

XX vs State of Kerala,

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Court : Kerala

Decided On : Jul-31-2024

Judge : Honourable Mr.Justice C.S.Dias

Appeal No. : Bail Appl./3823/2024

Appellant : XX

Respondent : State of Kerala,

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE C.S.DIAS WEDNESDAY,
THE 31ST DAY OF JULY 2024 / 9TH SRAVANA, 1946 CRIME
NO.508/2024 OF Kundara Police Station, Kollam -----
PETITIONER/ACCUSED No.2 :- XXXXXXXXXXXX XXXXXXXXXXXX
XXXXXXXXXXXX BY ADVS. BHARAT VIJAY P. SHAHNOY SHAJI
RESPONDENT/STATE & COMPLAINANT :- 1 STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, ERNAKULAM DISTRICT, KERALA, PIN - 682 031 2 THE
STATION HOUSE OFFICER, KUNDARA POLICE STATION, KOLLAM
DISTRICT, KERALA, PIN - 691 511 BY SMT.SEETHA S., SR.PP THIS
BAIL APPLICATION HAVING COME UP FOR ADMISSION ON

31.07.2024, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: -: 2 :-

ORDER

Dated this the 31st day of July, 2024 The application is filed under Section 438 of the Code of Criminal Procedure, 1973, for an order of pre-arrest bail.

2. The petitioner is the second accused in Crime

No.508/2024 of the Kundara Police Station, Kollam, which is registered against two accused persons, for allegedly committing the offences punishable under Sections 342, 294(b) and 506(i) r/w Section 34 of the Indian Penal Code and Section 12 r/w Section 11 of the Protection of Children from Sexual Offences Act, 2012 (for short POCSO Act).

3. The gist of the prosecution case is that; the victim is the biological child of the second accused and her husband. The second accused is maintaining a live-in-relationship with the first accused. During the period from 27.08.2021 to 03.09.2021, the first accused, after wrongfully confining the victim, spoke in sexually coloured -: 3 :- language and demanded sexual favours from the victim. The second accused supported the first accused and did not complain about the incident to the statutory authorities. Thus, the accused have committed the above offences.

4. Heard; Sri.Bharat Vijay P., the learned counsel for the petitioner and Smt.Seetha S., the learned Senior Public Prosecutor.

5. The learned counsel for the petitioner submitted that the petitioner is totally innocent of the accusations

levelled against her. The Investigating Officer has registered the complaint at the instance of the petitioner's father, who is on enemical terms with the petitioner due to her relationship with the first accused. By no stretch of imagination can the offence under Section 12 of the POCSO Act be attributed against the petitioner. In fact, the first accused was arrested and has been enlarged on bail by the Court of

Session, Kollam by Annexure A5 order. -: 4 :- The petitioner's custodial interrogation is not necessary and no recovery is to be effected. Hence, the application may be allowed.

6. The learned Public Prosecutor opposed the

application. She submitted that the investigation is in progress. She also stated that if the petitioner is granted an order of pre-arrest bail, there is every likelihood of her intimidating the victim and witnesses and tampering with the evidence. Hence, the application may be dismissed.

7. On a careful scrutiny of the materials on record,

it can be seen that the specific overt act of committing the sexual harassment is attributed against the first accused, who passed sexually flavoured comments at the victim and also demanded sexual favours from her. The allegation against the petitioner, who is the biological mother of the victim, is that she supported the first accused and also did not object to the acts of him passing comments as well as demanding sexual favours from the victim. It can be -: 5 :- gathered that there are certain disputes between the petitioner and her father pertaining to certain family properties.

8. In *Bhadres Bipinbhai Sheth v. State of*

Gujarat and another [2015 KHC 4579] the Hon'ble Supreme Court has succinctly culled out the principles to grant orders of pre-arrest bail. It is laid down that Courts should be careful and meticulous in evaluating the facts of each case before granting an order of pre-arrest bail. The court should consider whether arresting of an accused would lead to ignominy, humiliation and disgrace to the accused and their family and also if there is any frivolity in the complaint registered against the accused.

9. After bestowing my anxious consideration to the

facts, the rival submissions made across the Bar and the materials placed on record, particularly on considering the fact that there are certain disputes between

the petitioner and her father and that the specific overt act is attributed -: 6 :- against the first accused, who has allegedly sexually harassed the victim, and further that the petitioner is a lady and the mother of the victim, I am of the firm view that the petitioner's custodial interrogation is not necessary. The petitioner has made out valid grounds to invoke the discretionary jurisdiction of this Court under Section 438 of the Code. Hence, I hold that the petitioner is entitled to an order of pre-arrest bail, but subject to the condition that the petitioner co-operates with the Investigating Officer. In the result, the application is allowed, subject to the following conditions :-

(i) The petitioner is directed to surrender before the Investigating Officer within 10 days from today.

(ii) In the event of the petitioner's arrest, the

Investigating Officer shall release the petitioner on bail on her executing a bond for Rs.50,000/- (Rupees fifty thousand only) with two solvent sureties for the like amount each; -: 7 :-

(iii) The petitioner shall appear before the Investigating Officer for interrogation, as and when directed by the Investigating Officer.

(iv) The petitioner shall not directly or indirectly

make any inducement or threat to the victim or her witnesses or procure to 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;

(v) The petitioner shall surrender her passport

before the jurisdictional court concerned within a period of one week from the date of her release on bail. If she has no passport, she shall file an affidavit to the effect before the said court within the said period;

(vi) The petitioner shall not get involved in any other offence while on bail;

(vii) 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. -: 8 :- (viii) Applications for deletion/modification of the bail conditions shall also be filed before the court below.

(ix) 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].

(x) The observations made in this order are only for the purpose of considering the application and the same shall not be construed as an expression on the merits of the case to be decided by competent Courts. Sd/- C.S. DIAS, JUDGE
Jvt/31.7.2024

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