

Unnikrishnan Vs. State of Kerala

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Court : Kerala

Decided On : Oct-15-2014

Judge : Honourable Mr. Justice Alexander Thomas

Appellant : Unnikrishnan

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS WEDNESDAY, THE 15TH DAY OF OCTOBER 2014 23RD ASWINA, 1936 Bail Appl.No.6879 of 2014 (D) ----- CRIME NO.476/2014 OF MANKARA POLICE STATION , PALAKKAD PETITIONER(S)/ACCUSED: ----- UNNIKRIISHNAN, AGED 28 YEARS S/O BHAVANI AMMA, THEKKEKULAMBATH HOUSE, KALLUR P.O MANKARA VIA, PALAKKAD 67861 BY ADV. SRI.JACOB SEBASTIAN RESPONDENT(S)/COMPLAINANT: ----- STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR HIGH COURT OF KERALA, ERNAKULAM 68203 REPRESENTING S.I OF POLICE MANKARA POLICE STATION IN CRIME NO 476 2014 BY PUBLIC PROSECUTOR DHANESH MATHEW MANJOORAN THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 15-10- 2014, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: ALEXANDER THOMAS, J.

----- B.A No.6879 Of 2014 ----- Dated this
the 15th day of October, 2014.

ORDER

The petitioner is the sole accused in Crime No.476/2014 of Mankara Police Station, Palakkad District registered for the offence punishable under Sections 376 IPC. The defacto complainant is the niece of the brother-in-law of the petitioner. The case projected by the prosecution is that the accused had promised to marry the defacto complainant and it is in such a situation that she had consented for sexual union with the petitioner on many occasions for the last few years. The petitioner resiled from the promise of marriage and therefore he has committed rape by procuring the consent of the lady defacto complainant under such fraudulent representation, it is alleged.

2. Sri.Jacob Sebastian, learned counsel for the petitioner, would submit that the petitioner has been falsely foisted in the criminal case only to harass him. From the averments in the memorandum of bail application, the case projected is that the defacto complainant had submitted Annexure-I complaint in May, 2014 before the police ::2:: B.A No.6879 Of 2014 authorities complaining of the resiling of the promise of the petitioner from the marriage and regarding the aforesaid allegation, the petitioner had sent email as per Annexure-III on 8.5.2014 before the police authorities narrating his version and that he has been threatened and harassed by the uncle of the girl who is also related to the petitioner. Thereafter, the petitioner, his parents and defacto complaint were called to the police station and that the matter was settled and it is seen endorsed in Annexure-II on 22.5.2014 in the distribution register of the police station concerned. The version projected by the petitioner is that after such settlement, the defacto complainant was not interested in the offer of the marriage made by the petitioner because of the uncertainty of the job of the petitioner and that the sister of the petitioner was beaten up at the instance of the defacto complainant's family and it is long thereafter that the defacto complainant had lodged the First Information Statement before the police station as late as on 30.7.2014 for the aforementioned offence and that too on the alleged incident which is said to have happened between December, 2013 and

March, 2014. He would further urge that ::3:: B.A No.6879 Of 2014 the petitioner would fully co-operate with the investigation and make available himself before the investigating officer.

3. The learned Public Prosecutor would submit that the presence of the petitioner for questioning is necessary and further that the petitioner has to be subjected to potency medical examination in view of the fact that the allegation raised in the crime is under Section 376 IPC and the learned Public Prosecutor has opposed the anticipatory bail application. The learned Public Prosecutor would further submit that in case this Court is inclined to grant anticipatory bail to the petitioner, the same should be conditioned with necessary safeguards so as to protect the bonafide interest of the prosecution and to ensure that the petitioner is available for questioning and interrogation as well as for the conduct of the potency test etc.

4. Having heard the learned counsel for the petitioner and learned Public Prosecutor and taking into consideration the totality of the facts of the case, this Court is inclined to grant anticipatory bail to the petitioner in this case but, conditioned with necessary safeguards to protect the interest of the prosecution. Accordingly it is ordered that in the event of the ::4:: B.A No.6879 Of 2014 petitioner being arrested, he shall be released on bail on his executing a bond for ` 35,000/- (Rupees Thirtyfive Thousand only) before the investigating officer concerned and on furnishing two solvent sureties each for the like sum to the satisfaction of the investigating officer concerned and subject to the following conditions:- i) The petitioner shall surrender his passport, if any, before the court concerned within three days from execution of the bail bond before the investigating officer concerned and if he is not a holder of passport, then he shall file affidavit to that effect in the said court. If the petitioner requires his passport in connection with his travel abroad, then he is free to approach the court concerned for the release of the same and for necessary permission in that regard. In case if such an application is filed, the court concerned is free to consider the same on merits and to pass appropriate orders thereon, taking necessary guidance from the principles laid down in the decision of this Court in the case Asok Kumar v. State of Kerala, reported in 2009 (2) KLT712 notwithstanding the aforementioned condition imposed by this Court. (ii) Petitioner shall report before the investigating

officer concerned between 10:00 am and 11:00 am on every alternate Sundays until the submission of the final report in this case. ::5:: B.A No.6879 Of 2014 (iii) The petitioner shall not involve in any criminal offence of similar or graver nature. (iv) The petitioner shall make himself available for conduct of potency test as and when required by the investigating officer concerned and shall be present himself before the investigating officer for any questioning required for the investigation or at any time as and when required by the investigating officer and shall also fully co-operate with the investigation. (v) The petitioner shall not influence the witnesses or shall not tamper or attempt to tamper evidence in any manner whatsoever. If the petitioner fails to comply with any of the conditions as ordered above, the bail granted to him is liable to be cancelled. The anticipatory bail application is disposed of as above. ALEXANDER THOMAS, Judge. bkn/-

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