

Subhash Vs. State of Kerala

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Court : Kerala

Decided On : Oct-31-2014

Judge : Honourable Mr. Justice Alexander Thomas

Appellant : Subhash

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS FRIDAY, THE 31ST DAY OF OCTOBER 2014 9TH KARTHIKA, 1936 Bail Appl..No. 7572 of 2014 ----- CRIME NO. 1309/2014 OF VELLAMUNDA POLICE STATION , KANNUR ----- PETITIONER(S)/ACCUSED A1: ----- SUBHASH, AGED 35 YEARS, S/O NARAYANAN, PARIVIL MELATHIL VEEDU KULAKKADA EAST P.O, KULAKKADA, KOTTARAKKARA TALUK, KOLLAM DISTRICT. BY ADV. SRI.K.V.ANIL KUMAR RESPONDENT(S)/COMPLAINANT: ----- STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM 68203. BY GOVERNMENT PLEADER SMT.R.REMA THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 31-10-2014, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: PJ ALEXANDER THOMAS, J.

===== B.A.No. 7572 of 2014 ===== Dated this
the 31st day of October, 2014

ORDER

The petitioner herein is accused No.1 in crime No.1309/2014 of Puthoor Police Station, Kollam district. The crime has been registered for offences punishable under Sections 308, 313, 325, 498A read with Section 34 of the IPC, at the instance of the compliant of the petitioner's wife, Smt.Sobha, before the Judicial First Class Magistrate's Court-I, Kottarakara. The petitioner, who is accused No.1, is the husband of the defacto complainant and A2, A3 and A4 are the father, mother and sister respectively of the petitioner herein. The gist of the allegations is that after the marriage between the parties, the petitioner and other accused misused the defacto complainant's 38.5 sovereigns of gold ornaments and Rs.2 lakhs and committed mental and physical torture on her demanding more money and that on 10.10.2009 accused Nos.2 and 4 assaulted the defacto complainant demanding more money and alleged that without the consent the defacto BA757214 - :

2. :- complainant, accused Nos.2 to 4 had committed forceful miscarriage on her and that on 25.12.2012, the 2nd accused (father of the petitioner) pushed the defacto complainant and she fell on a cup-board and sustained head injury and on 8.9.2014, she was ousted from the matrimonial home demanding more dowry. It is the case of the petitioner that the defacto complainant is a mentally ill person and this fact was suppressed at the time of marriage and she is a patient of schizophrenia and is undergoing treatment and occasionally she becomes violent and cause harm to herself and others and she has beaten the petitioner and his family members. The child born out of the wedlock is also mentally retarded and the defacto complainant's mother is a nurse and she suppressed the disease of the child and that none of the accused has committed any offences as alleged. Sri.K.V.Anil Kumar, the learned counsel for the petitioner would submit that it is clearly admitted by the defacto complainant herein in paragraph No.3 of the petition filed under Section 156(3) Cr.P.C. before the learned Magistrate, which has triggered the registration of the instant crime, that, to a small extent, she is a

mentally ill person and he would further submit that Annexure A2 is the prescriptions of psychiatrist medicines, which BA757214 - :

3. :- have been taken by the defacto complainant. It is further submitted that the only offence alleged as against the petitioner in the aforementioned crime is one under Section 498A and the other offences alleged are directed solely against accused Nos.2 to 4 and that accused No.2, who is the father of the petitioner, subsequently committed suicide. In these circumstances, the learned counsel for the petitioner would pray that the plea of pre-arrest bail may be allowed in favour of the petitioner after imposing conditions that may be deemed necessary by this Court.

2. The learned Public Prosecutor would fairly submit that the only non-bailable offence alleged against the petitioner by the defacto complainant herein in this crime is the one under Section 498A and that the other offences alleged are only as against accused No.2 to 4. The Prosecutor would also fairly submit that paragraph 4 of the defacto complainant's petition as stated above, contains an admission as stated above. Accordingly, it is submitted that in case this Court is inclined to allow the plea of pre-arrest bail, then the same may be hedged with necessary conditions so as to protect the bonafide interests of the prosecution.

3. Having regard to the facts and circumstances involved in BA757214 - :

4. :- this case and in the light of the submissions made by the learned counsel for the petitioner and the learned Public Prosecutor, I am inclined to take the view that this application for anticipatory bail can be granted, subject to necessary conditions and safeguards.

4. In the result, there will be a direction that in the event of the arrest of the petitioner herein in connection with the above said crime, 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 subject to the following conditions: (i) The petitioner shall surrender his passport, if any, before the jurisdictional Magistrate concerned within 3 days from the execution of the bail bond before the Investigating Officer

and if the petitioner is not a holder of passport, then he shall file an 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 below 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 concerned, as the case may be, 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 conditions imposed by this Court. (ii) The petitioner shall report before the Investigating Officer in the above said crime between 10 a.m. and 11 a.m. on every alternate Sundays. (iii) The petitioner shall not involve in any criminal offence of similar or graver in nature. (iv) The petitioner shall co-operate with the investigation and report before the investigating officer as and when required. BA757214 - :

5. :- (v) The petitioner shall not influence the witnesses or shall not tamper or attempt to tamper evidence in any manner whatsoever. If the petitioner violates any of the conditions as ordered above, then the bail granted to him is liable to be cancelled. With the above said directions, the Application stands finally disposed of. Sd/- sdk+ ALEXANDER THOMAS, JUDGE ///True copy/// P.S. to Judge

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