

**Before the Child Friendly Court,
Bengaluru Urban District.**

Dated this the, **16th day of December 2017**

Present: SMT.YADAV VANAMALA ANANDRAO., B.Com. LL.B.[Spl.]
LIV ADDL., CITY CIVIL & SESSIONS JUDGE, [CCH:55]
Sitting in the Child Friendly Court,
Bengaluru Urban District

SP1 CC No.417/2017

COMPLAINANT: State by Chandra Layout Police,
Bangalore City.
(By Learned Public Prosecutor)

-Vs -

ACCUSED: Abdul Ghani,
Son of Balamiran,
Aged 54 Years,
Residing at No.08/07, Janata Colony,
Nayandanahalli, Mysore Road,
Bangalore-39.

[By Advocate Sri. S.Murali]

ORDER

This application is filed by the accused under Sec.439 of Cr.P.C seeking grant of bail in his favour. The alleged offences are punishable under Secs. 366 and 354 of IPC and under Sec.8 of POCSO Act, 2012. The specific grounds are stated therein, praying for allowing of this application.

2. To this application, the prosecution through the learned Public Prosecutor has raised objections that, Though Investigation is completed and charge-sheet has been filed , but, the evidence of the material witnesses have not yet been commenced. Hence, prayed for dismissal of the bail application.

3. Heard the arguments. Perused the petition and Objections thereto.

4. Following Points are formulated for consideration of this court:

(1) Whether accused has made out grounds for grant of regular bail in his favour under Sec.439 of Cr.P.C?

(2) What Order?

5. My findings on the above Points are as under:

(1) **Point No.1**: In the **Negative**

(2) **Point No.2**: As per final Order,
for the following:

REASONS

6. **POINT NO.1:** The specific case of the prosecution is that, on 25.6.2017 at about 2 P.M., the victim girl had been to the neighbour's house, in which the accused was residing, but, she [victim girl] did not returned back till 10 minutes and thereafter she came to her house and the complainant enquired about the delay and the victim girl narrated that the accused has committed sexual

assault on her by hugging her and touched her body parts and removed the pant worn by her [victim girl] and by seeing her private part, he got excited and rubbed his own sexual organ for sexual pleasure (masturbated) and semen stains were found on the clothes of the victim girl and thereby the accused has committed sexual assault on the victim girl who was aged 6 years. Hence complaint was lodged. After collecting the materials, the Investigating Officer has filed charge-sheet against the accused. Now the accused before this court has filed this bail application seeking grant of bail in his favour.

7. The learned counsel for the accused by referring the contents of the bail application has specifically argued that, the accused has never committed the alleged offences; there is no eyewitnesses to the alleged incident; the accused is innocent of the alleged offences; he never committed or involved in the alleged crime either directly or indirectly; he is a permanent resident of the address given above; he hails from a respectable family having no bad antecedents; he is ready to furnish surety and he undertakes to abide by the terms and conditions that may be imposed by this Hon'ble court.

8. On the contrary, learned Public Prosecutor referring to the objections has specifically argued that, the accused has committed the offence on the person of the victim girl aged about 6 years, which is heinous in nature. So, presumption is available in favour of the prosecution under Sec.29 of POCSO Act, 2012. Though investigation is completed and charge-sheet has been filed, the evidence of the victim girl and other material witnesses are yet to be commenced. If

the accused is enlarged on bail, he may commit similar type of offences, he may tamper with the prosecution witnesses and he may abscond, which gives bad signal to the society. Hence, the accused is not entitled for grant of bail.

9. On perusal of the charge-sheet, Complaint, FIR, Statement of the victim girl under Sec.164 of Cr.P.C before the Learned Magistrate, medical reports of the victim girl and the accused, voluntary statement of the accused etc., it is revealed that the victim girl was aged about 6 years and the Investigating Officer has collected the materials and charge-sheet is filed in this case. The statement of the victim girl is recorded under Sec.164 of Cr.P.C by Learned Magistrate reveals that, one person next to her home he drank tea, he removed her inner wear and did something to her. Prima-facie it revealed the said event regarding committing of sexual assault by the accused on the victim girl. Hence, statutory presumption under Sec.29 of POCSO Act, 2012 is available in favour of the victim girl as well as the prosecution.

10. Now, I would like to state about the object and essence of POCSO Act, 2012 which reads as under:

“It is necessary for the proper development of the child that his or her rights to privacy and confidentiality be protected and respected by every person by all means and through all stages of a judicial process involving the child”

Further, it is the object and essence of POCSO Act, 2012 that:

“It is imperative that the law operates in manner that the best interest and well being of the child are regarded as being of paramount importance at every stage, to ensure the healthy, physical, emotional, intellectual and social development of a child”.

The defence of the accused that he has not committed the alleged offence and he has been falsely implicated in this case etc., are matters of full-fledged trial. But, at this stage, the materials on record are supporting the case of the prosecution case to go for trial. The alleged offences are heinous in nature. The evidence of the victim girl and the complainant have not been commenced, as recently charge-sheet has been filed. At this stage, the accused has not made out grounds for grant of bail in his favour. Therefore, the apprehension of the prosecution that, if accused is released on bail, he may tamper the prosecution witnesses and threaten them not to give evidence against him and he may misuse the liberty and he may flee from justice and it gives bad signal to the society, is reasonable apprehension. Hence, the prosecution has made out grounds to reject the bail to the accused. Accordingly, Point No.1 is answered in the “**Negative**”.

11. **POINT NO.2:-** In the result, I proceed to pass the following:

ORDER

The bail application filed by accused under Sec.439 of Cr.P.C is rejected.

[Dictated to the Stenographer, transcript thereof is corrected and then pronounced by me in the open court on this the, **16th day of December , 2017**]

[YADAV VANAMALA ANANDRAO]
LIV ADDL., CITY CIVIL & SESSIONS JUDGE, [CCH:55]
Sitting in the Child Friendly Court,
Bengaluru Urban District

16.12..2017

Perused the charge-sheet and the materials on record. It reveals regarding the allegations against the accused that he has committed the offence of outraging the modesty of victim girl and also sexual assault. But it does not attract the provisions of Sec.366 of IPC. So also as the victim girl is below the age of 12 years, Sec.8 of POCSO Act, 2012 is not attracted. So, it attracts Sec.10 of POCSO Act, 2012 as the victim girl is below the age of 12 years coming with the purview of Sec.9 of POCSO Act, 2012.

Hence Charges are framed for the offences punishable under Sec.354 of IPC and under Sec.10 of POCSO Act, 2012.

[YADAV VANAMALA ANANDRAO]
LIV ADDL., CITY CIVIL
& SESSIONS JUDGE,
Sitting in the Child Friendly Court,
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16.12.2017

Orders pronounced in open court:
[Vide separate detailed orders]

The bail application filed by accused under Sec.439 of Cr.P.C is rejected.

[YADAV VANAMALA ANANDRAO]
LIV ADDL., CITY CIVIL
& SESSIONS JUDGE,
Sitting in the Child Friendly Court,
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