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Sunil Vs. the State of Kerala

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Court : Kerala

Decided On : May-26-2014

Judge : Honourable Mr.Justice N.K.Balakrishnan

Appellant : Sunil

Respondent : The State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE N.K.BALAKRISHNAN MONDAY,THE26H DAY OF MAY20145TH JYAISHTA, 1936 Bail Appl..No. 3496 of 2014 () ---------- IN CRMC8442014 of D.C. & SESSIONS COURT,THRISSUR DATED0805-2014 CRIME NO. 302/2014 OF ERUMAPETTY POLICE STATION , TRISSUR PETITIONER(S)/PETITIONER/SOLE ACCUSED: ---------- SUNIL AGED38YEARS S/O MALATHY, CHANGAMKUZHY HOUSE, CHITTANDA TALAPPILLY, THRISSUR BY ADV. SRI.G.SREEKUMAR (CHELUR) RESPONDENT(S)/STATE OF KERALA/COMPLAINANT: ---------- THE STATE OF KERALA REP. BY THE SUB INSPECTOR OF POLICE ERUMAPETTY POLICE STATION THROUGH THE PUBLIC PROSECUTOR HIGH COURT OF KERALA AT ERNAKULAM - 682 031. BY PUBLIC PROSECUTOR SRI. RAJESH VIJAYAN THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON2605-2014, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: ds N.K.

BALAKRISHNAN, J.

---------- B.A. No. 3496 of 2014
---------- Dated this the 26th day of May, 2014

ORDER

The petitioner is the accused in Crime No.302/2014 of Erumapetty Police Station, Thrissur District. Offences alleged are under sections 376, 406 and 420 of IPC and section 3(1)(xii) of SC/ST (Prevention of Atrocities) Act. Apprehending arrest, this petition is filed for anticipatory bail.

2. A private complaint was filed by the complainant before the Judicial First Class Magistrate, Wadakkanchery. When it was forwarded to the Police, crime was registered showing the offences as mentioned above.

3. The defacto complainant is aged 35 years and the petitioner is aged 38 years, the learned counsel for the petitioner submits. It is alleged in the complaint that she was taken to a lodge on 17.05.2009, from where the B.A. No. 3496/2014 -2- accused had sexual intercourse with her. It is seen from the complaint that the petitioner and complainant were in love and that the accused promised her that he will marry her. Subsequently, he resiled from the promise. It is alleged that on another occasion also the accused had sexual intercourse with her. On 14.04.2011 the petitioner had gone to the house of the complainant and promised her that he will marry her. Therefore, the learned counsel for the petitioner submits that it is actually a case where, if at all, only the offence of cheating could be attracted and there is noting to show that the complainant had ever made any complaint in 2009 or subsequently, that the accused had sexual intercourse without her consent and against her will.

4. In order to attract the bar under section 18 of SC/ST (Prevention of Atrocities) Act, the offence must have been committed on the ground that the complainant is a member of the Scheduled Caste/Scheduled Tribe, exploiting B.A. No. 3496/2014 -3- the social backwardness, the learned counsel for the petitioner further submits. It is pointed out that in the complaint, it is not stated that because the complainant

is a member of the Schedule Caste, the accused prevailed upon her and did the act complained of and hence prima facie offence under the provisions of SC/ST (Prevention of Atrocities) Act is not attracted. That submission, to some extent, appears to be correct. So the bar under section 18 of the Act cannot come into operation so as to preclude this Court from exercising the power under section 438 of Cr.P.C.

5. The grievance of the defacto complainant also has to be redressed. Considering all the aspects the following directions are issued: The petitioner shall surrender before the Investigating Officer within ten days from today. After interrogation the accused shall be produced before the learned Magistrate. B.A. No. 3496/2014 -4- When applied for bail by the accused, the learned Magistrate will, considering the nature of the case, grant bail to the petitioner but on the following conditions: a. The petitioner shall execute a bond for Rs.50,000/- (Rupees Fifty thousand only) with two solvent sureties each for the like sum to the satisfaction of the learned Magistrate. If in case the Magistrate has any doubt about the genuineness or correctness of the tax receipts produced by the sureties, the learned Magistrate can insist for production of the attested photo copies of the original title deeds of the sureties. b. The petitioner shall make himself available for interrogation by the Investigating Officer and shall appear before the Investigating Officer on all Mondays and Fridays between 9.30 AM to 11.30 AM until further orders. B.A. No. 3496/2014 -5- c. The petitioner shall surrender his original passport before the learned jurisdictional Magistrate. If he is not having any valid passport, he should file an affidavit regarding the same before the Magistrate. d. The petitioner will also file an affidavit that he will abide by all the conditions as mentioned above and that he will not commit any offence similar to the offence involved in this case and will not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court or to any police officer or tamper with the evidence. e. The petitioner shall not leave India without the prior permission of the learned Magistrate. B.A. No. 3496/2014 -6- f. The learned Magistrate will also ensure the identity of the sureties by insisting production of electoral photo identity cards/Driving licence etc. g. The petitioner shall deposit Rs.50,000/- (Rupees Fifty thousand only) before the trial court, which can, on a later stage be given as

compensation to the victim, if such an occasion arises. Sd/- N.K. BALAKRISHNAN, JUDGE //True Copy// P.A. to Judge jjj

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