

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 12TH DAY OF OCTOBER, 2022

BEFORE

THE HON'BLE MR. JUSTICE RAJENDRA BADAMIKAR

CRIMINAL PETITION NO.7295/2022

BETWEEN:

SRI.ALEEM PASHA
S/O SALEEM PASHA
AGED ABOUT 27 YEARS
RESIDING AT
NEAR DODDAMMA TEMPLE
KOWDENAHALLI
RAMAMURTHY NAGARA
K.R.PURAM
BENGALURU CITY - 560 016

....PETITIONER

(BY SRI.BASAVANNA M.D, ADVOCATE)

AND:

1. THE STATE OF KARNATAKA
REPRESENTED BY K.R.PURAM
POLICE STATION
BENGALURU
BY ITS GOVERNMENT PLEADER
HIGH COURT BUILDING COMPLEX
BENGALURU - 01
2. KUM.VANADANA KALAGUDI
SUB-INSPECTOR

K.R.PURAM POLICE STATION
K.R.PURAM
BENGALURU - 36

...RESPONDENTS

(BY SRI.K.NAGESHWARAPPA, HCGP FOR R.1;
R.2 -SERVED)

THIS PETITION IS FILED U/S 439 OF CR.P.C BY THE ADVOCATE FOR THE PETITIONER PRAYING THAT THIS HON'BLE COURT MAY BE PLEASED TO ENLARGE THE PETITIONER ON BAIL IN CR.NO.206/2022 OF K.R.PURAM P.S., BENGALURU CITY FOR THE OFFENCE P/U/S 9 AND 10 OF CHILD MARRIAGE RESTRAINT ACT AND SECTIONS 4 AND 6 OF PROTECTIONS OF CHILD FROM SEXUAL OFFENCE ACT 2012 PENDING ON THE FILE OF THE ADDITIONAL CITY CIVIL AND SESSIONS JUDGE AT BENGALURU AND ETC.

THIS PETITION COMING ON FOR ORDERS THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

This petition is filed by the petitioner/Accused No.1 under Section 439 of Cr.P.C. seeking regular bail in Crime No.206/2022 of K.R.Puram Police Station, Bengaluru City, registered for the offences punishable under Sections 9 and 10 of Child Marriage Restrain Act and Sections 4 and 6 of Protections of Child from Sexual Offence Act, 2012 (for short

'POCSO ACT') pending on the file of the Additional City Civil and Sessions Judge at Bengaluru.

2. The brief factual matrix leading to the case is that; respondent No.2 herein being a Sub-Inspector of Police of K.R.Puram Police Station has lodged a compliant against the petitioner on the basis of information furnished by the Medical Officer regarding the petitioner committing offence punishable under Sections 9 and 10 of Child Marriage Restrain Act and Sections 4 and 6 of Protections of Child from Sexual Offence Act 2012. On the basis of the complaint, the crime came to be registered and later on, the petitioner was arrested and remanded to the judicial custody. The petitioner has moved a regular bail petition before the learned Session's Judge and the same came to be rejected. Hence, the petitioner is before this Court.

3. Heard the arguments advanced by the learned counsel for the petitioner/Accused No.1 and learned counsel appearing for the respondent – State. Perused the records.

4. The allegation discloses that on 16.06.2022, the victim, who is the wife of the petitioner, approached the Primary Health Centre in Ramamurthy Nagar for medical checkup and on examination, it is found that she was pregnant. Further, it is also revealed that her date of birth is 27.07.2004 and she was aged about only 17 years. The petitioner being her husband, it is alleged that the marriage of the victim was solemnized when she was minor and after marriage, she has become pregnant in view of physical relationship between the petitioner and the complainant. Hence, the complaint came to be lodged.

5. Learned counsel appearing for the petitioner, at this juncture, contends that under Mohammedan Law, the puberty is the consideration for marriage and normal puberty age is

treated as 15 years and hence, he would contend that there is no commission of offence under Sections 9 and 10 of the Child Marriage Restrain Act. However, such arguments cannot be accepted in view of the fact that POCSO Act is a Special Act and it over rights personal law and under POCSO Act, the age for involving in sexual activities is 18 years.

6. However, at the same time, it is also evident that victim is aged about 17 years and is capable of understanding things. Though she asserts that without her consent, marriage was solemnized, there is no evidence to show that she has raised any objections and the *prima-facie*, it is evident that she is also consenting party though she is under the influence of her parents.

7. Admittedly, the petitioner is the husband of the victim and looking to these facts and circumstances, there is no serious dispute regarding the marriage as the petitioner himself has produced the relevant documents before the Trial

Court regarding the marriage. Hence, looking to these facts and circumstances, there is no question of tampering the prosecution witnesses. Considering the relationship of marriage, in my considered opinion, there is no impediment for admitting the petitioner on bail. Further victim being pregnant, requires proper support and petitioner can take care of his wife. The apprehension raised by the learned HCGP can be meted-out by imposing certain conditions. Hence, the bail petition needs to be allowed and accordingly, I proceed to pass the following:-

ORDER

The petition is **allowed**. The petitioner/Accused No.1 is directed to be enlarged on bail in respect of Crime No.206/2022 of K.R.Puram Police Station, registered for the offence punishable under Sections 9 and 10 of Child Marriage Restrain Act and Sections 4 and 6 of Protections of Child from Sexual Offence Act 2012 on his executing a personal bond for a sum of Rs.1,00,000/- (Rupees One Lakh only) with two

sureties for the like-sum to the satisfaction of the trial Court, subject to the following conditions that,-

- i) He shall not indulge in any of the criminal activities
- ii) He shall not tamper the prosecution witnesses either directly or indirectly.
- iii) He shall not leave the jurisdiction of the Court, without prior permission
- iv) He shall attend the Court on all the dates of hearing, unless he is exempted by a specific order.
- v) He shall co-operate for speedy disposal of the matter.

**Sd/-
JUDGE**

NEM