



CRL.P No. 12080 of 2022



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 14TH DAY OF MARCH, 2023

BEFORE

THE HON'BLE MR JUSTICE V SRISHANANDA

CRIMINAL PETITION NO. 12080 OF 2022

BETWEEN:

...PETITIONER

(BY SRI. TIGADI VEERANNA GADIGEPPA., ADVOCATE)

AND:

1. THE STATE OF KARNATAKA
REP BY INSPECTOR OF POLICE
BAGEPALLI POLICE STATION
TALUKA BAGEPALLI
DISTRICT : CHIKKABALLAPURA
REP. BY STATE PUBLIC PROSECUTOR
HIGH COURT OF KARNATAKA
BENGALURU-560001.

2.



...RESPONDENTS

(BY SRI S. VISHWAMURTHY, HCGP)

THIS CRL.P IS FILED U/S.439 CR.P. PRAYING TO ENLARGE THE PETITIONER ON BAIL IN CR.NO.179/2022 REGISTERED BY BAGEPALLI POLICE STATION, CHIKKABALLAPURA FOR THE OFFENCE P/U/S 363, 376(2)(n), 344 OF IPC, SECTION 4 AND 6 OF POCSO ACT AND SECTION 9 AND 10 OF PROHIBITION OF CHILD MARRIAGE ACT, PENDING ON THE FILE OF HONBLE ADDITIONAL AND SESSIONS JUDGE, FTSC-1, (POCSO), CHIKKABALLAPURA IN SPL.S.C. (POCSO).NO.116/2022.

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

ORDER

1. Heard Sri. Tigadi Veeranna Gadigeppa, learned counsel appearing for the petitioner and learned High Court Government Pleader for the respondent-State.

2. Respondent No.2, who is the complainant, though served with the notice of the petition, remained absent before this Court.

3. Brief facts of the case are as under:

A complaint came to be lodged by the second respondent with Bagepalli Police, Chikkaballapura District which was



registered in Crime No.179/2022 on 27.04.2022, initially for the offence punishable under Section 363 of Indian Penal Code (for short 'IPC').

4. Gist of the complaint averments reveal that the complainant belongs to Schedule Caste community and was the resident of 13th ward in Bagepalli Town along with her family members. She has a daughter (victim girl) aged 16 years. On 02.04.2022, the victim girl had been to church and at that juncture, the petitioner kidnapped her. Despite best efforts, the victim girl was not traced and therefore, the complainant approached the jurisdictional police with a missing complaint.

5. Police registered a case as aforesaid and investigated the matter. During the course of investigation, the investigating Agency was successful in tracing the victim girl and the accused/petitioner. After recording the statement of the victim girl, charge sheet came to be filed against the petitioner for the offences punishable under Sections 4 and 6 of POCSO Act and also under the provisions of Section 9 and 10 of the Prohibition of Child Marriage Act, 2006. Apart from the offence under Sections 363, 372(2) (n) and Section 344 of IPC.



6. Gist of the charge sheet material would go to show that the accused/petitioner cajoled the victim girl and took her with him on 14.02.2022 in the guise of valentine's Day. Thereafter, near the entrance of Nandi Hills, the petitioner took her into a lonely place and had forcible sexual intercourse with the victim girl. Again on 02.04.2022 he took the victim girl to one of his relative's house representing the victim girl as a major and obtained premises on rent and started residing there. On 03.04.2022 at about 9 a.m., the petitioner took the victim girl to Anjaneya Swamy Temple and married her. On 11.05.2022, the petitioner had sexual intercourse with the victim girl and the victim girl being aged 16 years. The Police filed charge sheet against the petitioner for the aforesaid offences.

7. During the course of investigation, the petitioner has been apprehended by the Police along his elder sister Sujata and her husband. Accused Nos.2 and 3 were successful in getting bail but insofar as the petitioner is concerned, the learned Special Judge, Chikkaballapura by order dated



24.11.2022 rejected the bail request in Criminal Misc. No.811/2022.

