

HIGH COURT OF KARNATAKA
Bench: Justice Shivashankar Amarannavar
Date of Decision: October 13, 2023

CRIMINAL APPEAL No. 65/2023

Paramashivaiah A J ... APPELLANT

Versus

1. State of Karnataka
2. Sri Chandrakumar C

3. XYZ

4. XYZ

(Respondent No.3 & 4 are Victims)

...RESPONDENTS

Sections, Acts, Rules, and Articles:

Section 14(A)(2) of SC/ST (POA) Act

Section 376(2)(n), 376(DA), 376(3), 201, 202, 506 r/w 34 and 37 of IPC

Sections 5(L), 6, 16, 17 of POCSO Act, 1989

Section 3(f) and Section 7 of Religious Institution Prevention of Misuse Act, 1988

Section 75 of the Juvenile Justice (Care and Protection of Children) Act 2015

Subject: Criminal Appeal – Bail Application - serious charges – lack of sufficient evidence.

Headnotes:

Criminal Appeal – Bail – Accused No.3 seeks bail in a case involving serious charges under Sections 376(2)(n), 376(DA), 376(3), 201, 202, 506 r/w 34 and 37 of IPC, Sections 17, 5(L), 6 of POCSO Act, 1989, Section 3(f) and Section 7 of Religious Institution Prevention of Misuse Act, 1988, and Section 75 of the Juvenile Justice (care and protection of Children) Act 2015 – Accused claims innocence and alleges conspiracy – Delay in lodging the complaint and alleged concealment of crucial facts questioned – Bail petition rejected by Special Court – Appeal filed challenging rejection – Accused granted bail as prosecution case lacks sufficient evidence and appellant's custody for over a year is unwarranted. [Para 1-10]

Referred Cases:

- Naval Dipakkumar Thakkar Vs. State of Gujrat and Another in CrI.A.No.1161/2023
- Phool Singh Vs. State of Madhya Pradesh reported in (2022) 2 SCC 74

Representing Advocates:

for the Appellant: Sri C V Nagesh, Senior counsel, and Sri K B K Swamy, Advocate

for Respondent No.3: Sri Srinivasa D C, Advocate
 for Respondent Nos.1 and 2: Sri M Divakar Maddur, HCGP
 for Respondent No.4: Smt. Deepa J, Advocate

This Criminal Appeal is filed under Section 14(A)(2) of SC/ST (POA) Act, praying to set aside the order dated 06.12.2022 in CrI.Misc.No.1179/2022, passed by Special 2nd Additional District and Sessions Judge, Chitradurga and consequently enlarge the appellant/accused No.3 on bail in Cr.No.387/2022 of Chitradurga rural P.S., Chitradurga District for the offences punishable under Section 376(2)(n), 376(DA), 376(3), 201, 202, 506 r/w 34 and 37 of IPC and 17, 5(L), 6 of POCSO Act, 1989 and Section 3(f) and section 7 of Religious Institution Prevention of Misuse Act, 1988 and Section 75 of the Juvenile Justice (care and protection of Children) Act 2015, pending on the file of Hon'ble 2nd Additional District and Sessions Judge, Chitradurga.

This Criminal Appeal having been heard and reserved for judgment this day, **SHIVASHANKAR AMARANNAVAR J**, delivered the following;

JUDGMENT

This appeal is filed by accused No.3 praying to set-aside the order dated 06.12.2022 passed in CrI.Misc.No.1179/2022 by the Special II Additional District and Sessions Judge, Chitradurga, whereunder the bail petition of the appellant – accused No.3 sought in respect of Crime No.387/2022 of Chitradurga Rural Police Station for the offences under Sections 5(l), 6 and 17 of the Protection of Children from Sexual Offences Act, 2012 (*for short hereinafter referred to as 'POCSO Act'*), Sections 376(2)(n), 376(3), 149 of the Indian Penal Code, 1860 (*for short hereinafter referred to as 'IPC'*) and Sections 3(1)(i) and (ii) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (*for short hereinafter referred to as "the SC/ST Act"*), came to be rejected.

2. Heard learned Senior counsel for the appellant – accused No.3 and learned counsel for respondent No.3 and learned High Court Government Pleader for respondent Nos.1 and 2.

