



IN THE HIGH COURT OF KARNATAKA, AT DHARWAD
DATED THIS THE 19TH DAY OF MAY, 2026
BEFORE
THE HON'BLE MR. JUSTICE VIJAYKUMAR A.PATIL
WRIT PETITION NO. 104021 OF 2026 (GM-RES)

BETWEEN:

NIKHIL S/O. KRISHNA KANKONKAR,
AGE: 35 YEARS, OCC: NIL,
R/O: RAMLING GALLI RAMANAGARJOIDA,
KARWAR.

... PETITIONER

(BY SRI. SHADAB H. YADWAD, ADV. FOR
SRI. ABHIJEET S. KANKONKAR, ADV.)

AND:

THE STATE OF KARNATAKA,
BY PSI RAMNAGAR POLICE STATION
NOW REP. BY STATE PUBLIC PROSECUTOR
HIGH COURT OF KARNATAKA,
DHARWAD BENCH, DHARWAD – 01.

... RESPONDENT

(BY SRI. AVINASH MALIPATIL, HCGP)



THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA R/W SECTION 528 OF BNSS, PRAYING TO ISSUE A WRIT, ORDER OR DIRECTION BY SETTING ASIDE THE ORDER DATED 11.05.2026 PASSED BY THE LEARNED FAST TRACK TRIAL COURT, KARWAR INsofar AS IT REMANDS THE PETITIONER TO JUDICIAL CUSTODY TILL 01.06.2026 AT ANNEXURE-C; TO DECLARE THAT THE CONTINUED JUDICIAL CUSTODY OF THE PETITIONER WITHOUT CANCELLATION OF ANTICIPATORY BAIL IS ILLEGAL, ARBITRARY AND UNCONSTITUTIONAL; TO DIRECT IMMEDIATE RELEASE OF THE PETITIONER FORTHWITH IN CONNECTION WITH THE SAID PROCEEDINGS AND ETC.



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

CORAM: THE HON'BLE MR. JUSTICE VIJAYKUMAR A.PATIL

ORAL ORDER

This petition is filed under Articles 226 and 227 of the Constitution of India read with Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short, 'BNSS'), challenging the order dated 11.05.2026 passed by the Additional District & Sessions Judge, FTSC-I, Uttarakannada, Karwar (for short, 'Special Court') in Special Case No.39/2026.

2. Sri.Shadab H.Yadawad, learned counsel appearing for the petitioner submits that the petitioner is an accused in Crime No.01/2026 registered by the respondent - Police. In the said crime, the petitioner/accused has got the anticipatory bail on 26.02.2026 and thereafter, the jurisdictional Police completed the investigation and filed the charge sheet. It is further submitted that the Special Court took cognizance, issued summons to the accused and on appearance, the petitioner/accused filed application for grant of regular bail. It is also submitted that the matter was adjourned to file the statement of objections to the said application by the State as



well as by the victim. It is contented that the mother of the victim filed objections and on 11.05.2026, orally she made a statement that the accused is still following the victim girl and because of this reason, the victim girl is unable to get admission at the college and is unable to go to the college. It is submitted that the learned Sessions Judge, without any enquiry, ordered to take the accused into custody under the impugned order. It is further contended that, once the accused is on bail, either on anticipatory bail or regular bail, in a particular crime, his liberty cannot be taken away unless the grant of bail by the Court is cancelled either by the same Court or by the Higher Court and the operation of the anticipatory bail would be in a force till the conclusion of the trial. It is further contented that the Special Court has given go by to all the procedures and taken away the liberty of the accused which is impermissible. In support of his contention, he placed reliance on the decision of the Hon'ble Supreme Court in the case of **DR.RAJESH PRATAP GIRI VS. STATE OF UP AND ANOTHER** in **Criminal Appeal Nos.272-273 of 2021 dated 05.03.2021** and seeks to allow the petition.



3. *Per contra*, Sri.Avinash Malipatil, learned High Court Government Pleader appearing for the respondent - State vehemently opposed the petition and submits that the petitioner has committed heinous crime against the victim, which *prima facie* indicates from the charge sheet material. He submits that on specific statement of the mother of the victim, the Special Court has rightly ordered to take the custody of the accused. Hence, he seeks to dismiss the petition.

4. I have heard the arguments of the learned counsel for the petitioner as well as the learned HCGP for the respondent – State. Meticulously perused the material available on record.

