

Biju Vs. State of Kerala

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Court : Kerala

Decided On : Oct-07-2014

Judge : Honourable Mr. Justice Alexander Thomas

Appellant : Biju

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS TUESDAY, THE 7TH DAY OF OCTOBER 2014 15TH ASWINA, 1936 Bail Appl..No. 7068 of 2014 ()
----- CRIME NO. 1101/2014 OF KADAKKAL POLICE STATION, KOLLAM PETITIONER(S)/ACCUSED NO.1: ----- BIJU, S/O.SURA AGED 29 YEARS VALAVIL VEEDU, BLOCK NO.177, SIVAN MUKKU ANADU MURI, MADATHARA, KOLLAM DISTRICT. BY ADV. SRI.ALEXANDER GEORGE
RESPONDENT(S)/COMPLAINANT: ----- 1. STATE OF KERALA REPRESENTED BY THE PUBLIC PROSECUTOR HIGH COURT OF KERALA, ERNAKULAM, 682 031.

2. THE SUB INSPECTOR OF POLICE KADACKAL POLICE STATION, KADACKAL KOLLAM DISTRICT 691516 BY PUBLIC PROSECUTOR SMT.R.REMA THIS BAIL APPLICATION HAVING BEEN FINALLY HEARD ON 07-10-2014, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ALEXANDER THOMAS, J.

===== B.A.No. 7068 of 2014 ===== Dated this
the 7th day of August, 2014

ORDER

The petitioner herein is the 1st accused in Crime No.1101 of 2014 of Kadackal Police Station, Kottarakkara for offences under Secs. 450 and 376 of IPC. The petitioner has preferred this application for regular bail under Sec. 439 of the Cr.P.C.

2. Heard the learned counsel for the petitioner Sri.Alexander George and the learned Public Prosecutor appearing for the respondents.

3. The petitioner would submit that the defacto complainant had earlier given information to the Kadackal Police Station alleging offences under Sections 450 and 376 of IPC against the petitioner in respect of an incident alleged to have occurred on 12.8.2009 and that this led to registration of Crime No.633 of 2009 of Kadackal Police Station against the petitioner for the above said offences. The said proceedings are now pending as Sessions Case No.402 of 2011 on the file of the Assistant Sessions Court, B.A.7068/14 - :

2. :- Kottarakkara. While so, the defacto complainant had preferred yet another petition for maintenance before the Family Court, as per Annexure No.1 herein, on 16.7.2013, claiming that she and the petitioner herein were living like man and wife, though not formally married, and that the petitioner had deserted her and that through that relationship, the defacto complainant has a daughter aged four years, who has allegedly been fathered by the petitioner herein. According to the petitioner, the mother had preferred a complaint to the police authorities as evidenced by Annexure No.II on 18.7.2014 alleging offence under Sec. 318 of the IPC against the defacto complainant herein. This led to registration of Crime No.1055 of 2014 of Kadackal Police Station for offence under Sec. 318 of IPC, in which, the defacto complainant herein is the accused. It is thereafter that the defacto complainant herein had submitted another petition before the police

authorities alleging offences under Sections 415 and 376 against the petitioner herein and another person, which led to the registration of the instant crime No.1101 of 2014 of Kadackal Police Station for the above said offences. The petitioner was arrested on 27.7.2014 and his regular bail application has been rejected by the court below as well as by B.A.7068/14 - :

3. :- this Court previously. The main thrust of the arguments advanced by Sri.Alexander George, the learned counsel for the petitioner herein, is that even according to the version projected by the defacto complainant, she was on intimate relationship earlier with the petitioner and that the present crime has been triggered against the petitioner to retaliate against Annexure No.II complaint filed by his mother against the said defacto complainant herein, which led to registration of Crime No.1055 of 2014 of Kadackal Police Station for offences under Sec. 318 of IPC, in which, the defacto complainant herein is the accused. The learned counsel for the petitioner further strongly urged that the version projected by the prosecution that the petitioner had asked the defacto complainant to meet him with the child at the forest under the pretext that he wants to see the child and had again subjected her to sexual intercourse, is absolutely preposterous and unbelievable, because both of them are living apart and many cases are pending between them before the courts and authorities concerned. Moreover, when the specific case of the defacto complainant is that the petitioner herein had allegedly raped her in a previous case which has now led to the pending Sessions Case No.402/2011 before the Assistant B.A.7068/14 - :

4. :- Sessions Court, Kottarakkara, then such a prosecutrix would never again be induced to go and meet the accused, that too, in a forest area. Moreover, if the petitioner wanted to see the child, then the defacto complainant could have insisted that such visitation of the child should be either through the pending Family Courts proceedings as in Annexure I or in the presence of family members or friends of either parties. Therefore, it is urged very strongly by the learned counsel for the petitioner that the aforementioned version of the petitioner having induced her to come to the forest area, is unbelievable and incredible.

