

XX vs State of Kerala,

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Court : Kerala

Decided On : Aug-07-2024

Judge : Honourable Mr.Justice C.S.Dias

Appeal No. : Bail Appl./5874/2024

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 7TH DAY OF AUGUST 2024 / 16TH SRAVANA, 1946 CRIME
NO.898/2024 OF Kunnankulam Police Station, Thrissur AGAINST THE
ORDER/JUDGMENT DATED 06.07.2024 IN CRMP NO.4389 OF 2024
OF DISTRICT COURT & SESSIONS COURT,THRISSUR

PETITIONER/S: XXXXXXXXXXXX XXXXXXXXXXXX XXXXXXXXXXXX BY ADV
K.RAKESH RESPONDENT/S: 1 STATE OF KERALA, REPRESENTED
BY PUBLIC PROSECUTOR,HIGH COURT OF KERALA, ERNAKULAM,
KOCHI, PIN - 682031 2 XXXXXXXXXXXX XXXXXXXXXXXX XXXXXXXXXXXX
OTHER PRESENT: SR PP SMT SEETHA S THIS BAIL APPLICATION
HAVING COME UP FOR ADMISSION ON 07.08.2024, THE COURT ON

THE SAME DAY PASSED THE FOLLOWING: C.S.DIAS,J
----- Bail Application No.5874 of 2024
----- Dated this the 7th day of August, 2024

ORDER

The application is filed under Sec.483 of the Bharatiya Nagarik Suraksha Sanhita, 2023, by the sole accused in Crime No.898/2024 of the Kunnamkulam Police Station, Thrissur, which is registered against him, for

allegedly committing the offences punishable under Sections 354(D)(1)(iii), 506 and 509 of the Indian Penal Code (in short, 'IPC') and Section 120(o) of the Kerala Police Act and Section 12 r/w Section 11(iii)(iv) of the Protection of Children from Sexual Offences Act (in short, POCSO Act). The petitioner was arrested and remanded to judicial custody on 18.06.2024.

2. The crux of the prosecution case is that: on

30.03.2024, the accused, who is the neighbour of the victim, a 14 year old girl, had asked her to forward her nude pictures and he in turn forwarded his nude pictures to the mobile phone of the victim's mother. Thus, the accused has committed the above offences.

3. Heard; Sri.K.Rakesh, the learned counsel appearing for the petitioner and Smt.Seetha S., the learned Public Prosecutor.

4. The learned counsel for the petitioner submitted

that the petitioner is innocent of the accusations leveled against him. He has been falsely implicated in the crime. There is no material to show that the petitioner had received or forwarded the nude pictures as alleged by the prosecution. The Investigating Officer has deliberately made the petitioner as accused due to his previous animosity. The allegation in the bail objection report is that the petitioner is a person with criminal antecedents. In fact by Annexure A order this Court has stayed the initiation of proceedings to declare the petitioner as a rowdy. One of the cases which was registered against the

petitioner has already been compounded. In any given case, the petitioner has been in judicial custody for the last more than 49 days, the investigation in the case is complete and the final report has been laid. Therefore, the petitioner's further detention is unnecessary. Hence, the application may be allowed.

5. The learned Public Prosecutor opposed the

application. The Investigation Officer has filed a bail objection report, inter-alia, contending that the petitioner is a habitual offender. The petitioner had executed a bond that he would not commit any offence. It is during the subsistence of the bond that the petitioner has committed the present offence which by itself proves that the petitioner is an inveterate offender. He also stated that if the petitioner is enlarged on bail, there is every likelihood of him intimidating the victim and the witnesses and tampering with the evidence. Hence, the application may be dismissed.

6. The prosecution allegation against the

petitioner is that he had outraged the modesty and committed sexual assault on the victim by receiving her nude pictures and forwarded his nude pictures to the mother of the victim. Even though it is alleged that the petitioner is a habitual offender, it can be seen that one of the crimes has been compounded. The fact remains that the petitioner has been in judicial custody for the last 49 days, the investigation in the case is complete and the final report has not been laid.

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

SCC 22] the Honourable Supreme Court observed that grant of bail is a 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.

8. 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.

9. 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.

10. 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.

11. After bestowing my anxious consideration of

the facts, the rival submissions made across the Bar, and the materials placed on record, particularly considering the fact that the petitioner has been in judicial custody for the last 49 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 alternate Saturday between 9 a.m. and 11 a.m till the conclusion of the trial in Crime No. 898/2024.

(ii) The petitioner shall not directly or indirectly make any inducement or threat to the victim or her witnesses or to any person acquainted with the

facts of the case, so as to dissuade him 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 Police Station

limits where the victim and the witnesses are residing till the conclusion of the trial in Crime No.898/2024, other than for the purpose of reporting before the Investigating Officer;

(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/- C.S.DIAS, JUDGE rkc/07.08.2024 APPENDIX OF B.A.NO.5874/2024 ANNEXURE A: A TRUE COPY OF THE INTERIM ORDER DATED 27.03.2024 OF THIS HON'BLE COURT IN WPC NO.3864/2024 ANNEXURE B: A TRUE COPY OF THE ORDER DATED 06.07.2024 IN CRL.M.P.NO.4389/2024 OF THE 1ST ADDITIONAL SESSIONS JUDGE, THRISSUR.

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