8. Thereafter, the petitioner is before this Court and sought for grant of bail on the following grounds:

- *"The Petitioner/Accused is innocent of the charges levelled against him.*
- *There are no reasonable grounds to believe that the Petitioner/Accused has committed the offences alleged against him.*
- *The offences alleged against the Petitioner/Accused are not exclusively punishable with death or imprisonment for life.*
- *The Petitioner/Accused is aged about 23 years old, earning lively hood by following avocation of bar bender and is the only earning members in his family consisting of his ailing old aged mother.*
- *The Petitioner/Accused is in custody from the date of his arrest on 25.07.2022.*
- *The Petitioner/Accused is in Judicial Custody; hence the detention of Petitioner/Accused is not necessary for the purpose of Investigation.*
- *The Petitioner is the only earning member in his family. His mother require immediate medical treatment. If the Petitioner is not granted Bail his mother may not be in position to take treatment.*



- *The Petitioner/Accused owns movable and immovable properties and has deep roots in the society; hence there is no apprehension of their abscondance.*
- *The Petitioner/Accused undertakes that he shall not abscond or flee from justice.*
- *The Petitioner/Accused is ready and willing to furnish security to the satisfaction of the Court for his appearance before the Court as and when directed.*
- *The Petitioner/Accused undertakes that he shall not tamper with prosecution witnesses.*
- *The Petitioner/Accused undertakes to abide all the terms and conditions that may be imposed by this Hon'ble Court in the event of granting Bail.*
- *If the Petitioner/Accused is not granted bail he will be put to hardship and prejudice.*
- *There are no criminal antecedents against the Petitioner/Accused.*
- *The Petitioner/Accused is falsely implicated in the case due to rivalry.*
- *The Petitioner/Accused has not filed any other Petition or any other Petition is pending before this Hon'ble Court on the same cause of action."*

9. Sri Veeranna Tigadi Gadigeppa, learned counsel for the petitioner reiterating the bail grounds, vehemently contended that element of force is absent in the case on hand



and therefore, ingredients to attract the offences punishable under Section 4 and 6 of POCSO Act are *prima facie* absent.

10. In support of his arguments, he places reliance on the statement made by the victim girl before the Jurisdictional Magistrate while her statement was recorded under Section 164 of Cr.P.C.

11. He pointed out that in such statement, victim girl specifically stated that the petitioner tied 'Mangala Sutra' outside the Anjaneya Swamy Temple in Doddaballapur and thereafter herself and the petitioner lived like husband and wife and they used to have physical relationship is every alternate day. It is also stated that the physical relationship out of volition and therefore, there is no forcible sexual intercourse which is *sine qua non* to attract the offences punishable under Sections 4 and 6 of POCSO Act, apart from the IPC offences and therefore, this is not a case where the custodial trial is utmost necessary and sought for grant of bail.

12. Per contra, learned High Court Government Pleader opposes the bail grounds by contending that victim girl is a



minor and in the pretext of love affair, petitioner and victim girl indulged in sexual act on 14.02.2022.

13. It is also contended that on behalf of the prosecution that the statement of the victim girl recorded under Section 164 Cr.P.C., would prima facie establish that there was a physical relationship between victim girl and the petitioner and the since the victim girl is a minor, the alleged consent is not a consent in the eye of law and therefore, sought for rejection of the bail.

14. In view of the rival contentions of the parties, this Court perused the material on record meticulously.

15. From various judicial pronouncements of Hon'ble Apex Court governing the field of grant or rejection of bail, one can safely deduce the following parameters:

- *The nature of accusation,*
- *Severity of punishment (gravity of the offence)*
- *The nature of evidence in support of thereof,*
- *The character of the accused*
- *Likely hood of accused fleeing away from trial,*
- *Possibility of witnesses being tampered with,*
- *possibility of hampering the investigation,*
- *Presence of accused for custodial investigation*



- *Presence of accused for identification parade*
- *The social and financial status of the accused in relation to offence alleged*
- *Peculiar circumstances relating to the accused,*
- *The larger interest of public/state*
- *Impact on the society at large if bail is granted*
- *Health, age & sex of the accused*
- *Prospects of speedy trial*
- *Stage at which bail is sought*

16. The parameters above referred are only indicative and list is not exhaustive. When we apply the above parameters to the case on hand, the company of victim girl with the petitioner herein is established. So also, *prima facie* the physical relationship between the petitioner and the victim girl is established as is stated by the victim girl when her statement is recorded under Section 164 of Cr.P.C.

17. In the statement of the victim girl recorded before the jurisdictional Magistrate under Section 164 of Cr.P.C., there is a clear material that victim girl had the physical relationship and couple had physical relationship every alternate day. It is also found from the said statement that the victim girl was happily having relationship with the petitioner.



18. Sri Veeranna Tigadi, learned counsel for the petitioner however, emphasized that the element of force is absent in the physical relationship and therefore, ingredients to attract either Section 4 or Section 6 of the POCSO Act are *per se* absent and in such cases, the Courts ought to have a liberal view and the petitioner cannot be penalized for the consensual act between grown up victim girl and the accused.