3. The factual matrix of the prosecution case is that; on the basis of the complaint lodged by respondent No.2, F.I.R was registered by Nazarabad Police Station, Mysuru in Crime No.155/2022. In the said complaint, it is alleged that the victims are aged 16 and 15 years respectively; they are the

inmates of Akkamahadevi Hostel run by Murugha Mutt, Chitradurga; accused No.1 who is the Chief Pontiff had sexually abused the two victims from 3½ and 1½ years respectively. The present appellant (accused No.4 in the F.I.R and accused No.3 in the charge sheet), Warden (accused No.2), Junior Pontiff (accused No.3 in the F.I.R), Lawyer Sri.Gangadharaiah (accused No.5 in the F.I.R) have supported accused No.1 to commit the offences. It is further stated in the complaint that both the victims were produced before the Child Welfare Committee by the office bearers of 'Odanadi', an N.G.O in Mysuru. The complaint and F.I.R are sequel of counseling of both the victims conducted by the Child Welfare Committee, Mysuru. It was further stated that as it was late night, the victims were handed over to the custody of 'Odanadi' temporarily. On such other facts, the F.I.R was registered for the offences punishable under Sections 17, 5(I) and 6 of the POCSO Act and Sections 3(1)(w)(i)(ii) and 3(2)(v) of the SC/ST Act, wherein the appellant was arraigned as accused No.4. Pursuant to registration of the said F.I.R, case was transferred to Chitradurga Rural Police on the point of territorial jurisdiction and F.I.R was registered afresh on the basis of the letter dated 27.08.2022, addressed to the Superintendent of Police, Chitradurga District. Pursuant to the receipt of the said letter, Chitradurga Rural Police registered F.I.R in Crime No.387/2022. The appellant – accused No.3 was produced before the Special Judge and he was remanded to judicial custody. After completion of investigation, final report has been laid for the offences under Sections 376(2)(n), 376DA, 376(3), 201, 202 506 r/w Sections 34 and 37 of IPC and Sections 17, 5(I), 6 of the POCSO Act and Section 3(1)(w)(i) and (ii), 3(2)(v) and 3(2)(va) of the SC/ST Act and Sections 3(f) and 7 of the Religious Institution (Prevention Of Misuse) Act, 1988 (*for short hereinafter referred to as 'the Religious Institution Act'*) and Section 75 of the Juvenile Justice (Care And Protection Of Children) Act, 2015 (*for short hereinafter referred to as 'the JJ Act'*). The appellant has been arraigned as accused No.3 in the charge sheet. The charge sheet was not laid against the Junior Pontiff (accused No.3 in the F.I.R) and lawyer Sri.Gangadharaiah (accused No.5 in the F.I.R). Based on two charge sheets filed in the same crime, two cases came to be registered in Special Case Nos.181/2022 and 182/2022. The said two special cases are pending on the file of Special II Additional District and Sessions Judge, Chitradurga. Since, two cases are registered in the same crime, learned counsel for the appellant filed I.A.No.1/2023 seeking amendment to insert the special case numbers in the prayer portion. Since, those two special

cases registered are arising out of two charge sheets filed in the same crime, the application seeking amendment deserves to be allowed and accordingly, it is allowed.

4. The appellant – accused No.3 who was in judicial custody filed CrI.Misc.No.1179/2022 seeking bail and the same came to be rejected by the Special Court by order dated 06.12.2023 which is challenged in this appeal.

5. Learned counsel for the appellant – accused No.3 would contend that the victim girls appeared in Cottonpet Police Station, Bengaluru on the night of 24.07.2022, without holding any enquiry, both the victims were handed over to the custody of Sri.S.K.Basavarajan. Thereafter, there enigmatic disappearance for about 33 days left unanswered in the investigation. The unseen hands behind these unfathomable episodes have planted the story of abetment and sexual abuse against the appellant and others. Missing of several important missing links in this case goes to show that the prosecution is handiwork of people who are opposed to accused No.1. In the battle to grab power, wealth and to exhibit supremacy the appellant has been made a scapegoat. There is an inordinate and unexplained delay in lodging the complaint. The prosecution has concealed the fact as to where the shelter was provided to the victims for long period of 33 days.

(a) The Investigating Officer has recorded the statements of 23 girl students who have not alleged any sexual assault or sexual intercourse against the accused persons. CW1 refused medical examination initially and after some days, she gave consent for the medical examination. The doctor who examined CWs.1 and 2 has noted that their hymen is intact. CWs.1 and 2 named eight girls stating that they have undergone sexual assault by accused No.1 and their statements were recorded, wherein there

is no allegation of sexual assault by accused No.1. Due to wayward behaviour of CWs.1 and 2 not attending the classes etc., the Warden has taken them to task.

(b) This Court in W.P.No.2331/2023 has held that the provisions of Section 7 of the Religious Institution Act are not applicable.

(c) In the F.I.R and in the statement of some witnesses, there is allegation that accused Nos.3 to 5 named in the F.I.R are the supporters of accused No.1 who have supported the acts of accused No.1, but the charge sheet is filed only against accused No.4 in the F.I.R, leaving accused Nos.3 and 5 in the F.I.R, without any reason. The appellant – accused No.3 is similarly alleged as against accused Nos.4 and 5 in the F.I.R, but has left out in the charge sheet.

