
Adv.)

-Vs-

Respondent : State by K.R.Pet Rural Police.
(Rep. by learned Public Prosecutor)

ORDERS ON PETITION FILED U/Sec.438 OF Cr.P.C.

This petition is filed under Section 438 of Cr.P.C. praying to grant anticipatory bail in Cr.No.198/2022 registered by

respondent-police for the offences punishable under Sections 366, 376 r/w 34 of IPC against petitioners/**accused Nos.2, 3 and 9.**

2. BRIEF FACTS:

It is the case of complainant that, she is the resident of Koodalakuppe Village, Bukanakere Hobli, K.R.Pet Taluk, Mandya District and she is studying 1st year B.Sc in the college of K.R.Pet town, so she travels daily from her Village to K.R.Pet. Since one year, accused No.1 was telling that he loves her and he was at her back, threatening her. That on 07.09.2022 when she was going to Mallenahalli Village to her grandmother's house at 11.00 a.m., all the accused persons came in car and bike stopped her near Mallenahalli Gate, forcibly abducted her and took her to Hariyaladamma temple and accused No.1 tied thali there. Later on, he took her to Ballekere Praveen's Farm house, stayed along with her one week and had physical relationship with her. Later, on 14.09.2022 he left her and ran away. She came back to her Village, informed about the incident to her parents and to the villagers and lodged complaint before the police.

3. GROUNDS FOR ANTICIPATORY BAIL:

The petitioners submit that, accused No.1 has not yet attained 21 years of age, so he is not eligible to marry. His parents thought not to get him married at this young age itself. Petitioners never abducted complainant with the support of other accused persons and there is no forced marriage. There is no physical contact between accused No.1 and the complainant. No such incident has taken place and hence the question of involvement of the 1st petitioner does not arise. 1st petitioner's

husband i.e., father of accused No.1 who is suffering from liver damage and chest pain and bed-ridden from past 1½ months. 1St petitioner is looking after her husband. 2Nd petitioner is the grandmother of accused No.1 and she is aged about 60 years. She is suffering from age old ailments, so it cannot be said that these petitioners would have abducted the complainant. Therefore, the involvement of these petitioners in the commission of offence is very doubtful. Till today, respondent-police have not seized the car and bike which are allegedly involved in the incident. In video recording done by the friend of complainant shows that out of her own Will, she has gone with accused No.1, only because complainant wanted to get marry with accused No.1. A false complaint came to be filed.

4. OBJECTIONS:

On the other hand, in pursuance of court notice, learned Public Prosecutor entered appearance and filed her objections statement reiterating the complaint averments and further submit that, the offences alleged against the petitioners are offences against women. The investigation is still under progress. Investigating Officer has to collect the FSL report and other documents. Since accused belongs to Vokkaliga community and complainant belongs to Kuruba community. If they are released on bail, again they will cause trouble to complainant and her family members. The materials available on record clearly indicate that, petitioners are involved in the commission of offence. If they are released on bail, they would tamper the prosecution witnesses. Therefore, relying upon the decisions reported in 2001(1) crimes page 30, (2011) 3 S.C.C. (Cri.) 765, SC (cri.) AP No.2271/2010 and 2003 (3) Crimes page 466

Gujarath, she prays to reject the bail application.

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

6. From the above facts following **points arise for my consideration:**

1. Whether the petitioners/accused No.2, 3 and 9 have made out sufficient grounds for grant of Anticipatory bail under Section 438 of Cr.P.C. as prayed for in the petition?

2. What order?

7. My **findings** on the above points are as follows:

Point No.1 : In the **Affirmative**.