5. The material on record indicates that the mother of the victim has filed a police complaint against the petitioner/accused and based on such a complaint, the respondent - Police registered the crime in Crime No.01/2026 for the offences punishable under Section 12 of Protection of Children from Sexual Offences Act, 2012 and Section 78(2) of BNSS. The material on record further indicates that the petitioner/accused has applied and obtained the anticipatory bail in CrI.Misc.No.29/2026 on 26.02.2026. The material on record



also indicates that the jurisdictional Police after completion of investigation filed the charge sheet. The Special Court took the cognizance of the offences, issued summons to the petitioner/accused and thereafter, the petitioner/accused entered appearance before the Special Court and filed an application seeking to release him on bail. The Special Court issued notice to the State as well as the victim on such application and the victim has filed objections to the said application and the learned Public Prosecutor sought time to file objections. When things stood thus, on 11.05.2026, the mother of the victim makes a oral statement before the Special Court that the petitioner/accused is still following the victim girl and because of this reason, the victim girl is unable to get admission at the college and is unable to go to the college. The impugned order dated 11.05.2026 indicates that the petitioner/accused has denied the said assertion orally. However, the Special Court accepting the oral statement of the mother of the victim girl, proceeded to order to take the petitioner/accused to the custody.

6. It is not in dispute that the petitioner/accused is on anticipatory bail granted by the Special Court vide order dated 26.02.2026. The conditions imposed under said order has been



complied by the accused. It is also not in dispute that neither the State nor the victim has sought the cancellation of bail. The victim has filed objections to the bail application and the learned Public Prosecutor has sought time to file the objections to the said application. Admittedly, the application of the petitioner/accused for regular bail is pending before the Special Court. When things stood thus, I am of the considered view that, there was no occasion for the Special Court to pass the impugned order dated 11.05.2026 and order for taking custody of the accused without there being any order for cancellation of the bail or anticipatory bail granted by it. In my view, the procedure adopted by the Special Court is unheard and contrary to settled position of law.

7. It would be useful to refer the decision of the Hon'ble Supreme Court in the case of **DR. RAJESH PRATAP GIRI VS. STATE OF UP AND ANOTHER** referred *supra* at paragraph numbers 6 and 7 which read as under:

"6. *The issue involved in the present case, as to whether anticipatory bail once granted, lapses or comes to an end on the filing of a charge - sheet has been decided by this Court, in the case of Sushila Aggarwal (supra). Ravindra Bhat, J., in his concurring opinion holds as follows:*



HC-KAR

"77.3. In these circumstances, the **mere fact that an accused is given relief under Section 438 at one stage, per se does not mean that upon the filing of a charge - sheet, he is necessarily to surrender or/and apply for regular bail.** The analogy to "deemed bail" under Section 167(2) with anticipatory bail leads this Court to conclude that **the mere subsequent event of the filing of a charge - sheet cannot compel the accused to surrender and seek regular bail.** As a matter of fact, interestingly, if indeed, if a charge - sheet is filed where the accused is on anticipatory bail, the normal implication would be that there was no occasion for the investigating agency or the police to require his custody, because there would have been nothing in his behaviour requiring such a step. **In other words, an accused, who is granted anticipatory bail would continue to be at liberty when the charge - sheet is filed,** the natural implication is that there is no occasion for a direction by the court that he be arrested and further that he had cooperated with the investigation."

(emphasis supplied)

7. The same is reiterated in the section headed final conclusions wherein the Court has laid down certain principles on the basis of the two concurring opinions in the following words:

"91.2. As regards the second question referred to this Court, it is held that **the life or duration of an anticipatory bail order does not end normally at the time and stage when the accused is summoned by the court, or when charges are framed, but can continue till the end of the trial.** Again, if there are any special or peculiar features necessitating the court to limit the tenure of anticipatory bail, it is open for it to do so."

(emphasis supplied)"



8. The Hon'ble Supreme Court in the aforesaid decision considering the law on the point laid down in the case of ***Sushila Aggarwal and Ors. Vs. State (NCT of Delhi) and Anr., (2020) 5 SCC 1*** has held that, once the anticipatory bail is granted, the same would continue to operate even after the filing of charges. Considering the legal position on the point, I am of the view that the Special Court has committed grave error in taking the accused to the custody. Hence, I proceed to pass the following:

ORDER

- (i) The writ petition is ***allowed***.
- (ii) The impugned order dated 11.05.2026 passed in Special Case No.39/2026 by Additional District & Sessions Judge, FTSC-I, U.K., Karwar is set aside.
- (iii) The petitioner/accused shall be released forthwith by the Prison Authorities.



(iv) The Special Court/Trial Court shall consider the petitioner's application for regular bail, in accordance with law.

(v) Petitioner/accused shall abide the conditions imposed by the Special Court in Crl.Misc.No.29/2026 by order dated 26.02.2026.

(vi) Registry is directed to communicate the operative portion of this order to the Prison Authorities for release of the petitioner/accused, forthwith.

Sd/-
(VIJAYKUMAR A.PATIL)
JUDGE

RH/ CT: ASC
List No.: 1 Sl No.: 39