19. He also contended that object of the act is to bring into the books of law, the persons who forcefully have a physical relationship with a child or indulge in sexual assault and in the absence of such material on record, the bail provisions should be dealt with by the Courts liberally.

20. In order to appreciate the said arguments of learned counsel for the petitioner, it is just and necessary for this Court to cull out Section 3 to 6 of the POCSO Act, which reads as under:

"Sections 3 to 6 of Protection of Children from Sexual Offences Act, 2012:

3. Penetrative sexual assault

(1) In this Act, unless the context otherwise requires, -



A person is said to commit "penetrative sexual assault" if-

(a) he penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a child or makes the child to do so with him or any other person; or

(b) he inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of the child or makes the child to do so with him or any other person; or

(c) he manipulates any part of the body of the child so as to cause penetration into the vagina, urethra, anus or any part of body of the child or makes the child to do so with him or any other person; or

(d) he applies his mouth to the penis, vagina, anus, urethra of the child or makes the child to do so to such person or any other person.

4. Punishment for penetrative sexual assault

Whoever commits penetrative sexual assault shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may extend to imprisonment for life, and shall also be liable to fine.

5. Aggravated penetrative sexual assault

(a) Whoever, being a police officer, commits penetrative sexual assault on a child —



(i) within the limits of the police station or premises at which he is appointed; or

(ii) in the premises of any station house, whether or not situated in the police station, to which he is appointed; or

(iii) in the course of his duties or otherwise; or

(iv) where he is known as, or identified as, a police officer; or

(b) whoever being a member of the armed forces or security forces commits penetrative sexual assault on a child—

(i) within the limits of the area to which the person is deployed; or

(ii) in any areas under the command of the forces or armed forces; or

(iii) in the course of his duties or otherwise; or

(iv) where the said person is known or identified as a member of the security or armed forces; or

(c) whoever being a public servant commits penetrative sexual assault on a child; or

(d) whoever being on the management or on the staff of a jail, remand home, protection home, observation home, or other place of custody or care and protection established by or under any law for the time being in force, commits penetrative sexual assault on a child, being inmate of such jail, remand home, protection home, observation home, or other place of custody or care and protection; or



(e) whoever being on the management or staff of a hospital, whether Government or private, commits penetrative sexual assault on a child in that hospital; or

(f) whoever being on the management or staff of an educational institution or religious institution, commits penetrative sexual assault on a child in that institution; or

(g) whoever commits gang penetrative sexual assault on a child.

Explanation—When a child is subjected to sexual assault by one or more persons of a group in furtherance of their common intention, each of such persons shall be deemed to have committed gang penetrative sexual assault within the meaning of this clause and each of such person shall be liable for that act in the same manner as if it were done by him alone; or

(h) whoever commits penetrative sexual assault on a child using deadly weapons, fire, heated substance or corrosive substance; or

(i) whoever commits penetrative sexual assault causing grievous hurt or causing bodily harm and injury or injury to the sexual organs of the child;

Or

(j) whoever commits penetrative sexual assault on a child, which—

(i) physically incapacitates the child or causes the child to become mentally ill as defined under clause (b) of section 2 of the Mental Health Act, 1987 or causes impairment of any kind so as to render the child unable to perform regular tasks, temporarily or permanently;



or

(ii) in the case of female child, makes the child pregnant as a consequence of sexual assault;

(iii) inflicts the child with Human Immunodeficiency Virus or any other life threatening disease or infection which may either temporarily or permanently impair the child by rendering him physically incapacitated, or mentally ill to perform regular tasks; or

(k) whoever, taking advantage of a child's mental or physical disability, commits penetrative sexual assault on the child; or

(l) whoever commits penetrative sexual assault on the child more than once or repeatedly; or

(m) whoever commits penetrative sexual assault on a child below twelve years; or

(n) whoever being a relative of the child through blood or adoption or marriage or guardianship or in foster care or having a domestic relationship with a parent of the child or who is living in the same or shared household with the child, commits penetrative sexual assault on such child; or

(o) whoever being, in the ownership, or management, or staff, of any institution providing services to the child, commits penetrative sexual assault on the child; or

or

(p) whoever being in a position of trust or authority of a child commits penetrative sexual assault on the child in an institution or home of the child or anywhere else; or

(q) whoever commits penetrative sexual assault on a



child knowing the child is pregnant, or
(r) whoever commits penetrative sexual assault on a
child and attempts to murder the child; or
(s) whoever commits penetrative sexual assault on a
child in the course of communal or
sectarian violence; or
(t) whoever commits penetrative sexual assault on a
child and who has been previously
convicted of having committed any offence under this
Act or any sexual offence punishable
under any other law for the time being in force; or
(u) whoever commits penetrative sexual assault on a
child and makes the child to strip
or parade naked in public, is said to commit aggravated
penetrative sexual assault.