(d) The application filed seeking discharge has been rejected and the order has been challenged in the criminal revision petition and there is stay of further proceedings till date and also an order is passed in CrI.P.No.4511/2023, wherein, further proceedings are stayed till 30.09.2023. In CrI.P.No.5576/2022 also there is stay of further proceedings. The order of stay of further proceedings would enure for grant of bail.

(e) In the statement of CW7 dated 26.08.2022, there is no reference to accused Nos.3 to 5. Even in the statement of CW1 dated 28.08.2022, there is no reference of accused No.3. In the statement of CW1 recorded under Section 164 of Cr.P.C dated 30.08.2022, there is no allegation of sexual intercourse by accused No.1. In the said statement, there is only allegation that this appellant – accused No.3 is the supporter of accused No.1. The statements of father and mother of CW1 reveal that CW1 has not told them about any sexual assault by accused No.1. Even CW2 in her statement has only alleged that appellant – accused No.3 is the supporter of accused No.1.

The statement of other students recorded by the Investigating Officer does not contain any allegation of sexual assault by accused No.1 or reference to this appellant – accused No.3 as a supporter to accused No.1. The statement of Sri.Basarvarajan and his wife Smt.Soubhagya does not contain regarding receipt of any complaint by CWs.1 and 2 and there is no whisper of name of accused No.3. There are civil litigations between accused No.1 and the said Sri.Basavarajan and his wife Smt.Soubhagya.

(f) The offences under Sections 3(2)(v) and 3(2)(va) of the SC/ST Act are not attracted, since there is no allegation that the alleged offences are committed knowingly that the victims belongs to the Scheduled Caste and Scheduled Tribe and the charges leveled against the accused persons are not contained in the Schedule of the Act.

(g) Even the alleged act against the appellant – accused No.3 stating that he is the supporter of accused No.1 does not amount to abetment as defined under Section 16 of the POCSO Act, since there is no instigation or conspiracy and aid by the act or omission. The other offences namely Sections 366, 376DA, 323, 504, 201 of IPC are not attracted against the appellant - accused No.3.

(h) Learned Senior counsel placing reliance on the order passed by the Co-ordinate Bench of this Court in **Crl.P.No.3274/2020** has submitted that, in the said case, the Court noting that the hymen is intact and there are no external injuries seen over the body of the victim, has granted bail for the offence under Section 376 of IPC and Section 4 of the POCSO Act.

(i) Learned Senior counsel also placed reliance on the order of the Co-ordinate Bench passed in **Crl.P.No.5675/2022**, wherein the Court has granted bail for the offence under Section 376 of IPC and Sections 5(l), 6 and 17 of the POCSO Act, noting that the medical report reveal that there is no sexual assault on the victim, except her own statement and that she has not co-operated with the medical examination and the doctors have not given any opinion regarding sexual assault on the victim.

(j) Learned Senior counsel also placed reliance on the decision of the Hon'ble Apex Court in the case of ***Naval Dipakkumar Thakkar Vs. State of Gujrat and Another*** in ***Crl.A.No.1161/2023***, wherein it is held as under;

“4. The appellant is facing proceedings in respect of the allegation under Section 376(2) of the Indian Penal Code. The appellant was arrested on 10.08.2022 and has spent more than eight months in custody as on date. Though, the charge-sheet has been filed, the Trial Court has not yet framed the charges and the trial has not commenced. In a matter of the present nature though, we have referred to the entire material available on record including the explanation sought to be put forth by the appellant, we do not propose to specifically refer to the same as it may otherwise affect the case of the parties on merits.

5. However, having taken into consideration the fact that charge-sheet has been filed and the appellant has been in incarceration for more than eight months, we deem it appropriate to direct release of the appellant on bail subject to the appropriate conditions to be imposed by the Trial Court.”

(k) Learned Senior counsel would contend that the appellant – accused No.3 is in judicial custody since more than one year and he is aged more than 60 years. Except the allegations of supporting accused No.1, there are no other allegations against him and the persons alleged similarly, have been left out in the charge sheet. With this, he prayed to allow the appeal and grant bail to the appellant – accused No.3.

6. Learned counsel for respondent No.3 would contend that the appellant – accused No.3 was absconding for two months and he came to be arrested on 29.10.2022 ie., after filing the charge sheet. The statement of CWs.1 and 2 establish that this appellant – accused No.3 has supported accused No.1 and he pushed the victims to the room of accused No.1. The said act of the appellant – accused No.3 clearly attracts the offence of abetment under Section 16 of the POCSO Act, which is punishable under Section 17 of the POCSO Act. The punishment provided for the offence

under Section 17 of the POCSO Act is that of the offence alleged against the main accused i.e., under Section 6 of the POCSO Act. The appellant – accused No.3 is an influential person and therefore, there is a threat to the victims and the prosecution witnesses. He supported the reasoning assigned by the Trial Court in rejecting the bail petition of this appellant – accused No.3. With this, he prayed to dismiss the appeal.

