

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

THE HON'BLE MR.JUSTICE K.SOMASHEKAR

CRIMINAL PETITION NO. 3374 OF 2020

Dated:11-08-2020

M. Madhukumar @ Maribond vs. State of Karnataka

O R D E R

This petition is filed by the petitioner who is arraigned as Accused No.5 in S.C.No.252/2019 arose out of Crime No.38/2019 of Kuvempunagar Police Station, Mysuru for the offence punishable under Sections 376(D), 307, 397, 120B and 201 of IPC. The accused is in judicial custody since from the date of his arrest. Therefore, the counsel for the accused is praying for grant of regular bail amongst the grounds urged therein.

2. Heard learned counsel for the petitioner and learned HCGP for respondent – State appearing through video conferencing.

3. It is transpired in the charge sheet laid by the IO against the accused in C.C.No.4507/2019 that the victimgirl by name Kum.Nethravathi who lodged the complaint against the accused persons stated that she had been working in the software office by name PB Solutions situated at Saraswathi Puram, 14th Main Road, Mysuru. She fell in love with CW.2 – Shivakumara who is cited as a witness in

the charge sheet. He came into contact with the accused namely Karthik Gowda and he introduced another girl as his fiancée by name Anusha. They were chatting with each other often. On 12.04.2019, she joined Gupta Lodge as a Receptionist. She was having some financial crisis, therefore, she requested the said Karthik Gowda for some loan and in fact through the said Anusha, an amount of Rs.2,000/- was received by her as loan. The said Karthik Gowda often started demanding the said amount. In this context on 08.05.2019, there was some telephonic conversation in between Karthik Gowda and Kum.Nethravathi to pay the said loan amount. However, CW.2 – Shivakumara along with Kum.Nethravathi went to the house of Karthik Gowda and found his house was locked. Thereafter, the victim girl and CW.2 were returning. While returning, CW.2 stopped the motorcycle near a ring road, as the complainant intended to attend to nature call. At that time, it is alleged that 4 to 6 persons came and attacked the victim – complainant, raped and assaulted her. The same reveals in the charge sheet laid by the IO. On all these allegations, the IO investigated the case thoroughly and laid the charge sheet against the accused persons before the concerned committal court. This petitioner is arraigned as Accused No.5.

4. It is contended by the learned counsel for the petitioner during the course of his arguments that the petitioner who is arraigned as Accused No.5 in the alleged crime, there is no overt act attributed against him that he

had also committed the offence under Section 376 and 397 of IPC and so also made attempt to take away the life of CW.2 - Shivakumara. The allegations made against this accused that he had made attempt to have sexual intercourse on the victim girl that there was a exposing light by the car which was proceeding near the scene of crime. But seeing that exposing light this accused is also alleged to have made attempt to have sexual intercourse with the victim girl. Except this allegation in the charge sheet made by the IO, nothing is made out against this Accused relating to other offences which lugged in the charge sheet. This accused is in judicial custody since from the date of his arrest and moreover, there is no specific incriminating materials against this accused in committing the alleged offences and no incriminating materials have been seized from the custody of this accused. This accused is ready to abide by any terms and conditions to be imposed by this Court while granting bail to him. These are all the contentions as taken by learned counsel for the petitioner and seeking for regular bail.

5. Per contra, learned HCGP has taken me through the averments made in the complaint and so also, the allegations made against the accused in Crime No.38/2019. But on filing of the complaint by the complainant said to be the victim girl in an offence of rape

and so also, made attempt to take away the life of CW.2 – Shivakumara who is cited as a witness and this CW.2 has been kicked by this petitioner/accused No.5. The same reveals in the materials available on record. But on perusal of the statement of the victim and so also, statement of CW.2, the allegation made against this accused that he also participated in the crime with other accused persons in committing the alleged offences. However, CW.2 was present at the scene of crime along with the victim girl who is the author of the complaint and this CW.2 has been assaulted by accused No.2 with means of stick on his face and also other parts of the body and accused No.3 also assaulted CW.2. However, accused Nos.4 to 6 dragged CW.1 – victim girl and committed rape on her. Since this petitioner who is also involved in the heinous crime if he is released on bail, certainly he would come in the way of prosecution case and destroy the evidence. These are all the contentions as taken by learned HCGP for the State and seeking for dismissal of bail petition.

