

Eldhose Vs. State of Kerala

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Court : Kerala

Decided On : Aug-25-2014

Judge : Honourable Mr.Justice V.K.Mohanan

Appellant : Eldhose

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE V.K.MOHANAN MONDAY, THE 25TH DAY OF AUGUST 2014 3RD BHADRA, 1936 Bail Appl..No. 5735 of 2014 ()
----- CRIME NO. 1569/2014 OF ERNAKULAM CENTRAL POLICE STATION , ERNAKULAM PETITIONER(S)/ACCUSED: -----
ELDHOSE, AGED 33 YEARS, S/O.VARGHSE, AREECKAL HOUSE, NAYATHODU, ANGAMALY, ERNAKULAM DISTRICT. BY ADV. SRI.NIREESH MATHEW RESPONDENT(S)/COMPLAINANT: ----- STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR HIGH COURT OF KERALA, ERNAKULAM. R BY PUBLIC PROSECUTOR SRI.C.K.JAYAKUMAR THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 25 08-2014, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:
V.K.MOHANAN,J.

----- B.A.No. 5735 OF 2014- -----
----- Dated this the 25th day of August , 2014

ORDER

The petitioner is the sole accused in Crime No.1569/2014 of the Central Police Station, Ernakulam. Apprehending arrest, he preferred this application for anticipatory bail under Section 438 of the Code of Criminal Procedure.

2. The prosecution allegation is that while the defacto complainant and the petitioner were working as Accountant and Office Manager respectively in Optovision Optics at Penta Menaka building complex, Manaka Junction, Ernakulam, the petitioner under the pretext of loving her made proposal to marry her for which she was not amenable. It is the further allegation that on 28/4/2014, the petitioner committed rape on the defacto complainant at the cabin of the owner of the said firm and thereafter on 28/5/2014 the petitioner/accused agreed to marry her and towards the said assurance, the petitioner and his brother gave a signed letter in writing and thereafter engagement was conducted on 29/6/2014 at the house of the petitioner/accused and a party was also B.A. No.5735/2014 2 conducted in M.S.L.P. School, Poonjapara and decided to solemnize the marriage on 14/7/2014 at St.John's Chapel, Nayathodeu. It is the further case of the defacto complainant that, however, subsequently the petitioner/accused withdrawn from the marriage proposal under the pretext that the father of the petitioner is not agreeable for such relationship and the petitioner's father was admitted in the hospital. Thus, according to the prosecution, the petitioner has committed offence punishable under Sections 376 & 506 (ii) of IPC.

3. Heard the learned senior counsel for the petitioner Sri.C.C.Thomas as well as the learned Public Prosecutor appearing for the respondent.

4. The learned senior counsel for the petitioner Sri.C.C.Thomas strenuously submitted that, going by the Annexure A complaint submitted before the Judicial First Class Magistrate Court,II, Ernakulam, it can be seen that sexual relationship between the petitioner and the defacto complainant was with their mutual consent and, therefore, no offence under Section 376 is attracted. It is also the submission of the learned senior counsel that the petitioner is ready to marry the defacto complainant after convincing his B.A. No.5735/2014 3 father, who is a mental

patient, after discharging him from the hospital. According to the learned counsel, in order to materialise the above intention of the petitioner, an order of pre arrest bail is absolutely necessary.

5. On the other hand, the learned Public Prosecutor, on instructions, submitted that the custodial interrogation of the petitioner is absolutely necessary in view of the allegations raised against the petitioner. Hence, according to the learned Public Prosecutor, if anticipatory bail is granted to the petitioner, it will adversely affect the prosecution.

6. I have carefully considered the submissions made by the learned senior counsel for the petitioner and the learned Public Prosecutor.

7. Going by Annexure-A complaint, it appears to me that the petitioner and the defacto complainant were in love and if the allegation of the defacto complainant is taken as true, it appears that, the alleged sexual intercourse had occurred on 28/4/2014. However, no information was furnished to the police, But, Annexure A dated 7/7/2014 was filed before the Judicial First Class Magistrate Court, II, Ernakulam and it is thereafter the above crime was registered in the Central Police B.A. No.5735/2014 4 Station, Ernakulam on receiving the complaint under Section 156(3) of the Cr.P.C. It is also discernible from Annexure A complaint that pursuant to the relationship between the petitioner and the defacto complainant, the engagement as well as the betrothal were held. It is much thereafter, the defacto complainant preferred Annexure A complaint. So, according to me, the contention of the learned senior counsel, that the essential ingredients of Section 376 IPC are not attracted, cannot be ruled out. However, as submitted by the learned Public Prosecutor, the custody of the petitioner to have an effective investigation is absolutely necessary. Thus on a total consideration of the entire facts and circumstances involved in the case, according to me, this application can be allowed subject to stringent conditions. In the result, this application is allowed granting anticipatory bail to the petitioner and there will be a direction that in the event of arrest of the petitioner, he shall be released on bail on his executing a bond for Rs.35,000/- (Rupees Thirty Five Thousand only) with two solvent sureties each for the like amount to the satisfaction of the Investigating Officer in the above

crime and on the following conditions:- B.A. No.5735/2014 5 i). The petitioner shall undergo for potency test as directed by the Investigating Officer in the above crime on the date of his arrest and on the date of execution of bond or on any other date as suggested by the Investigating officer. ii). The petitioner shall surrender his passport, if any, before the jurisdictional Magistrate at the time of executing the bail bond and if he is not the passport holder, he will file an affidavit to that effect in the said court. If the petitioner requires his passport, he can approach the trial court for the release of the same and in case such an application is filed, the trial court is directed to consider the same on merit guided by the decision of this Court reported in Asok Kumar v. State of Kerala (2009 (2) KLT712. iii). The petitioner shall report before the Investigating Officer between 10 to 11 a.m. on Sundays once in every fortnight. Iii). The petitioner shall not involve in any criminal offence similar in nature and B.A. No.5735/2014 6 iv). The petitioner shall not intimidate the witnesses or interfere with the investigation or attempt to tamper the evidence. If the petitioner violates any of the conditions, the bail granted to him is liable to be cancelled. The Bail Application is accordingly allowed. Sd/- V.K.MOHANAN , JUDGE. dpk /True copy/ PS to Judge.

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