



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 24TH DAY OF OCTOBER, 2024

BEFORE

THE HON'BLE MR JUSTICE S VISHWAJITH SHETTY

CRIMINAL PETITION NO. 9582 OF 2024

BETWEEN:

XXX

(ACCUSED IN J J BOARD)

...PETITIONER

(BY SRI PRAVEEN S, ADV. &
SRI. LETHIF B, AMICUS CURIAE)

AND:

1. STATE BY WOMEN POLICE STATION
CHAMARAJANAGARA - 571 313
REPRESENTED BY SPP
HIGH COURT OF KARNATAKA
BANGALORE - 560 001.

2. CHELUVARAJ
GOVERNMENT OFFICIAL
AGE 30 YEARS
GAZETTED, DCPU OFFICE
CHAMARAJANAGARA
TOWN, CHAMARAJANAGARA - 571 313.

...RESPONDENTS

(BY SRI LETHIF B, AMICUS CURIAE;
SRI M. DIWAKAR MADDUR, HCGP FOR R-1 & R-2)

THIS CRL.P IS FILED U/S 439 CR.PC (FILED U/S 483 BNNS)
PRAYING TO GRANT BAIL TO THE PETITIONER / ACCUSED AND
DIRECT THE RESPONDENT STATE BY WOMEN PL.S,
CHAMARAJANAGARA TO RELEASE THE PETITIONER / ACCUSED ON
BAIL IN SPL.C.NO.239/2023 ON THE FILE OF ADDL. DIST. AND
SESSIONS JUDGE AND FTSC-I, CHAMRAJANAGANRA FOR OFFENCE
P/U/S 376, 376(2)(f), 376(2)(n), 376(3) OF IPC AND SEC. 4, 5(j)(ii),
5(n), 6 OF POCSO ACT, 2012.





THIS PETITION, COMING ON FOR ORDERS, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR JUSTICE S VISHWAJITH SHETTY

ORAL ORDER

1. Accused in Special Case No.239/2023 pending before the Court of Additional District and Sessions Judge and FTSC-I, Chamarajanagar, arising out of Crime No.36/2023 registered by Chamarajanagar Women Police Station, Chamarajanagar, for the offences punishable under Sections 376, 376(2)(f), 376(2)(n) and 376(3) of IPC and Sections 4, 5(j)(ii), 5(n), 5(l) and 6 of the Prevention of Children from Sexual Offences Act, 2012 (hereinafter referred to as 'the POCSO Act' for short), is before this Court under Section 439 of Cr.P.C. seeking regular bail.

2. Heard the learned Amicus Curiae appearing on behalf of the petitioner and the learned HCGP appearing on behalf of respondent Nos.1 and 2.

3. First informant had submitted a report on 20.07.2023 before the Chamarajanagar Women Police



Station, Chamarajanagar, stating that victim girl aged about 13 years had visited the District Government Hospital, Chamarajanagar, for taking treatment and when she was medically examined by a Gynecologist in the Hospital, it was found that the victim girl was pregnant by five months. On enquiry, victim girl had stated that petitioner, who is her brother was the cause for her pregnancy. The victim girl was admitted in the Hospital and her statement was recorded in the Hospital and thereafter, first informant had approached the police. Based on the report submitted by the first informant, FIR in Crime No.36/2023 was registered in Chamarajanagar Women Police Station for the aforesaid offences against the petitioner. During the course of investigation, petitioner was arrested on 24.07.2023 and since he was a minor, he was produced before the Juvenile Justice Board at Chamarajanagar (hereinafter referred to as 'the Board' for short) and remanded to Observation Home at Mysuru. His bail application filed before the Board in JC No.26/2023 under Section 12 of the Juvenile Justice (Care and



Protection of Children) Act, 2015 (hereinafter referred to as 'the Act of 2015' for short) was rejected by the Board on 06.10.2023. Thereafter, an order was passed under Section 18(3) of the Act of 2015 by the Board and the case was referred to Children Court/Sessions Court to conduct trial against petitioner as an adult though he was a child within the meaning of Section 2(12) of the Act of 2015. Thereafter, Principal District and Sessions Judge had referred the case to the Special Court constituted under the POCSO Act and case was registered against the petitioner as Special Case No.239/2023. In the said case, petitioner had filed an application under Section 439 of Cr.P.C. with a prayer to enlarge him on regular bail. The said application was dismissed by the Special Court on 25.01.2024. Therefore, the petitioner is before this Court.

4. Learned Amicus Curiae submits that though the order is passed against the petitioner under Section 18(3) of the Act of 2015, to hold a trial against him as an adult, for the purpose of bail of the petitioner, who is a child, Section 12



of the Act is applicable and subject to the proviso to sub-section (1) of Section 12 of the Act of 2015, the child is required to be released on bail. Board as well as the Special Court have failed to appreciate this aspect of the matter and have erred in rejecting the bail application of the petitioner. He submits that the victim girl and her parents had appeared before Special Court and had submitted that they have no objection for releasing the petitioner on bail. The victim girl and her parents have not cooperated for the DNA Test. Petitioner is in custody for the last more than one year. Trial in the case is yet to commence. Accordingly, he prays to allow the petition.

5. Per contra, learned HCGP has opposed the petition. He submits that petitioner has committed a heinous offence on the minor victim girl who is his sister. As a result of the act committed by the petitioner, victim got pregnant and subsequently, she has delivered a child. He submits that in the event, petitioner is enlarged on bail, he



is likely to tamper with the prosecution witnesses. Accordingly, he prays to dismiss the petition.