4. The learned Public Prosecutor strongly opposed the bail application and contended that the submissions advanced by the learned counsel for the petitioner regarding the false implication in the above said crime, etc. are absolutely untenable and bereft of any merit and that the police is fairly and impartially investigating the said offences. The learned Public Prosecutor has opposed the grant of the present bail application and has also pointed out that as per Annexure No.III order dated 2.8.2014, the Judicial First Class Magistrate's Court-II, Kottarakkara had rejected the regular bail application of the petitioner and that as evidenced by Annexure B.A.7068/14 - :

5. :- No.IV order dated 19.8.2014, this Court had also rejected the application for regular bail preferred by the petitioner herein as per Bail Application No.6032 of 2014. The Prosecution has also pointed that the petitioner's subsequent bail application as Bail Application No.6681 of 2014 also was dismissed as withdrawn on 17.9.2014.

5. It is true that no hard and fast rules can be laid down as to whether bail should be granted or refused and the golden rule is that discretionary power has to be exercised by the court taking into account the facts and circumstances of each case. However, it is also by now too well settled by a catena of court rulings that the following factors would also be relevant for deciding on the crucial issue as to whether to grant or refuse bail in a particular case:- (i) the nature of gravity of the offence (ii) enormity of the charge (iii) the severity of the punishment prescribed, (iv) the nature of evidence in support of accusation, (v) the probability of accused absconding, if released on bail, (vi) the likelihood of the witnesses being tampered with or terrorised, (vii) the danger of offence being repeated or continued, (viii) the delay likely to be occasioned in trial, (ix) the opportunity to the accused to prepare his defence, (x) B.A.7068/14 - :

6. :- age, sex, health, back ground, antecedents and character of the accused, (xi) circumstances under which the offence is committed, (xii) period for which the accused remained in custody, (xiii) position and status of the accused with reference to the victim and the witnesses, (xiv) the nature and character of the evidence against the accused and (xv) larger interest of the public and State. Of

course, the above said factors are only illustrative and cannot be treated as exhaustive and self contained.

6. Though the learned counsel for the petitioner has seriously urged about the circumstances, which led to registration of the instant crime and especially about the conduct of the defacto complainant herein, in herself clearly admitting in Annexure No.I petition filed before the Family Court about the earlier existence of intimate relationship between the defacto complainant and the petitioner herein, this Court is not inclined to evaluate on the issues on that score, in view of another crucial aspect in this case. No doubt, the submissions made by the learned counsel for the petitioner cannot be easily brushed aside, but the crucial aspect that is glaring in this matter is that the petitioner herein was arrested as early as on 27.7.2014 and has been continuing in custody for B.A.7068/14 - :

7. :- almost 70 days as of now. Therefore, I am inclined to take the view that further custodial detention of the petitioner may not really be warranted for the purpose of custodial interrogation or other aspects of the matters relating to the investigation, in view of the fact that the petitioner has been under custody for the last 70 days or so. Accordingly, I am inclined to allow the prayer of the petitioner for regular bail subject to strict safeguards and it is ordered that the petitioner herein 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 court concerned (viz., the Judicial First Class Magistrate's Court, Kottarakkara) and subject to the following conditions:- (i) The petitioner shall surrender his passport, if any, before the aforementioned jurisdictional Magistrate at the time of executing the bail bond and if he is not a passport holder, then he will file an affidavit to that effect in the said court. If the petitioner requires his passport for travel abroad, he is at liberty to approach the local court concerned for the release of the same and for necessary permission in that regard. In case such an application is filed, the trial court or the jurisdictional Magistrate, as the case may be, is at liberty to consider the same on merits and pass appropriate orders thereon, taking sufficient guidance B.A.7068/14 - :

8. :- from the principles laid down by this Court in the case Asok Kumar v. State of Kerala reported in 2009(2) KLT712 notwithstanding the above said conditions imposed by this Court. (ii) The petitioner shall report before the Investigating Officer in Crime No.1101 of 2014 of Kadackal Police Station between 10 a.m. and 11 a.m. on every alternate Sundays. (iii) The petitioner shall not interfere with the investigation in any manner. (iv) The petitioner shall not influence the witnesses or shall not tamper or attempt to tamper the evidence in any manner whatsoever. (v) The petitioner shall fully co-operate with the investigation and report before the aforementioned Investigating Officer as and when required by him. If the petitioner violates any of the conditions as ordered above, then the bail granted to him is liable to be cancelled. In terms of the above said directions, this Bail Application stands finally disposed of. Sd/- sdc+ ALEXANDER THOMAS, JUDGE ///True copy/// P.S. to Judge B.A.7068/14 - :

9. :-

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