SECTION 6-Punishment for aggravated penetrative sexual assault.--

(1) Whoever commits aggravated penetrative sexual assault shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of natural life of that person and shall also be liable to fine, or with death.

(2) The fine imposed under sub-section (1) shall be just and reasonable and paid to the victim to meet the medical expenses and rehabilitation of such victim."



21. On careful reading of the above provisions, what has been dealt in the above provision is that an act of penetrative sexual assault or aggravated penetrative sexual assault against a child. Child is defined under Section 2(d) of the POCSO Act where under any person below 18 years is a child. In the case on hand, admittedly victim girl is under the age of 18 years. May be in the case on hand, the aggravated penetrative sexual assault may not get attracted *prima facie* in view of the statement made by the victim girl under Section 164 of Cr.P.C., especially, when the victim girl stated that she had the company of the accused/petitioner happily and she is aged 16 years.

22. While considering the bail application, it is settled principles of law that the Court is not required to hold a mini trial to find out the merits or demerits of the case, as the same may prejudice the case of the parties during the trial one way or the other.

23. So also, what is the value to be attached is a statement recorded under Section 164 of Cr.P.C., of a victim girl while deciding the bail application should also have the



same treatment that such statement should not be taken as gospel truth, as the same needs to be tested during the trial.

24. Suffice to say in the case on hand, since the victim girl has specifically stated that she had sexual relationship with the petitioner every alternate day so long as in the company of petitioner, would only indicate that there was no resistance on the part of the victim girl in the alleged act and she participated in the act voluntarily.

25. In the light of above factual aspects, when the object of the enactment of POCSO Act to be looked into, it is crystal clear that the Act has been enacted to provide protection of children from the offences of sexual assault, sexual harassment and pornography etc.

26. Whether a child could be a consenting party is a moot question while considering the completion of an offence as is defined under Section 3 of the POCSO Act. On bare reading of the Section 3 of the POCSO Act, as referred to supra, the provision never contemplate anything about the consent



inasmuch as the intension of legislature is abundantly clear that a child cannot be a 'Consenting Party'.

27. While dealing with a similar situation and what is the effect of a factual aspect where the child is a consenting party and how the act is to be interpretative in such circumstances is no longer *res integra*.

28. Hon'ble Apex Court in the case of ***Independent Thought V. Union of India and Another*** reported in **(2017) 10 SCC 800**, while dealing with similar situation has held as under:

"46. Section 3 of the PoCSO Act defines "penetrative sexual assault". Clause (n) of Section 5 provides that if a person commits penetrative sexual assault with a child, then that person actually commits aggravated penetrative sexual assault if that person is related to the child, inter alia, through marriage. Therefore, if the husband of a girl child commits penetrative sexual assault on his wife, he actually commits aggravated penetrative sexual assault as defined in Section 5(n) of the PoCSO Act which is punishable under Section 6 of the PoCSO Act by a term of rigorous imprisonment of not less than ten years and which may extend to imprisonment for life and fine.



47. *The duality therefore is that having sexual intercourse with a girl child between 15 and 18 years of age, the husband of the girl child is said to have not committed rape as defined in Section 375 IPC but is said to have committed aggravated penetrative sexual assault in terms of Section 5(n) of the Pocso Act.*

48. *There is no real or material difference between the definition of "rape" in the terms of Section 375 IPC and "penetrative sexual assault" in the terms of Section 3 of the Pocso Act. [**3. Penetrative sexual assault.**—A person is said to commit "penetrative sexual assault" if—(a) he penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a child or makes the child to do so with him or any other person; or(b) he inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of the child or makes the child to do so with him or any other person; or(c) he manipulates any part of the body of the child so as to cause penetration into the vagina, urethra, anus or any part of body of the child or makes the child to do so with him or any other person; or(d) he applies his mouth to the penis, vagina, anus, urethra of the child or makes the child to do so to such person or any other person.]*

