

Sumod Vs. State of Kerala

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Court : Kerala

Decided On : Sep-12-2013

Judge : Honourable Mr.Justice P.Bhavadasan

Appellant : Sumod

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE P.BHAVADASAN THURSDAY, THE 12^H DAY OF SEPTEMBER 2013 21ST BHADRA, 1935 Bail Appl.No.6119 of 2013 ----- CRIME No.1560/2013 OF KOTTARAKKARA POLICE STATION, KOLLAM PETITIONER/ACCUSED: ----- SUMOD AGED 23 YEARS, S/O. SOMAN PILLAI THADATHIL PUTHEN VEEDU, XIITH MURI, KANNIMALA PATTAZHI VILLAGE. BY ADVS.SRI.ALAN PAPALI SRI.GILBERT GEORGE CORREYA GOVERNMENT PLEADER RESPONDENT/COMPLAINANT: ----- STATE OF KERALA (CRIME No.1560/2013 OF KOTTARAKKARA POLICE STATION), REPRESENTED BY THE PUBLIC PROSECUTOR HIGH COURT OF KERALA, ERNAKULAM, KOCHI - 682031. BY PUBLIC PROSECUTOR SRI.ROY THOMAS. THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 12-09-2013, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: P.BHAVADASAN, J.

ORDER

The petitioner stands accused of having committed the offences punishable under Sections 366A and 376 of Indian Penal Code and Section 3(a) read with Section 4 and 5(1) read with Section 6 of Protection of Children from Sexual Offences Act, 2012. The allegation against the petitioner is that he had forced the victim, who is aged only 16 years, to go along with him on 19.06.2013 and had kept under his custody upto 03.07.2013 when she was detected by the Police and produced before the Magistrate court concerned.

2. The petitioner would say that he is innocent and has been falsely implicated in the matter. According to him, on an earlier occasion, the girl had gone along with him on her own volition and they were traced out and produced before the Magistrate court concerned. In the said case, the petitioner was arrested and was produced before the Magistrate court and was B.A. No.6119/2013 2 remanded to judicial custody. He was able to get bail in that case. One of the conditions while granting bail was that the petitioner shall not commit any similar offence while on bail. The petitioner would say that he was taken by the relatives of the victim to a house and they physically assaulted him and they brought the victim also there and they created a situation to show that the girl had been abducted by the petitioner. According to him, he has not committed any act as alleged. At any rate, according to him, he has been in custody from 03.07.2013 onwards and his continued custody is unnecessary.

3. Learned Public Prosecutor opposed the petition and pointed out that the petitioner has little regard for law and he is a person who has repeated the offence even though there was a condition that he shall not commit similar offence. It is also pointed out that this Court had occasion to consider the petition filed by the mother of the victim and a special task team was deputed in the matter and the girl was later located. The petitioner deserves no sympathy, according to the learned Public Prosecutor. B.A. No.6119/2013 3 4. After having heard the learned counsel for the petitioner, the learned Public Prosecutor and also after having perused the

records, it becomes difficult to accept the claim of the petitioner that he is innocent. Of course, there is a statement made by the victim found in the Case Diary that she had gone along with the petitioner voluntarily and there was an attempt of rape by a person to whom she was engaged. She has also stated that she was asked to go back by the petitioner but she insisted to be with him. Learned Public Prosecutor pointed out that the said statement cannot be given much weight in the light of the fact that when produced before the Division Bench, she expressed her desire to go along with her parents and that shows that she had not gone along with the petitioner on her own volition.

5. On going through the order of the Division Bench of this Court in W.P(CrI) No.298/2013 dated 03.07.2013, it is seen that when the detenu was produced before the Division Bench, the Bench interacted with the detenu and the detenu expressed her desire to go along with her mother. This conduct of the victim falsifies the claim made by the petitioner that he had not B.A. No.6119/2013 4 abducted or he had not forced her to go along with him.

6. Whatever that be, in the light of the fact that the petitioner though was aware of the fact that he was on bail with a condition had chosen to take the girl along with him and on production of the girl, the girl expressed her desire to go along with her parents shows that the statement seen in the Case Diary alleged to have been made by the victim is open to doubt. Anyhow, a deeper probe into the genuineness of the statement is not warranted at this point of time.

7. Suffice to say that, considering the conduct of the petitioner especially when he was strictly prohibited from doing similar offence, it is felt that it will not be proper to give bail to the petitioner. The Bail Application is dismissed. But, the dismissal of this Bail Application will not be a bar for the petitioner approaching the appropriate court seeking bail in future. Sd/- P.BHAVADASAN JUDGE smp

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