

## **H. Nagesha Vs State Of Karnataka Represented By Abbinahole Police Station, Chitradurga District, Represented By Spp, High Court Building, Bangalore - 560001 & Others**

**Court:** Karnataka High Court At Bengaluru

**Date of Decision:** Dec. 13, 2023

**Acts Referred:** Indian Penal Code, 1860 â€” Section 363, 376

Protection Of Children From Sexual Offences, Act, 2012 â€” Section 4, 8, 12

Code Of Criminal Procedure, 1973 â€” Section 439

**Hon'ble Judges:** S Vishwajith Shetty, J

**Bench:** Single Bench

**Advocate:** Lethif B, Rangaswamy R

**Final Decision:** Allowed

### **Judgement**

S Vishwajith Shetty, J

1. Accused in Spl.C.No.64/2023 pending on the file of learned Spl. 2nd Addl. District and Sessions Judge Chitradurga, arising out of Crime

No.61/2023 registered by Abbinahole Police Station, Chitradurga District for the offences punishable under Sections 363 and 376 of Indian Penal

Code (for short hereinafter referred to as 'IPC') and Sections 4, 8 and 12 of Protection of Children from Sexual Offences Act, 2012 (for short

hereinafter referred to as 'POCSO') is before this Court under Section 439 of Cr.P.C. seeking regular bail.

2. Heard the learned Counsel for the petitioner and learned High Court Government Pleader for respondent-State. Respondent No.2 who is served in

the matter has remained unrepresented before the Court.

3. FIR in Cr. No.61/2023 was registered by the Abbinahole police station, Chitradurga against the petitioner herein for the aforesaid offences on the

basis of the complaint dated 28.03.2023 lodged by the 2nd respondent who is the mother of the victim girl. In the complaint it is averred that the

complainant's minor daughter who was studying in 7th standard was found missing from their house on 26.03.2023 and she returned home on

28.03.2023. On enquiry, she told that the petitioner had taken her to a house at Dasarahalli, Bengaluru on 26.03.2023 and had sexually assaulted her

despite she resisting his act. It is in this background, the complaint was lodged.

4. During the course of investigation, the petitioner was arrested on 29.03.2023 and subsequently, he was produced before the jurisdictional Magistrate

and remanded to judicial custody. Investigation is completed and charge sheet has been filed. The petitioner's bail application filed before the Court of

Special 2nd Addl. District and Sessions Judge, Chitradurga in CrI.Misc.No.758/2023 was rejected on 10.07.2023. It is under these circumstances, the

petitioner is before this Court seeking regular bail.

5. Learned counsel for the petitioner having reiterated the grounds urged in the petition submits that before the trial Court, totally 12 charge sheet

witnesses have been examined as P.W.1 to P.W.12. The victim girl and her parents are also examined. The petitioner, aged about 21 years has no

criminal antecedents and he is in judicial custody from 29.03.2023 onwards. Accordingly, prays to allow the petition.

5. Per contra, learned High Court Government Pleader has opposed the bail petition and submits that victim girl is a minor and therefore, the alleged

offences get attracted against the petitioner and accordingly, prays to dismiss the petition.

6. The material made available to the Court would go to show that the complainant's minor daughter was found missing from the house on 26.03.2023.

However, no missing complaint was lodged. Subsequently, on 28.03.2023, the minor girl allegedly had returned home and it is only thereafter the

complaint was lodged against the petitioner alleging that he had taken her to a room and committed sexual assault on her. Investigation is completed

and charge sheet has been filed. During the course of investigation, the petitioner was arrested on 29.03.2023.

7. Before the trial Court, prosecution has examined totally, 12 charge sheet witnesses as P.W.1 to P.W.12. The victim girl has been examined as

P.W.1 and her parents have been examined as P.Ws.2 and 3 respectively. During the course of cross examination, the victim girl has stated that she

is aged 17 years and she is studying in 10th standard at present. P.Ws.2 and 3 have stated that they do not know the exact date of birth of the victim

girl. P.W.2 has admitted in the cross examination that victim girl is aged about 19 years. The Doctor who had medically examined the victim girl is

examined as P.W.10 and he has stated that after examination of the victim girl, he had found that there is no evidence suggestive of any recent sexual

act/exposure and he further stated that after local examination, hymen was found intact, no injuries were found on external genitalia. The petitioner

who has no criminal antecedents is aged about 21 years and he is in judicial custody from 29.03.2023 onwards. Since the material charge sheet

witnesses are already examined, there cannot be any apprehension that the petitioner is likely to tamper the prosecution witnesses. Therefore, without

expressing any opinion on the merits of the case, the petitioner's prayer for grant of regular bail is required to be answered affirmatively. Accordingly,

I pass the following:

ORDER

The Criminal Petition is allowed.

The petitioner is directed to be released on bail in respect of Crime No.61/2023 registered by Abbinahole Police Station, Chitradurga District for the

offences punishable under Sections 363 and 376 of IPC and Sections 4, 8 and 12 of POCSO Act, subject to the following conditions:-

a) The petitioner shall execute personal bond for a sum of Rs.1,00,000/- (Rupees One lakh only) with one surety for the likesum, to the satisfaction of

the jurisdictional Court;

b) The petitioner shall appear regularly on all the dates of hearing before the Trial Court unless the Trial Court exempts his appearance for valid

reasons;

c) The petitioner shall not directly or indirectly threaten or tamper with the prosecution witnesses;

d) The petitioner shall not involve in similar offences in future;

e) The petitioner shall not leave the jurisdiction of the Trial Court without permission of the said Court until the case registered against him is disposed

off.