375. Rape.—A man is said to commit "rape" if he—(a) penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or(b) inserts, to any extent, any object or a part of



the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or(c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or(d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person....”] The only difference is that the definition of rape is somewhat more elaborate and has two Exceptions but the sum and substance of the two definitions is more or less the same and the punishment [under Section 376(1) IPC] for being found guilty of committing the offence of rape is the same as for penetrative sexual assault (under Section 4 of the PocsO Act). Similarly, the punishment for “aggravated” rape under Section 376(2) IPC is the same as for aggravated penetrative sexual assault under Section 6 of the PocsO Act. Consequently, it is immaterial if a person is guilty of the same sexual activity under the provisions of the PocsO Act or the provisions of IPC—the end result is the same and only the forum of trial changes. In a violation of the provisions of the PocsO Act, a Special Court constituted under Section 28 of the said Act would be the trial court but the ordinary criminal court would be the trial court for an offence under IPC.

79. *There is no doubt that pro-child statutes are intended to and do consider the best interest of the child. These statutes have been enacted in the recent*



past though not effectively implemented. Given this situation, we are of opinion that a few facts need to be acknowledged and accepted:

79.1.*Firstly, a child is and remains a child regardless of the description or nomenclature given to the child. It is universally accepted in almost all relevant statutes in our country that a child is a person below 18 years of age. Therefore, a child remains a child whether she is described as a street child or a surrendered child or an abandoned child or an adopted child. Similarly, a child remains a child whether she is a married child or an unmarried child or a divorced child or a separated child or a widowed child. At this stage we are reminded of Shakespeare's eternal view that a rose by any other name would smell as sweet—so also with the status of a child, despite any prefix.*

79.2.*Secondly, the age of consent for sexual intercourse is definitively 18 years and there is no dispute about this. Therefore, under no circumstance can a child below 18 years of age give consent, express or implied, for sexual intercourse. The age of consent has not been specifically reduced by any statute and unless there is such a specific reduction, we must proceed on the basis that the age of consent and willingness to sexual intercourse remains at 18 years of age.*



79.3. *Thirdly, Exception 2 to Section 375 IPC creates an artificial distinction between a married girl child and an unmarried girl child with no real rationale and thereby does away with consent for sexual intercourse by a husband with his wife who is a girl child between 15 and 18 years of age. Such an unnecessary and artificial distinction if accepted can again be introduced for other occasions for divorced children or separated children or widowed children.*

29. In view of the legal principles enunciated in the above decision, *vis-à-vis* the object of the act, it is crystal clear that a person who is under the age of 18 years, at any cost cannot be a consenting party to a physical relationship in view of the definition of the 'child' under Section 2(d) of POCSO Act.

30. It is also pertinent to note that in complimentary to the definition of Child under Section 2 (d) of the POCSO Act, the age of consent which was "sixteen years" was amended in the Indian Penal Code with the words "eighteen years". Amendment to Section 375 of IPC after the enactment of the POCSO Act, reads as under:

Section 375 in the Indian Penal Code

"xxxx



(Sixthly) With or without her consent, when she is under sixteen years of age. Explanation.—Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.”

31. In other words, the consent, if any, of the victim girl for the penetrative sexual assault said to have taken place between the petitioner and the victim girl is immaterial while considering the scope of Section 3 of POCSO Act which is punishable under Section 4 of the POCSO Act.

32. Therefore, the theory propounded on behalf of the petitioner that the victim girl is a consenting party to the alleged penetrative sexual assault and there is absence of element of force and therefore, no ingredients whatsoever to attract the offence under Section 3 and 5 punishable under Section 4 and 6 of the POCSO Act cannot be countenanced in law, more so, at the stage of considering the bail application.

33. Further, after the prosecution discharges the initial burden about the charges leveled against the accused, prosecution enjoys the presumption as is contemplated under Section 29 and 30 of the POCSO Act.



34. For ready reference those provisions are culled hereunder:

"Section 29: Presumption as to certain offences.

Where a person is prosecuted for committing or abetting or attempting to commit any offence under sections 3, 5, 7 and section 9 of this Act, the Special Court shall presume, that such person has committed or abetted or attempted to commit the offence, as the case may be unless the contrary is proved.

Section 30: Presumption of culpable mental state.

(1) In any prosecution for any offence under this Act which requires a culpable mental state on the part of the accused, the Special Court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

(2) For the purposes of this section, a fact is said to be proved only when the Special Court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability.



