



CNR: KAHC010336262026

NC: 2026:KHC:39757  
CRL.P No. 7048 of 2026

**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 30<sup>TH</sup> DAY OF JULY, 2026**

**BEFORE**

**THE HON'BLE MR. JUSTICE H.P.SANDESH**

**CRIMINAL PETITION NO.7048 OF 2026**

**BETWEEN:**

1. SRI. MOHAMMED SAFWAN  
S/O HASANABBA  
AGED ABOUT 36 YEARS  
R/AT DOOR NO.5-206  
SHABHANA MANZIL  
SHANTHIGUDDE, BAJPE  
MANGALURU, D.K-575 011.

...PETITIONER

(BY SMT. HALEEMA AMEEN, ADVOCATE A/W  
SRI. ASHOK KUMAR SHETTY K., ADVOCATE)

**AND:**

1. STATE BY  
SURATHKAL POLICE, MANGALURU  
REPRESENTED BY STATE PUBLIC PROSECUTOR  
HIGH COURT BUILDINGS  
BENGALURU-560 001.

...RESPONDENT

(BY SRI. M. DIVAKAR MADDUR, HCGP;  
SERVICE OF NOTICE TO VICTIM IS HELD SUFFICIENT  
VIDE ORDER DATED 29.06.2026)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 439  
OF CR.PC (FILED U/S 483 BNSS) PRAYING TO ENLARGE THE  
PETITIONER ON BAIL IN SPL.C.NO.60/2026 (CR.NO.9/2026 OF  
SURATHKAL P.S) ON THE FILE OF ADDL. DISTRICT AND

Digitally signed  
by DEVIKA M  
Location: HIGH  
COURT OF  
KARNATAKA



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SESSIONS JUDGE FTWS-II (POCSO), D.K., MANGALURU, REGISTERED BY THE SURATHKAL P.S. FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 126(2), 137(2), 74, 308(4), 351(2), 351(3), 64 R/W 62 OF BNS AND SECTION 8 OF POCSO ACT, 2012.

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

CORAM: HON'BLE MR. JUSTICE H.P.SANDESH

### **ORAL ORDER**

Heard learned counsel for the petitioner and learned High Court Government Pleader for the respondent-State.

2. The factual matrix of case of the complainant is that on 31.01.2026, when she was proceeding after alighting from the bus at 3.45 p.m., the petitioner came in the scooter and threatened that he is having a video to the effect she was proceeding with a boy holding his hand and he would viral the same and forced him to accompany her. When the victim, being afraid of the same accompanied him, an attempt is made to subject her for sexual act. When she refused, he touched upon her chest putting his hand inside burqa and threatened to pay an amount of Rs.10,000/- or otherwise, he will viral the video. But, when she agreed to pay Rs.3,000, he had dropped



her near Badriyaa school and also caused threat not to reveal the same to anybody else and she informed the same to her mother and also friend and gave a complaint and case was registered for the offence punishable under Sections 126(2), 137(2), 74, 308(4), 351(2), 351(3), 64 and 62 of BNS, 2023 and Section 8 of POCSO Act, 2012. After registration of the case, the Police investigated the matter and filed the charge sheet. The Police after investigation, apart from the offences earlier invoked, invoked the offence under Sections 78 and 75 of BNS, 2023 and Section 4 of POCSO Act, 2012.

3. The counsel appearing for the petitioner would submit that this Court can take note of contents of the complaint and the same is filed belatedly after 5 days of the incident and the victim was also subjected to recording of 164 statement before the learned Magistrate, wherein also she has reiterated the contents of the complaint and there is no allegation that she was subjected to sexual act. The counsel also brought to notice of this Court that FSL report is also silent about subjecting her for sexual act and except the allegation in the complaint as well as in 164 statement that he had touched



her chest, no other allegation. Hence, invoking of Sections 64 and 62 of BNS, 2023 while filing the charge sheet is nothing but a false implication.

4. The learned High Court Government Pleader for the respondent-State would submit that the investigation material discloses that she was subjected to sexual act. Hence, invoked Sections 4 and 8 of POCSO Act, 2012, apart from other offences and the petitioner is a habitual offender and he was also convicted in respect of similar offences. Hence, exercising the discretion does not arise.

5. Learned counsel for the petitioner also relied upon the judgment of the Apex Court in ***PRABHAKAR TEWARI vs. STATE OF UTTAR PRADESH AND ANOTHER*** reported in ***(2020) 11 SCC 648*** and would contend that in paragraph Nos.3, 4, 5, 7 and 9, the Apex Court held that, merely because there are criminal antecedents against the accused, the same cannot be a ground to reject the bail petition and the Apex Court held that while exercising the discretion, factors based on which grant of bail may be interfered with and offences alleged no doubt, is grave and serious, there are several criminal cases



pending against the accused. However, such factors by themselves, cannot be basis for refusal of prayer for bail, and a holistic view has to be taken of all facts and circumstances, as has been done by the High Court in the present case. The counsel also would submit that when he was convicted in other cases, the offence invoked is under Section 8 of POCSO Act, 2012 and already appeal is filed and the same is pending for consideration.

6. Having heard learned counsel for the petitioner and the learned High Court Government Pleader for the respondent-State, the Court has to take note of first allegation made in the complaint dated 05.02.2026. Though, the incident has taken place on 31.01.2026, there was delay of 5 days in lodging the complaint and while lodging the complaint also, an allegation is made that an attempt is made to subject her for sexual act. But, she did not allow him to do so and the petitioner only touched her chest and inserted his hand inside burqa and demanded an amount of Rs.10,000/- and the same statement was also reiterated before the learned Magistrate recorded under Section 164 and corresponding provision of BNS 2023.



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The counsel appearing for the petitioner also brought to notice of this Court that FSL report is also negative. When such being the case and this petitioner is in custody from February 2026 and investigation has already been completed and charge sheet is also filed, there is no need of custodial trial and with regard to the accusation is concerned, it requires trial. Hence, taking note of all these factors into consideration, though the offence under Section 4 of POCSO Act, 2012 is invoked, no such material is found and there is no prima facie material to invoke Section 4 of POCSO Act, 2012 and also Sections 64 and 62 of BNS, 2023. Therefore, it is a fit case to exercise the discretion under Section 439 of Cr.P.C. in favour of the petitioner to enlarge him on bail, subject to imposing certain conditions to protect and safeguard the interest of the prosecution. Hence, I pass the following:-

**ORDER**

The Petition is allowed. Consequently, the petitioner/accused shall be released on bail in Crime No.09/2026 of Surathkal Police Station, Mangaluru City, registered for the offence punishable under Sections 78,



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126(2), 137(2), 75, 308(4), 351(2) of BNS, 2023 and Sections 4 and 8 of POCSO Act, subject to the following conditions:

- (i) The petitioner shall execute personal bond for a sum of Rs.2,00,000/- (Rupees Two Lakhs only) with one surety for the like-sum to the satisfaction of the jurisdictional Court.
- (ii) The petitioner shall not indulge in tampering the prosecution witnesses.
- (iii) The petitioner shall appear before the jurisdictional Court on all the future hearing dates, unless exempted by the Court for any genuine cause.
- (iv) The petitioner shall not leave the jurisdiction of the Trial Court without prior permission of the Court, till the case registered against him is disposed of.

**Sd/-**  
**(H.P.SANDESH)**  
**JUDGE**

ST  
List No.: 1 Sl No.: 2