IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 5TH DAY OF MARCH, 2022

BEFORE

THE HON'BLE MR. JUSTICE H.P. SANDESH

CRIMINAL PETITION NO.9980/2021

BETWEEN:

THIPPESWAMY
S/O ANJANAPPA

... PETITIONER

(BY SRI V.LAKSHMI KANTH RAO, ADVOCATE)

AND:

STATE BY JAGALUR P.S.,
REP. BY STATE PUBLIC PROSECUTOR
HIGH COURT OF KARNATAKA COURT COMPLEX,
BENGALURU – 560 001. ... RESPONDENT

(BY SRI VINAYAKA V.S., HCGP)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 439 OF CR.P.C PRAYING TO ENLARGE THE PETITIONER ON BAIL IN CR.NO.103/2021 (S.C.NO.149/2021 PENDING BEFORE THE II ADDITIONAL DISTRICT AND SESSIONS JUDGE AND SPECIAL JUDGE, DAVANAGERE) REGISTERED BY JAGALUR POLICE STATION, DAVANAGERE, FOR THE OFFENCE PUNISHABLE UNDER SECTIONS 363, 376(2)(n) OF IPC, SECTION 6 OF POCSO ACT AND SECTIONS 9 AND 11 OF PROHIBITION OF CHILD MARRIAGE ACT.

THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 25.02.2022, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

O R D E R

This petition is filed under Section 439 of Cr.P.C. seeking regular bail of the petitioner in Crime No.103/2021 of Jagalur Police Station, Davanagere, for the offence punishable under Sections 363 and 376(2)(n) of IPC, Section 6 of the Protection of Children from Sexual Offences Act ('POCSO Act' for short) and Sections 9 and 11 of the Prohibition of the Child Marriage Act.

2. Heard the learned counsel for the petitioner and the learned High Court Government Pleader appearing for the respondent-State.

3. The factual matrix of the case of the prosecution is that the complainant, who is the father of the victim girl, filed a complaint stating that his daughter Padmavathi, who is aged about 16 years is pursuing SSLC. That on 14.06.2021, he went to the land for work and his daughter was alone in the house. When he came back from work, she was not in the house and they have searched in the house of her relatives and friends and she was not there and hence suspected the role of the petitioner and gave the complaint. Based on the complaint, the police have registered the case for the offence punishable under

Section 363 of IPC. Thereafter, during the course of investigation, secured the petitioner as well as the victim girl. On enquiry, the victim girl disclosed that both of them fell in love. The accused came to the house and persuaded her that he would marry her and with the assistance of her friends took her in a bus to Ilkal and kept her in a house and subjected her for sexual act. The victim also disclosed that on 26.06.2021, he took her to the house of one Manjula and there also he has committed forcible sexual intercourse from 27.06.2021 to 18.07.2021. The victim was subjected to medical examination. 164 statement of the victim was also recorded by the learned Magistrate and hence invoked the offence punishable under Sections 363 and 376(2)(n) of IPC, Section 6 of the POCSO Act and Sections 9 and 11 of the Prohibition of the Child Marriage Act.

4. The learned counsel for the petitioner would vehemently contend that the police have already investigated the matter and filed the charge-sheet. This petitioner is arraigned as accused No.1. The incriminating material has already been recovered from the petitioner and hence this petitioner is no more required for further investigation. The

learned counsel submits that accused Nos.2 to 4 are granted bail by this Court in Crl.P.No.6659/2021 and hence this petitioner is also entitled for bail on the ground of parity. The petitioner undertakes to obey the conditions that may be imposed by this Court.

5. Per contra, the learned High Court Government Pleader appearing for the respondent State would contend that it is not in dispute that the victim girl is aged about 16 years. In her 164 statement, she categorically says that both of them led life like husband and wife. The medical evidence is also clear that she is subjected to sexual act.

6. This Court taking into consideration the sexual assault certificate issued by the doctor, ordered to keep the doctor present before the Court regarding non-furnishing of the opinion. The Medical Officer is secured and enquired with him regarding report is concerned and there is no answer from the Medical Officer regarding non-furnishing of opinion with regard to sexual assault and issuance of the certificate.

