

Arogyaswami vs State of Kerala

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Court : Kerala

Decided On : Apr-25-2024

Judge : Honourable Mr.Justice C.S.Dias

Appeal No. : Bail Appl./3396/2024

Appellant : Arogyaswami

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE C.S.DIAS THURSDAY, THE 25TH DAY OF APRIL 2024 / 5TH VAISAKHA, 1946 BAIL APPL. NO. 3396 OF 2024 CRIME NO.1189/2023 OF KOZHINJAMPARA POLICE STATION, PALAKKAD AGAINST THE ORDER/JUDGMENT DATED 03.04.2024 IN CRMP NO.469 OF 2024 OF FAST TRACK SPECIAL COURT, PALAKKAD ARISING OUT OF THE ORDER/JUDGMENT DATED 20.03.2024 IN CRMP NO.1356 OF 2024 OF DISTRICT COURT & SESSIONS COURT, PALAKKAD PETITIONER/ACCUSED:

AROGYASWAMI AGED 28 YEARS S/O DURAISWAMI, KUNNUKUDIAR VEEDU, AYYARKKALAM, PAZHANIYARPALAYAM,

KOZHINJAMPARA, PALAKKAD, PIN - 678555 BY ADVS. SARATH M.S. B.PREMNATH (E) RESPONDENT: STATE OF KERALA REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM,, PIN - 682031 SR.PUBLIC PROSECUTOR SMT. NEEMA T.V. THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 25.04.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: Dated this the 25th day of April, 2024

ORDER

The application is filed under Section 439 of the Code of Criminal Procedure, 1973, by the accused in Crime No.1189/2023 of the Kozhinjampara Police Station, Palakkad, registered against him for allegedly committing the offences punishable under Sections 354D

(1) (ii) r/w 354 (D) (2) of the Indian Penal Code, and

Section 11(V) r/w 12 of the Protection Of Children from Sexual Offences Act, 2012 and Sections 67 and 67B of the Information Technology Act. The petitioner was arrested on 1.2.2024.

2. The essence of the prosecution case is that;

between the period from September 2022 to 17.12.2023, the accused had taken the nude videos of a 15 year old victim on his two mobile phones and he forwarded the same to the younger sister of the victim, who is studying in the 7th standard, on the mobile phone belonging to the victims mother. He also circulated the video through the social media. Thus, the accused has committed the above offences.

3. Heard; Sri.Sarath M.S., learned counsel appearing for the petitioner and Smt.Neema T.V., the learned Senior Public Prosecutor.

4. The learned counsel appearing for the

petitioner submitted that the petitioner i

is the sole breadwinner of his family. He has no criminal antecedents. The petitioner has been languishing in jail for the last 85 days, the investigation in the case is practically complete and recovery has been effected. The petitioner is willing to abide by any stringent condition that may be imposed by this Court. Hence, the petitioner may be released on bail.

5. The learned Public Prosecutor opposed the

application. She submitted that investigation is in progress. If the petitioner is released on bail, there is every likelihood of him intimidating the victim and the witnesses, and also tampering with evidence. Therefore, the application may be dismissed.

6. The prosecution allegation is that, the petitioner,

who is the husband of the victims maternal aunt and is holding a fiduciary relationship with victims family, while the victim was having a bath, took her nude videos

and circulated it among their relatives. Although, the allegations are grave, the fact remains that the petitioner has been in judicial custody since 1.2.2024, which is nearly 85 days. Even though the petitioner had moved the Special Court for a similar relief, on two occasions, both the applications were dismissed, on the ground that the investigation is not complete.

7. In *Sanjay Chandra v. CBI*, [2012 1 SCC 40],

the Honourable Supreme Court has categorically held

that the fundamental postulate of criminal jurisprudence is the presumption of innocence, until a person is found guilty. Any imprisonment prior to conviction is to be considered as punitive and it would be improper on the part of the Court to refuse bail solely on the ground of former conduct.

8. In *Dataram Singh v. State of U.P.*, [(2018) 3

SCC 22] the Honourable Supreme Court observed that grant of bail is the rule and putting a person in jail is an exception. Even though the grant of bail is entirely the discretion of the court, it has to be evaluated based on the facts and circumstances of each case and the discretion has to be exercised in a judicious and compassionate manner.

9. In *State of Kerala v. Raneef*, [(2011) 1 SCC 784], the Honourable Supreme Court has declared that

undertrial prisoners detained in jail for indefinite period constitute an infringement of their right to life guaranteed under Article 21 of the Constitution.

10. In *Hussainara Khatoon (I) v. Home Secy.*,

State of Bihar [(1980) 1 SCC 81], the Honourable Supreme Court while dealing with a case of under trials, who suffered long incarceration, held that the procedure that keeps large number of people behind the bars without trial for long is unreasonable and unfair, and is not in conformity with the mandate of Article 21 of the Constitution of India.

11. The principle that bail is the rule and jail is an

exception is on the touch stone of Article 21 of the Constitution of India. Once the charge sheet is filed, a strong case has to be made out for continuing a person in judicial custody. The right to bail cannot be denied merely due to the sentiments of the society.

12. After bestowing my anxious consideration to the facts, the rival submissions made across the Bar, and the materials placed on record, especially on considering the fact that the petitioner has been in judicial custody

for the last 85 days, the investigation in the case is practically complete and recovery has been effected, I am of the firm view that the petitioners further detention is unnecessary. Taking into consideration the peculiar facts and circumstances of the case, I am inclined to allow the bail application, but subject to stringent conditions.

In the result, the application is allowed, by directing the petitioner to be released on bail on him executing a bond for Rs.1,00,000/- (Rupees one lakh only) with two solvent sureties each for the like sum, to the satisfaction of the court having jurisdiction, which shall be subject to the following conditions:

(i) The petitioner shall appear before the Investigating Officer on every Saturday between 9 a.m. and 11 a.m till the final report is laid. He shall also appear before the Investigating Officer as and when directed;

(ii) The petitioner shall not directly or indirectly

make any inducement, threat or procure to the victim or any person acquainted with the facts of the case so as to dissuade them from disclosing such facts to the court or to any Police Officer or tamper with the evidence in any manner, whatsoever;

(iii) The petitioner shall not enter the Taluk where the victim is residing, other than for the purpose of appearing before the Investigating Officer, without previous permission of the jurisdictional court;

(iv) The petitioner shall not commit any offence while he is on bail;

(v) The petitioner shall surrender his passport, if

any, before the court below at the time of execution of the bond. If he has no passport, he shall file an affidavit to the effect before the court below on the date of execution of the bond;

(vi) In case of violation of any of the conditions

mentioned above, the jurisdictional court shall be empowered to consider the application for cancellation of bail, if any filed, and pass orders on the same, in accordance with law.

(vii) Applications for deletion/modification of the bail conditions shall be moved and entertained by the court below. (viii) Needless to mention, it would be well within

the powers of the Investigating Officer to investigate the matter and, if necessary, to effect recoveries on the information, if any, given by the petitioner even while the petitioner is on bail as laid down by the Hon'ble Supreme Court in *Sushila Aggarwal v. State (NCT of Delhi) and another* [2020 (1) KHC 663]. SD/-
rmm/25/4/2024 C.S.DIAS, JUDGE

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