

Ummarkunhi @, Mohammed Kunhi @ Kunhi Vs State Of Karnataka By, Mangaluru Women Police Station, D. K District & Others

Court: Karnataka High Court At Bengaluru

Date of Decision: March 10, 2023

Acts Referred: Code Of Criminal Procedure, 1973 â€” Section 438

Indian Penal Code, 1860 â€” Section 34, 109, 363, 370, 506

Immoral Traffic (Prevention) Act, 1956 â€” Section 3, 4, 5, 6, 8

Protection Of Children From Sexual Offences Act, 2012 â€” Section 4, 6, 17

Hon'ble Judges: V Srishananda, J

Bench: Single Bench

Advocate: Nagaraja N, Vinayaka V S

Final Decision: Dismissed

Judgement

V Srishananda, J

1. Heard the learned counsel for the petitioner and the learned High Court Government Pleader for the respondent-State. Perused the records.

2. Present petition is filed under Section 438 of Cr.P.C.

3. The brief facts of the case are as under:

An FIR came to be filed against the accused/petitioner in Crime No.32/2022 on 07.03.2022 by the Mangalore Women Police Station for the offences

punishable under Sections 363, 370, 506, 109 read with Section 34 of the Indian Penal Code, 1860 (hereinafter referred to as 'IPC' for short), under

Sections 3, 4, 5, 6 and 8 of The Immoral Traffic (Prevention) Act, 1956 (hereinafter referred to as 'ITP Act' for short) and under Sections 4, 6 and 17

of the Protection of Children from Sexual Offences Act, 2012(hereinafter referred to as 'POCSO Act' for short).

4. Gist of the complaint averments reveals that victim girl was introduced by the petitioner to other accused persons wherein the victim girl was forced

to indulge in prostitution. Victim girl is a minor. On different dates, she has been subjected to forcible sexual intercourse and different cases have been

filed. In all the cases, the role assigned to the present petitioner is that he introduced the victim girl to other accused persons.

5. In fact, accused was granted bail in respect of Crime No.8/2022, which is now pending in Special Case No.103/2022 before the Additional District

& Sessions Judge/FTSC-II (POCSO), Dakshina Kannada, Mangaluru.

6. Admittedly, the petitioner has jumped the bail in respect of Crime No.8/2022 which is now pending in Special Case No.103/2022. Thereafter, he has

approached for grant of anticipatory bail before the very same Court in Special Case No.940/2022, which was turned down by the learned Special

Judge. Subsequently, the petitioner is before this Court.

7. Reiterating the grounds urged in the petition, Ms. Navya, learned counsel for the petitioner vehemently contended that the petitioner is a law abiding

citizen and he could not appear before the trial Court in Special Case No. 940/2022 and therefore, non-bailable warrant is issued and that would not

prevent the petitioner from obtaining an order of grant of anticipatory bail at the hands of this Court. Hence, sought for allowing the petition.

8. Per contra, learned High Court Government Pleader opposes for grant of anticipatory bail contending that the petitioner is not a law abiding citizen.

In fact, he had the benefit of grant of bail, which he has jumped and therefore, the petition is not maintainable.

9 . Though respondent No.2/complainant is served, complainant remained absent.

10. In the light of the rival contentions, this Court perused the materials on record meticulously.

11. Role assigned to the petitioner in Crime No.8/2022 and other cases is that he has introduced the victim girl to the other accused persons whereby

the victim girl was made to indulge in prostitution. Admittedly, the victim girl is a minor.

12. Taking note of the fact that the petitioner had already been bail, which he had jumped and is not available to the trial, this Court is of the

considered opinion that there is sufficient force in the argument put forth on behalf of the learned HCGP that petitioner is not a law abiding citizen and

therefore, he would not be entitled for grant of anticipatory bail. In fact, the conduct of the petitioner proves the apprehension of the prosecution.

13. The apprehension of the prosecution is well founded and does not make out a case for entertaining the petition under Section 438 of Cr.P.C.

Accordingly, this Court passes the following:

ORDER

1. The Criminal Petition is rejected.

2. However, if the petitioner surrenders before the trial Court and applies for grant of regular bail, this order shall not come in the way.