

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 20TH DAY OF JANUARY, 2022

BEFORE

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

CRIMINAL PETITION NO.9804/2021

BETWEEN:

SALMAN,
S/O RIYAZ,
OCC: WELDER,
AGED ABOUT 20 YEARS,
R/O CHAMUNDI LAYOUT,
1ST CROSS, GANDHINAGARA,
TIPTUR TALUK, TIPTUR,
TUMKUR DISTRICT 572201.

...PETITIONER

(BY SRI P.B. UMESH, ADVOCATE FOR
SRI R.B. DESHPANDE, ADVOCATE)

AND:

1. THE STATE OF KARNATAKA BY
SAGAR TOWN POLICE STATION,
SAGAR SUB-DIVISION,
SHIVAMOGGA DISTRICT 577401.
(REPRESENTED BY STATE PUBLIC PROSECUTOR,
HIGH COURT BUILDINGS,
BENGALURU 560001).

2. SMT. RESHMA,
W/O NAZEER KHAN,
OCC: HOUSEHOLD WORK,
AGED ABOUT 34 YEARS,
R/O BACKSIDE OF LIC OFFICE,
KADUR TOWN,
CHIKKAMAGALURU DISTRICT 577548. ...RESPONDENTS

(BY SRI K.K. KRISHNA KUMAR, HCGP FOR R-1)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 439 OF CR.P.C PRAYING TO ENLARGE THE PETITIONER ON BAIL IN SPL.C.NO.1013/2021 ON THE FILE OF THE ADDITIONAL DISTRICT AND SESSIONS JUDGE, FTSC-1 (POCSO), CR.NO.173/2021 FOR SAGAR TOWN P.S., SHIVAMOGGA DISTRICT FOR THE OFFENCE PUNISHABLE UNDER SECTIONS 366 AND 376(2)(n) OF IPC AND SECTIONS 6 AND 17 OF POCSO ACT AND SECTIONS 9, 10 AND 11 OF PROHIBITION OF CHILD MARRIAGE ACT.

THIS CRIMINAL PETITION COMING ON FOR ORDERS THROUGH VIDEO CONFERENCE THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

This petition is filed under Section 439 of Cr.P.C. seeking regular bail of the petitioner in Crime No.173/2021 of Sagar Town Police Station, Shivamogga District, for the offence punishable under Sections 366 and 376(2)(n) of IPC and Sections 6 and 17 of the Protection of Children from Sexual Offences Act, 2012 ('POCSO Act' for short) and Sections 9, 10 and 11 of the Prohibition of 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 is that the mother of the victim girl had lodged the complaint stating that her daughter is missing on 04.09.2021 and hence Crime

No.173/2021 is registered for the offence punishable under Sections 363 of IPC and thereafter the victim girl was secured and her 164 statement was recorded, wherein she has stated that the petitioner took her telling that he would marry her. The petitioner took the victim girl to Hassan and married her and thereafter subjected her for sexual act against her wish. He kept her in Tiptur and used to attend the work. The police have investigated the matter and filed the charge-sheet for the offence punishable under Section 366 of IPC, Sections 9, 10 and 11 of the Prohibition of the Child Marriage Act and Sections 6 and 17 of the POCSO Act.

4. The learned counsel for the petitioner would vehemently contend that the victim girl is aged about 17 years and this petitioner has been falsely implicated in the case and there was an unexplained delay in lodging the complaint and the charge-sheet material do not reveal prima facie case for the offence punishable under Section 376 of IPC and there is no any medical evidence and hence the petitioner may be enlarged on bail. The petitioner is in custody from 08.09.2021 and no custodial trial is required.

5. The learned High Court Government Pleader appearing for the respondent-State would submit that the victim girl is aged about 16 years and this petitioner took her to Hassan and married her and subjected her for sexual act knowing fully well that she is a minor and even in the absence of medical evidence she made a statement before the learned Magistrate stating that she was subjected to sexual act by the petitioner. When such being the facts of the case, it is not a fit case to exercise the powers under Section 439 of Cr.P.C.

6. 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, it is clear that her date of birth is 13.04.2005 and she was aged about 16 years as on the date of subjecting her for sexual act. The very victim girl made the statement before the learned Magistrate that she was subjected to sexual act against her wish and the petitioner used to keep her in the house at Tiptur and attending work. When such being the factual aspects of the case, the victim girl is below the age of 18 years as defined under Section 2(d) of the POCSO Act and she was taken to different places from her native place and in the guise of

marrying her, subjected her for sexual act and married the minor girl. Hence, it is not a fit case to exercise the discretion in favour of the petitioner when the minor girl was subjected to sexual act.

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

ORDER

The petition is rejected. The Trial Judge is directed to dispose of the matter as early as possible.

**Sd/-
JUDGE**

MD