7. Having heard the learned counsel for the petitioner and the learned High Court Government Pleader appearing for

the respondent-State and also on perusal of the material on record, the father of the victim girl had lodged the compiaint on 16.06.2021 stating that his daughter is missing from 14.06.2021 and suspected the role of the petitioner. At the first instance, the offence under Section 363 of IPC is invoked against the petitioner. Thereafter, the petitioner as well as the victim girl were secured from Andhra Pradesh. On enquiry, she revealed about subjecting her for sexual act. It is pertinent to note that the victim was subjected to medical examination by the doctor on 27.07.2021 and the material discloses that the victim was with the petitioner till 18.07.2021. Within a span of 10 days, she was subjected to medical examination. On perusal of the sexual assault certificate issued by the doctor, the doctor has not given the opinion, but he has given the opinion that pending till the FSL report is obtained. The fact that the victim was missing from 14.06.2021 is not in dispute and also the fact that both of them were secured from Andhra Pradesh is not in dispute. The victim girl who has been examined before the learned Magistrate on 22.07.2021, has categorically stated that this petitioner took her on 14.06.2021 along with her friends. It is also her statement that she was with this petitioner for a period of ten

days in a room. It is also her statement that in the said room both lived like husband and wife and thereafter he took her to Guntakal, Andhra Pradesh. It is also her statement that in his friend's sister's house, both of them were there for a period of one month and the police went to the said place and brought them back.

8. The doctor who examined her regarding history of sexual assault, on physical examination, says that no injuries noted in external genetalia. But nothing is found in the certificate whether hymen is intact or not, whether she is subjected to sexual act or not and no finding is given by the doctor. The doctor has issued the Sexual Assault Certificate and when the doctor is enquired before the Court as to what is meant by Sexual Assault Certificate, which he has issued, he kept quiet and not answered to the Court since nothing is found in his report whether she was subjected to sexual act or not and not given opinion and only says FSL report is pending and hence report is not given. The FSL report is in respect of collection of pubic hair and clothes and if any semen stains on the clothes and no report is given regarding physical examination i.e., genetal examination of the victim. The very purpose of

subjecting the victim girl for medical examination is defeated since the doctor has not given the report. But he issues the Sexual Assault Certificate and no opinion is given.

9. This Court has taken note of the callous attitude and negligence on the part of the doctor when the victim was subjected for medical examination, but no report is given and no provisional report is also given whether she was subjected to sexual act or not. This Court in Crl.P.3312/2021 dated 24.02.2022, in the case of **PRADEEP v. STATE OF KARNATAKA** directed the Principal Secretary, Health Department, to issue notification stating the duties of the doctors. This is one more classic case of negligence on the part of the doctor, who conducted the examination of the victim and not giving report and in a callous manner issuing Sexual Assault Certificate without any opinion and hence it is a fit case to direct the Principal Secretary, Health Department, to initiate the appropriate proceedings against the doctor, who had issued Sexual Assault Certificate. The Registry is directed to send this order along with the Sexual Assault Certificate issued by the doctor, Taluk Government Hospital, Jagalur, Davanagere District to the Principal Secretary, Health Department. The Principal

Secretary, Health Department, is directed to issue circular as observed in this order as well as the earlier order passed by this Court about the duties of the doctor or otherwise the very purpose of producing the victim before the doctor for examination would be defeated.

10. Now coming to the case on hand, it is not in dispute that the victim is aged about 16 years and in her 164 statement, she has categorically stated that the petitioner kept her in a room for a period of ten days and both of them led life like husband and wife and thereafter this petitioner took her to Andhra Pradesh and made her to stay in his friend's sister's house for a period of one month. The opinion of the doctor, though he has not given any provisional opinion, he categorically, on local examination, opined that external genetalia well developed. The very victim girl categorically stated in 164 statement that this petitioner took her to different places and kept her in a room as well as friend's sister's house and both of them led life like a husband and wife and hence it is a clear case of subjecting her for sexual act and there is a prima facie material against the petitioner herein. The filing of the charge-sheet itself is not enough to enlarge him on bail when the

petitioner subjected the minor girl for sexual act and he took the minor girl from the custody of her parents and made her to stay in a room and also at Andhra Pradesh and both of them were secured by the police from Andhra Pradesh. When such being the factual aspects of the case, the very contention of the learned counsel for the petitioner that already recoveries are made and no need of the petitioner for further trial cannot be accepted having considered the heinous offence committed by the petitioner and hence it is not a fit case to exercise the discretion in favour of the petitioner.

11. In view of the discussions made above, I pass the following:

ORDER

The petition is rejected.

The Registry is directed to send a copy of this order along with the copy of the Sexual Assault Certificate, which is produced along with the petition to the Principal Secretary, Health Department, for taking action against the doctor and also to issue appropriate circular and direction to the Medical Officers, who are working in the entire State regarding their duties and

responsibilities when the child victim is produced before the doctor for their opinion for sexual penetration assault as this Court observed in Crl.P.3312/2021 dated 24.02.2022 and this petition forthwith.

Sd/-
JUDGE

MD