7. *Per contra*, learned High Court Government Pleader appearing for respondent Nos.1 and 2 would submit that CWs.1 and 2 are the children. This appellant – accused No.3 has supported accused No.1 and abetted commission of offences. The appellant – accused No.3 is the close associate of accused No.1 and he is clearly involved in supporting accused No.1 in his activities. He is influential in the Mutt and there are chances of tampering the prosecution witnesses. He placed reliance on the decision of the Hon'ble Apex Court in the case of ***Phool Singh Vs. state of Madhya Pradesh*** reported in **(2022) 2 SCC 74** contending that the evidence of the prosecutrix is as that of an injured witness. The Special Court considering these aspects has rightly rejected the bail petition of the appellant – accused No.3. With this, he prayed to dismiss the appeal.

8. Having heard the learned counsel, the Court has perused the charge sheet materials and the impugned order.

9. The accusation against this appellant – accused No.3 is that he supported accused No.1 and abetted commission of offences. The Trial Court while passing the impugned order in Paragraph Nos.11 to 14 has referred to the statements of CWs.1, 2 and 4 and extracted the relevant portions of their statements. In the extracted portions of the said statements of CWs.1, 2 and 4, it is stated that the Junior Pontiff, Sri.Gangadhar and Sri.Paramashivaiah (accused No.3) and accused No.2 were supporting accused No.1. Even though the said Junior Pontiff and the lawyer Sri.Gangadhariah were arraigned as accused in the F.I.R, charge sheet has not been filed against them. On considering the statements of the victims, the allegations against them is also similar to that of this appellant – accused No.3. Merely because this appellant – accused No.3 is a close associate of accused No.1 and he was supporting accused No.1, does not amount to abetment to commit the offences alleged against accused No.1. The said aspect can be considered at the full fledged trial.

10. The offences alleged against accused No.1 is under sections 5(l) and 6 of the POCSO Act. The POCSO Act provides extreme penalty for the said offence. If any person abetted commission of the said offences, the punishment provided for the abetment is same that of the punishment provided for the offence under Section 6 of the POCSO Act. On medical examination of CWs.1 and 2, it is found that their hymen is intact. Section 5(l) punishable under Section 6 of the POCSO Act is for aggravated penetrative sexual assault. As the hymen of the victim girls are intact, at this stage, it cannot be said that there was an aggravated penetrative sexual assault on the victim girls. The said aspect can be ascertained at the trial. This appellant – accused No.3 is charged for the offence of abetment for accused No.1 to commit the offence punishable under Section 6 of the POCSO Act. The said aspect that accused No.1 has committed the penetrative sexual assault on the victim girls and this appellant – accused No.3 abetted commission of the said offence is a matter of trial. Merely because the appellant – accused No.3 is an influential person, is not a ground to keep him in custody as a pre-trial punishment till conclusion of the trial, wherein the prosecution has to examine 84 witnesses and further proceedings are stayed at present. The appellant – accused No.3 is in custody for more than one year and as the charge sheet is filed he is not required for the custodial interrogation. The apprehension of the prosecution that, if the appellant – accused No.3 is granted bail, there is a threat to the prosecution witnesses, can be met with by imposing stringent conditions. Considering all these aspects, the appellant – accused No.3 has made out grounds for setting-aside the impugned order and grant of bail. In the result, the following;

ORDER

The appeal is **allowed**. The impugned order dated 06.12.2022 passed in Crl.Misc.No.1179/2022 by the Special II Additional District and Sessions

Judge, Chitradurga is set-aside. The appellant – accused No.3 is granted bail in Crime No.387/2022 of Chitradurga Rural Police Station (Special Case Nos.181 and 182 of 2022), subject to the following conditions:

- (i) The appellant – accused No.3 shall execute a personal bond for a sum of Rs.2,00,000/- (Rupees two lakh only), with two sureties for the likesum.*
- (ii) The appellant – accused No.3 shall not tamper the prosecution witnesses.*
- (iii) The appellant – accused No.3 shall attend the Court on all dates of hearing and co-operate in speedy disposal of the cases.*
- (iv) The appellant – accused No.3 shall not threaten the prosecution witnesses.*
- (v) The appellant – accused No.3 shall not commit any offence till disposal of the cases registered against him.*

The Trial Court is at liberty to impose any other suitable conditions apart from the above conditions.

I.A.No.1/2023 is allowed. Counsel for the appellant is permitted to amend the prayer column.

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