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

REASONS

8. **Point No.1:** The allegations of complainant is that, when she was going to her college, accused No.1 used to follow her and threatened her saying that he loves her. On 07.09.2022, when she was going to her grandmother's place, all the accused came in car and bike and abducted her. It is seen that nowhere complainant has stated that, she does not like accused No.1. If really there was any threat on the part of accused No.1, surely she would have disclosed it to her family members. Learned Public Prosecutor submit that, complainant is staying alone in the Village. Her brother is working as a server in Bengaluru and grandmother is residing in another Village. Taking advantage of this, accused was following her and threatening her. But nowhere in her complaint, she has disclosed about it. But in her

164 of Cr.P.C. statement before Magistrate, she has stated that she does not have parents and her grandmother is staying in Mallenahalli. She is staying alone. But however, she has stated in her statement that, after accused No.1 stayed along with her in the Farm house for one week, he quarreled with his mother and left her there. What was the necessity for the accused No.1 to quarrel with his mother is a doubtful circumstance. It is also noticed that she has stated in her complaint that after accused left her alone in the Farm house and went away, she was searching for him. What was the necessity for complainant to search the accused?. If the accused had physical contact with her forcibly, having come to know that accused had fled away leaving her alone any ordinary prudent person would flee away from the place immediately and the person will not keep on searching for the accused. This conduct of complainant shows that she stayed in the Farm house voluntarily with the accused.

9. Learned counsel for accused submit that, since accused No.1 had not reached 21 years, he and his parents had told that they would not get him married. But there was force from the side of complainant to marry immediately. She threatened that, if he did not marry her, then she will be put end to her life. Therefore, petitioners along with other accused persons performed simple marriage and came back. Therefore, there was no forcible abduction from the petitioners. In order to fulfill unlawful demand, she has filed false complaint against the petitioners. It is seen from the prosecution papers and at this stage that there was no resistance from the complainant while she was abducted or while she stayed at the Farm house for about one week. Moreover, what made her to state that accused

No.1 quarreled with his mother. It is quite natural that, parents will not involve in the such forcible and illegal abduction joining hands with accused No.1. Therefore, I am of the opinion that submission made by learned counsel for petitioners seems to be more probable. Moreover, petitioner No.2 is aged about 60 years and she coming in car for the purposes of abduction of complainant is far from truth.

10. It is seen that offence under Section 366 of IPC is punishable with imprisonment upto 10 years, similarly section 376 of IPC is punishable with imprisonment which extends to life imprisonment, but the question as to whether accused No.1 had physical relationship with the complainant against her Will is to be decided at that time of the trial. As far as the present petitioners are concerned, section 376 of IPC does not attract. Moreover, accused No.1 is already in judicial custody. Further it is seen that there are no criminal antecedents against the petitioners. It is not the case of prosecution that, they are habitual offenders. They are permanent residents of given address and hence the question of fleeing away from the jurisdiction of the court does not arise at all. Considering the facts and circumstances of the case, I am of the opinion that custodial interrogation of these petitioners is not very much required. However, the apprehension of prosecution can be met with by imposing reasonable restrictions. Further more, the custodial detention of these petitioners may not be required to meet the objections stated by Investigating Officer and learned Public Prosecutor. Therefore, taking into consideration the entire facts and circumstances of the case, the materials available on record, I am of the opinion that in order to have an effective

balance between the personal liberty of the petitioners and the society interest, I am of the opinion that considering the principle that **bail is a rule and jail is an exception**, petitioners are entitled for pre-arrest bail, as no strong prima-facie case exists against them. Accordingly, I answer above point No.1 in the **Affirmative**.

11. **Point No.2:-** For the foregoing reasons, I proceed to pass the following :-

ORDER

Petition filed by petitioners under Section 438 of Cr.P.C. is hereby allowed.

Consequently, in the event of arrest of petitioners/accused No.2, 3 and 9 in Cr.No. 198/2022 of K.R.Pet Rural Police Station, they are ordered to be released on bail, on their executing personal bond for a sum of Rs.1,00,000/- each and with two sureties for likesum to the satisfaction of the Investigating Officer/Police Officer on the following conditions:

1. The petitioners shall appear before the Investigating Officer within 15 days from the date of this order and in that event Investigation Officer to take bond and to release them.

2. They shall appear before Investigating Officer as and when called upon and to extend fullest co-operation in the investigation.

3. They shall not give threat to the prosecution witnesses in any manner.

4. They shall not indulge in similar offences in any manner.

(Dictated to the Stenographer, transcribed and computerized by her and transcript corrected by me and then pronounced in open Court on this the 4th day of November, 2022.)

(Nirmala.K.)

IV Addl. District & Sessions Judge,
Mandya.

Orders pronounced in Open Court
(Vide my separate order)

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IV ASJ,
Mandya.