Explanation.--In this section, "culpable mental state" includes intention, motive, knowledge of a fact and the belief in, or reason to believe, a fact."

35. On bare reading of the above provisions, it is crystal clear that in a given case after the prosecution places such evidence on record, which would discharge initial burden, it is always open for the accused to have his say in the matter placed on record, which would facilitate the Trial Court to arrive at a finding whether in a given case the act complained of against the accused would amount to an offence under Section 3 and 5 punishable under Section 4 and 6 of the POCSO Act. Till such time, it is not open for any Court to have a definite opinion as to the role of an accused in a matter of this nature.

36. However, in the cases where there is an allegation that there was a love affair, such cases must stand on a different footing. However, even in such cases, having regard to the age prescribed to call a person as a child under 18 years, love affair may be permissible, but not definitely physical relationship having regard to the object of the act. Otherwise, the very object of the enactment would render useless and



registering a case and investigation and trial would all become empty formality.

37. It is settled principles of law and requires no emphasis that every Court is required to advance the object sought to be achieved by an enactment and no judicial pronouncement should run contrary to the objects sought to be achieved by the enactment.

38. Likewise, the theory of compromise or post event compromise could be taken into account by Court or not in respect of heinous offences is no longer *res integra*. Role of Court in such matters is enunciated in catena of judicial pronouncements. Can there be a compromise in respect of a heinous offence and such compromise could be basis for passing judicial orders is a moot question which would often arise for consideration before the Court.

39. It is not uncommon that the Courts across the Country have often either enlarged an accused on bail owing to the accused contracting marriage with the rape victim or cases where the FIR has been quashed on account of subsequent marriage. Those judgments and orders eclipse the settled



principles of law enunciated by the Hon'ble Apex Court while considering the seriousness or gravity of the offences alleged against an accused in a given case.

40. Hon'ble Apex Court in catena of judgments has clearly ruled that heinous offences like suicide, murder and rape etc., can neither be quashed nor compounded. Echoing similar view, Hon'ble Apex Court in a recent judgment in the case of Daxaben v. State of Gujarat reported in 2022 SCC OnLine SC 936 has held as under:

"37. Offences under Section 306 of the IPC.....where the victim and offender have compromised disputes essentially civil and personal in nature, the High Court can exercise its power under Section 482 Cr.P.C. to quash the criminal proceedings. In what cases power to quash an FIR or a criminal complaint or criminal proceedings upon compromise can be exercised, would depend on the facts and circumstances of the case.

38. However, before exercising its power under Section 482 of the Cr.P.C.....Crimes like murder, rape, burglary, dacoity and even abetment to commit suicide are neither private nor civil in nature. Such crimes are against the society. In no circumstances can prosecution be quashed on compromise, when the



offence is serious and grave and falls within the ambit of crime against society.

39. xxxx

40. In Criminal jurisprudence, the position of the complainant In case of grave and serious non-compoundable offences which impact society, the informant and/or complainant only has the right of hearing, to the extent of ensuring that justice is done by conviction and punishment of the offender. An informant has no right in law to withdraw the complaint of a non-compoundable offence of a grave, serious and/or heinous nature, which impacts society."

41. It is also pertinent to note that despite such repeated rulings from the Hon'ble Apex Court in the sensitive matters, Trial Court and sometimes the High Court is often required to deal with plea of settlement/compromise; especially in the matter involving sexual assault offences/where that the accused is ready to marry the victim and therefore, the accused be granted bail or the complaint be quashed.

42. If such pleas are accepted as a rule, it would result in the Court allowing the non compoundable offence being



compounded by the process of the Court which is not the intention of the legislature in enacting the relevant statutes.

43. Keeping the above aspects in view, this Court is of the considered opinion that the argument put forward on behalf of the petitioner that the petitioner if enlarged on bail, would make sincere efforts to marry the victim girl cannot be countenanced in law.

44. Keeping all these aspects in view, even though victim girl has stated that she had the company of accused and physical relationship and both the couple had the relationship on their volition, taking note of the object that is sought to be achieved by enacting the POCSO Act, this Court is of the considered opinion that the grounds urged in the petition are hardly sufficient to accept the request made by the petitioner to admit him on bail by resorting to the special powers vested in this Court under Section 439 Cr.P.C.

45. However, it is always open for the petitioner to approach the Court with a successive bail request, if there is



CRL.P No. 12080 of 2022

any positive changed circumstance in the case after examination of the material witnesses.

**Sd/-
JUDGE**

GPG/MR
List No.: 1 SI No.: 49

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