

2022 LiveLaw (SC) 972

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

M.R. SHAH; J. HIMA KOHLI; J.

CRIMINAL APPEAL NO. 1981 OF 2022; NOVEMBER 17, 2022

versus State of Karnataka & Anr.

Code of Criminal Procedure, 1973; Section 439 - Bail - Rape accused granted bail by the High Court observing that allegations are matter of trial and there is no need of custodial trial - Even the observation that there is no need of further custodial trial is also not relevant aspect while considering the bail application under Section 439 of Cr.P.C. The same may have some relevance while considering the application for anticipatory bail - Relevant aspects which are required to be kept in mind while considering the bail application are: Seriousness of the offence alleged; material collected during the investigation; statement of the prosecutrix recorded under Section 161 of Cr.PC, etc.- HC directed to reconsider the bail application afresh.

For Appellant(s) Ms. Jayna Kothari, Sr. Adv. Ms. Anindita Pujari, AOR Mr. Azad Bansala, Adv. Prakriti Rastogi, Adv. Ms. Ayushi Saraogi, Adv.

For Respondent(s) Mr. Shubhranshu Padhi, AOR Mr. Vishal Banshal, Adv. Ms. Rajeshwari Shankar, Adv. Mr. Niroop Sukrithy, Adv. Mr. Mohd. Ovais, Adv. Dr. Aditya Sondhi, Sr. Adv. Ms. Ranu Purohit, AOR Mr. Parashuram A.L., Adv.

J U D G M E N T

M. R. Shah, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 10.06.2022 passed by the High Court of Karnataka at Bengaluru in Criminal Petition No. 3492/2022, by which, the High Court has released respondent No. 2 herein on bail in connection with an FIR/Crime No. 8/2022 registered with Laxmipura Police Station, Mysuru City for the offences punishable under Sections 376, 354, 328 and 120B of IPC, the original informant/complainant/prosecutrix/victim has preferred the present appeal.

2. We have heard Ms. Jayna Kothari, learned Senior Advocate appearing on behalf of the appellant, Shri Shubhranshu Padhi, learned counsel appearing on behalf of the State and Dr. Aditya Sondhi, learned Senior Advocate appearing on behalf of respondent No. 2 – accused. We have gone through and perused the impugned judgment and order passed by the High Court releasing respondent No. 2 on bail.

2.1 From the impugned judgment and order passed by the High Court, it appears that what has weighed with the High Court is that the complaint was filed after five days and the allegations that the accused had mixed some substance in the drinks that made her lose consciousness and thereafter, he committed the offence on intoxicating her and subjected her to the sexual act, is a matter of trial and that the accused is in custody from 11.02.2022 and there is no need of further custodial trial. The relevant observations made in paragraph 6 of the impugned order while releasing respondent No. 2 – accused on bail are as under: -

“6. Having heard the respective counsel appearing for the parties and also on perusal of the material available on record, the Court has to take note of the contents of the allegations and also the complaint is filed after five days, wherein an allegation is made that this petitioner mixed some substance in the drinks to loose her conscious and thereafter he committed the offence and the fact that both of them went to Bopy's Bar & Restaurant in order to take food and also had alcohol. Having taken note of the said fact into consideration whether intoxicating her subjected her to sexual act is a matter of trial and this petitioner is in custody

from 11.02.2022 and no need of further custodial trial. Hence, it is a fit case to exercise the powers under Section 439 of Cr.P.C., subject to imposing certain conditions to protect and safeguard the interest of the prosecution.”

2.2 However, the High Court has failed to appreciate the allegations in the FIR that immediately on the occurrence, when the prosecutrix/victim regained consciousness, she first went to the hospital and thereafter, tried to lodge the FIR but no complaint was taken. In a case like this, the High Court has not properly appreciated the fact that there could have been some delay (though in the present case, it may not be said that there was any inordinate delay in lodging the FIR) as sometime could have been consumed for the victim/prosecutrix to get out of the shock. Even the said aspect is required to be considered at the time of the trial.

2.3 Even otherwise, from the reasoning given, it appears that the High Court has not at all considered the seriousness of the allegations and the gravity of the offences alleged against the accused. It is reported that the chargesheet has already been filed. So, whatever material has been collected during the investigation was required to be considered by the High Court while considering the application under Section 439 of Cr.PC.

2.4 Even the observation that there is no need of further custodial trial is also not relevant aspect while considering the bail application under Section 439 of Cr.P.C. The same may have some relevance while considering the application for anticipatory bail.

2.5 Having regard to the fact that while releasing respondent No. 2 – accused on bail the High Court has not taken into consideration the relevant aspects which are required to be kept in mind while considering the bail application, namely, seriousness of the offence alleged; material collected during the investigation; statement of the prosecutrix recorded under Section 161 of Cr.PC, etc., the impugned judgment and order passed by the High Court is unsustainable. Considering the fact that the chargesheet has already been filed, the accused is already chargesheeted and the relevant material is also now a part of the chargesheet, the same is required to be considered by the High Court. Therefore, the matter ought to be remitted to the High Court to consider the bail application afresh and pass appropriate orders after considering the relevant material/evidence collected during the investigation which are now a part of the chargesheet.

3. In view of the above and for the reasons stated above, the present Appeal Succeeds. The impugned judgment and order passed by the High Court releasing respondent No. 2 – accused on bail, deserves to be quashed and set aside and is accordingly quashed and set aside. The matter is remitted to the High Court to decide the bail application afresh in accordance with law and on its own merits after perusing the material/evidence collected during the investigation which are now a part of the chargesheet and upon taking into consideration the relevant aspects which are required to be kept in mind while examining the prayer for bail.

4. As the impugned judgment and order passed by the High Court releasing respondent No. 2 – accused on bail has been set aside, respondent No. 2 – accused is directed to surrender before the concerned Court/Jail Authority within a period of one week from today and only thereafter, the High Court shall decide and dispose of the bail application afresh, as observed hereinabove, at the earliest. With this, the present appeal is allowed.