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XX vs State of Kerala,

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Court : Kerala

Decided On : Jul-30-2024

Judge : Honourable Mr.Justice C.S.Dias

Appeal No. : Bail Appl./5096/2024

Appellant : XX

Respondent : State of Kerala,

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE C.S.DIAS TUESDAY, THE 30TH DAY OF JULY 2024 / 8TH SRAVANA, 1946 BAIL APPL. NO. 5096 OF 2024 CRIME NO.1057/2024 OF Kottarakkara Police Station, Kollam PETITIONER/S: XXXXXXXXXX XXXXXXXXXX XXXXXXXXXX BY ADV B.N.SHIVSANKAR RESPONDENT/S: 1 STATE OF KERALA, REPRESENTED BY PUBLIC PROSECUTOR,HIGH COURT OF KERALA, PIN - 682031 2 THE STATION HOUSE OFFICER, KOTTARAKARA POLICE STATION, KOLLAM DISTRICT, PIN - 3 CHILD WELFARE COMMITTEE, REPRESENTED BY ITS CHAIRMAN, KOLLAM DISTRICT, BEACH ROAD, PALLITHOTTAM, THAMARAKULAM, KOLLAM, KERALA, PIN - 691001 OTHER

PRESENT: Sr PP Smt Neema T.V THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 30.07.2024, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: C.S.DIAS,J ========== ---------- Dated this the 30th day of July, 2024

ORDER

The application is filed under Sec.439 of the Code of

Criminal Procedure by the sole accused in Crime No.1057 of 2024 of the Kottarakkara Police Station, Kollam, which is registered against him, for allegedly committing the offences punishable under Sections 377 and 506(i) of the Indian Penal Code and Sec. 4(2) read with Sec.3(a), Sec.6 read with Sec. 5(l), Sec.10 read with Sec. 9(m) and Sec.10 read with Sec.9(n) of the Protection of Children from Sexual Offences Act, 2012. The petitioner was arrested and remanded to judicial custody on 18.5.2024.

2. The gist of the prosecution case is that: the mother of the accused was having a live-in relationship with a person named Arun, who in turn had two children born in his

relationship with a lady named Asha. The victim, a seven years old boy, was born in the relationship between Arun and Asha. The victim was residing with the petitioner, his mother and his step father. Between the period from 1.1.2024 to 24.4.2024, the accused committed aggravated penetrative sexual assault on the victim by compelling the victim to have oral sex with the petitioner. Thus, the accused has committed unnatural sex and penetrative sexual assault on the victim.

3. Heard: Sri.B.N Shivsankar, the learned counsel for the petitioner and Smt.Neema T.V, the learned Public Prosecutor.

4. The learned counsel for the petitioner submitted that the petitioner is totally innocent of the accusations levelled against him. The mother of the victim, due to her animosity

with the father of the victim, has deliberately implicated the petitioner in the crime. The petitioner has not committed any of the offences alleged. The parents of the victim are having multiple relationships. It was only because there was no one to look after the victim, that he was residing in the petitioners house with his biological mother. There are certain litigations between the parents of the victim. It is to wreak vengeance on the step father of the victim that the petitioner has been made a scapegoat. A reading of the allegations in the first information report as well as the final report would show that the offence under Sec.377 is not attracted. The fact remains that the petitioner has been in judicial custody for the last more than 70 days, the investigation in the case is complete and

final report has been laid on 29.6.2024. The petitioner does not have any criminal antecedents. The petitioner is an eighteen year boy and is pursuing his studies. The petitioner is willing to abide by any stringent condition that may be imposed by this Court. Therefore, the petitioner may be enlarged on bail.

5. The learned Public Prosecutor seriously opposed the

application. The Investigating Officer has filed a bail objection report, inter alia, contending that the petitioner has committed a heinous offence by committing aggravated penetrative sexual assault on the victim. If the petitioner is released on bail, there is every likelihood of him intimidating the victim and witnesses and also tampering with the evidence. Hence, the application may be dismissed.

6. The prosecution allegation against the petitioner is

that, he had committed aggravated penetrative sexual assault on the step son of his mother during the period from 1.1.2024 to 24.4.2024 that is spanning over three months.

7. On a scrutiny of the materials placed on record, it is seen that the biological parents of the victim are at logger heads and there are litigations between them. Indisputably,

the biological father of the victim and the mother of the petitioner are in a live-in-relationship. It is due to the said relationship, the petitioner, his mother, the victim

and the father of the victim were residing together in the same house. The petitioner alleges that he has been falsely implicated in the

crime by the mother of the victim due to her animosity towards the father of the victim. These are all matters that have to be ultimately decided at the time of trial. The fact remains that the petitioner is an eighteen year old boy and he does not have any criminal antecedents. The petitioner has been in judicial custody for the last more than 70 days, the investigation in the case is complete, medical examinations have been conducted and the final report has been laid. On a perusal of the medical examination report of the victim, it is stated that there is no evidence suggestive of recent penetrative sexual assault. That is also a matter to be ultimately decided at the time of trial.

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 periods, without any sufficient reason or due to the delay in concluding the trial, will tantamount to 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. The right to bail cannot be denied merely due to the sentiments of the society.

12. On an overall consideration of the facts, the rival

submissions made across the Bar, and the materials placed on record, particularly on considering the fact that the petitioner is a young boy aged 18 years, that the petitioner does not have any criminal antecedents, that the petitioner has been in judicial custody for the last 70 days, the investigation in the case is complete and the final report has been laid, I am of the firm view that the petitioners further detention is unnecessary. Hence, 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 third Saturday between 9 a.m. and 11 a.m till the conclusion of the trial in Crime No. 1057/2024. He shall also appear before the Investigating Officer as and when directed;

(ii) The petitioner shall not directly or indirectly make any

inducement or threat to the victim or his witnesses or 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;

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

(iv) 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;

(v) The petitioner shall not enter the territorial jurisdiction

of the Court of Session, Kollam, other than for the purpose of reporting before the Investigating Officer, till the conclusion of the trial in Crime No. 1057/2024.

(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].

(ix) 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/-sks/30.7.2024 C.S.DIAS, JUDGE

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