6. The statement of the victim girl, who was admitted in the Hospital after she was found to be pregnant was recorded on 20.07.2023. The victim girl has stated that she was aged about 13 years and she had attained puberty in the age of 10 years. She has stated that her brother/petitioner aged about 17 - 18 years is an auto driver and she was studying in 8th Std. She has further stated that since she had missed her periods, her mother had taken her to Chamarajanagar Government Hospital on 20.07.2023 for treatment and the Doctor, who medically examined her stated that she was pregnant. On enquiry, she had informed that petitioner, who was her brother was the cause for her pregnancy and he had sexual intercourse with her on 21.02.2023 in their house. He had repeated the said act two to three times even thereafter when there was nobody in the house and as a result she got pregnant.



7. It is not in dispute that the petitioner is a child within the meaning of Section 2(12) of the Act of 2015. Section 12 of the Act of 2015, reads as follows:-

"12. Bail to a person who is apparently a child alleged to be in conflict with law.-(1) *When any person, who is apparently a child and is alleged to have committed a bailable or non-bailable offence, is apprehended or detained by the police or appears or brought before a Board, such person shall, notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law for the time being in force, be released on bail with or without surety or placed under the supervision of a probation officer or under the care of any fit person:*

Provided that such person shall not be so released if there appears reasonable grounds for believing that the release is likely to bring that person into association with any known criminal or expose the said person to moral, physical or psychological danger or the person's release would defeat the ends of justice, and the Board shall record the reasons for denying the bail and circumstances that led to such a decision.



(2) When such person having been apprehended is not released on bail under sub-section (1) by the officer-in-charge of the police station, such officer shall cause the person to be kept only in an observation home in such manner as may be prescribed until the person can be brought before a Board.

(3) When such person is not released on bail under sub-section (1) by the Board, it shall make an order sending him to an observation home or a place of safety, as the case may be, for such period during the pendency of the inquiry regarding the person, as may be specified in the order.

(4) When a child in conflict with law is unable to fulfill the conditions of bail order within seven days of the bail order, such child shall be produced before the Board for modification of the conditions of bail."

8. Section 18(3) of the Act of 2015 reads as follows:-

"(3) Where the Board after preliminary assessment under section 15 pass an order that there is a need for trial of the said child as an adult, then the Board may order transfer of the trial of the



case to the Children's Court having jurisdiction to try such offences."

9. Section 12(1) of the Act provides that notwithstanding anything contained in the Code of Criminal Procedure, 1973, or any other law for the time being in force, a child, who is produced before the Board, shall be released on bail subject to proviso to Section 12(1) of the Act of 2015. Therefore, it is very clear that even if the child is ordered to be tried as a adult, as provided under Section 18(3) of the Act of 2015, for the purpose of his bail application, Section 12 of the Act of 2015 would be applicable and his bail application cannot be considered under the provisions of Code of Criminal Procedure. As is evident from Section 12 of the Act of 2015, the only embargo in not releasing a child on bail is that there appears a reasonable ground that his release is likely to bring him into any association with any known criminal or expose him to moral, physical or psychological danger or that release of such a person would defeat the ends of justice. The three disentitlement categories



contemplated in the proviso to Section 12(1) of the Act of 2015, would not come in the way of the petitioner's application being considered under Section 12 of the Act of 2015 for the following reasons:-

(a) The nature of crime committed by the petitioner is not likely to bring him into association with any known criminal or expose him to moral, physical or psychological danger; (b) There is no such report available on record which suggests that the petitioner is likely to be exposed to moral, physical and psychological danger; (c) The victim girl and her parents do not apprehend any danger from the petitioner and they have appeared before the Special Court and stated that they have no objection for enlarging the petitioner on bail.

10. In addition to the aforesaid, material on record would also go to show that the victim girl and her parents have not cooperated for the purpose of DNA Test in the present case and they have refused to give the blood sample of the victim girl. It appears that the child born to the victim



girl was given in adoption and the adoptive parents of the child born to the victim also have refused to give blood sample of the child for the purpose of DNA Test. The petitioner is in custody from 24.07.2023. The trial in the case is yet to commence. The prosecution has in all cited 22 charge sheet witnesses in the present case and the petitioner is being tried as an adult for the alleged offences. Therefore, the chance of the trial being completed in the near soon is very remote. Petitioner's application which was filed under Section 439 of Cr.P.C. before the Special Court was required to be considered as if it is an application under Section 12 of the Act of 2015. Failure to do so has resulted in miscarriage of justice and petitioner's right to liberty has been effected. Under the circumstances, I am of the opinion that petitioner's prayer for enlarging him on bail is required to be answered affirmatively. Accordingly, the following order:-

11. The petition is allowed. The petitioner is directed to be enlarged on bail in Special Case No.239/2023 pending



before the Court of Additional District and Sessions Judge and FTSC-I, Chamarajanagar, arising out of Crime No.36/2023 registered by Chamarajanagar Women Police Station, Chamarajanagar, for the offences punishable under Sections 376, 376(2)(f), 376(2)(n) and 376(3) of IPC and Sections 4, 5(j)(ii), 5(n), 5(l) and 6 of the POCSO Act, subject to the following conditions:

- a) Petitioner shall execute a personal bond for a sum of Rs.50,000/- 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.

The services rendered by learned Amicus Curiae is appreciated and placed on record.

**Sd/-
(S VISHWAJITH SHETTY)
JUDGE**

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