6. It is in this context of the contention as taken by learned counsel for the petitioner and so also counter made by learned HCGP for the State by referring to the materials secured by the IO during the course of the investigation in order to laying the charge sheet against the accused persons in C.C.No.4507/2019 arising out of

Crime No.38/2019 of Kuvempunagara Police Station, Mysuru for the aforesaid offences. However, it is relevant to peruse the statement made by the victim who is author of the complaint and so also, CW.2 – Shivakumara. But the victim girl fell in love with CW.2 and CW.2 had come into contact with one of the accused – Karthik Gowda. But the victim girl was in need of financial assistance. Therefore, introduced another girl by name Anusha. Thereafter she secured loan in a sum of Rs.2,000/-. Subsequent to obtaining the loan from the aforesaid girl, accused Karthik Gowda who insisted her to return the said loan amount. There was some telephonic conversation that took place between the victim girl and accused Karthik Gowda. Thereafter, the victim girl and CW.2 – Shivakumara went to the house of Karthik Gowda but found his door was locked. Subsequently, CW.1 – Nethravathy and CW.2 were returning, but on the way, CW.2 stopped the motorcycle near a ring road, as the complainant intended to attend to nature call. At that time, 4 to 6 persons came and attacked victim – complainant, raped and assaulted her.

7. During the course of his arguments, learned counsel for the petitioner has produced copies of the order passed by the co-ordinate bench of this court in respect of Karthik Kumar in Crl.P.No.7404/2019 dated 06.11.2019, Crl.P.No.7915/2019 dated 03.12.2019 in respect of Surya Kumar @ Surya, Crl.P.No.8411/2019 dated 19.12.2019 in respect of Jeevan Kumar, Crl.P.No.7893/2019 dated 27.11.2019 in respect

of Dileep.K, who are the accused persons in Crime No.38/2019 of Kuvempunagar Police Station. All these accused persons have been released on bail granted by this Court in the aforesaid criminal petitions by imposing suitable conditions. But this accused who is arraigned as accused No.5 is in similar footing for the alleged offences. This accused is said to have participated with other accused in the alleged offence by giving kick on the person of CW.2 - Shivakumara. Thereafter, accused No.4 to 6 said to have dragged CW.1 - Kum.Nethravathy and committed rape on her. But on exposing light of a car which passed nearby the scene of crime, that on seeing of exposing of light, this petitioner made an attempt to have sexual intercourse but he did not committed the alleged offence. But there was a injury inflicted on the person of CW.2 - Shivakumara. The said injuries suffered by him are simple in nature and one is grievous injury. However, CW.2 - Shivakumara has been discharged from the hospital after obtaining treatment. There is no threat to his life. But the aforesaid co-accused and also petitioner/accused no.5 are in similar footing. Therefore, it is said that paramount consideration whilegranting bail to the accused are whether the accused is available for facing of trial, whether there are any bad antecedents about the accused and so also, whether the accused has to flight from justice and causing hindrance of the progress of charge sheeted case against him and so also, threatening witnesses on the parts of the prosecution. But in the instant case, the IO has already laid the charge sheet against the petitioner/accused. The co-accused have already granted bail

as stated supra. Therefore, for consideration of this bail petition, detailed documentation is not required and moreover, at this stage it does not require any detailed discussion of the materials secured by the IO in order to lay the charge sheet against the accused. On careful perusal of the entire charge sheet consisting of statement of witnesses and so also, mahazar said to have drawn by the IO in the presence of panch witnesses and so also, the allegation made against this accused relating to the incident. But at this stage, it cannot be spell out in detail relating to the role of the individual accused in the charge sheeted case and that the accused are require to be facing of trial. Therefore, it is said that there are substance in the contention of the petitioner's counsel seeking relief of bail. At a cursory glance of the entire materials relating to the charge sheet laid by the accused, it is said that the detail documentation is not required for consideration of the bail petition filed by the accused.

8. However, learned HCGP for the State contends that if the accused is supposed to be released on bail, certainly he would come in the way of prosecution case and destroy the evidence. This apprehension could be curtailed by imposing suitable conditions to safeguard the interest of the prosecution. Therefore, for the aforesaid reasons as well as under the circumstances of the case, I am of the considered opinion that the accused is deserving for bail. Accordingly, I proceed to pass the following:

ORDER

The petition filed by petitioner/Accused No.5 under Section 439 of Cr.P.C. is hereby allowed. He shall be released on bail subject to the following conditions:

- i) Petitioner/Accused No.5 shall execute bond in a sum of Rs.50,000/-, with one surety for the likesum to the satisfaction of the trial Court in S.C.No.252/2019 arising out of Crime No.38/2019 of Kuvempunagar Police Station, Mysuru;
- ii) Petitioner/Accused No.5 shall appear before the Court of law on all the date of hearing;
- iii) Petitioner/Accused No.5 shall not indulge in any criminal activities henceforth.
- iv) Petitioner/Accused No.5 shall not tamper or hamper the case of prosecution witnesses.
- v) Petitioner/Accused No.5 shall not leave the jurisdiction of Mysuru District without prior permission from the competent court of law.

If the Petitioner/Accused violates any of the above conditions, the bail order shall automatically stand ceased.