

Savitha.K. vs State of Kerala

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Court : Kerala

Decided On : Apr-26-2023

Judge : Honourable Dr. Justice Kauser Edappagath

Appeal No. : Crl.MC/450/2023

Appellant : Savitha.K.

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH
WEDNESDAY, THE 26TH DAY OF APRIL 2023 / 6TH VAISAKHA, 1945
CRL.MC NO. 450 OF 2023 AGAINST SC 245/2021 OF FAST TRACK
SPECIAL COURT (RAPE AND POCSO), HOSDRUG
PETITIONER/APPROVER: SAVITHA.K., AGED 31 YEARS D/O
KAMALA, MAJKELU ROAD, KEDUPADAVU, MEEYAPADAVU,
MEENJA VILLAGE, KASARGOD, KERALA, PIN - 671323 BY ADV
M.SHAJNA RESPONDENT/STATE-COMPLAINANT: 1 STATE OF
KERALA REPRESENTED BY PUBLIC PROSECUTOR,HIGH COURT
OF KERALA, PIN - 682031 2 THE SUB INSPECTOR OF POLICE
MANJESHWARAM POLICE STATION, KASARAGOD DISTRICT -, PIN -

671323 3 XXXX XXXX (IS IMPEADED AS ADDITIONAL RESPONDENT 3 AS PER THE ORDER DATED 1/2/2023 IN CRL.M.C.450/2023 SMT.SHEEBA THOMAS, PP THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 26.04.2023, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: -:2:-

ORDER

Dated this the 26th day of April, 2023 This Crl.M.C has been filed with a prayer to grant bail to the petitioner and release her forthwith.

2. The petitioner was the accused in Crime No.583/2020

of Manjeshwaram Police Station Kasaragod leading to SC No.245/2021 on the files of the Fast Track Special Court (Rape and POCSO), Hosdurg (for short, the court below). The offence alleged are punishable under sections 376, 354A(1)(i), 370(A)(1), 370(4), 366A, 119, 114 of IPC and sections 7,12 r/w 11(vi), 17 r/w 16, 18 r/w 3 of the Protection of Children from Sexual Offences Act, 2012.

3. The petitioner was arrested during the crime stage on

crimes were registered against her. Out of which, she was granted bail in three cases. In the remaining five cases including the one above, she was tendered pardon by the Chief Judicial -:3:-

Magistrate Court, Kasaragod invoking power under section 366(1) of Cr.P.C. Thereafter she was made as second witness (CW2) in those crimes. The common allegation in all the crimes against the petitioner is that she abetted the main accused in committing sexual assault against the victim. The petitioner is the elder sister of the victim. Since there is a bar under section 306(4)(b) of Cr.P.C, the petitioner has moved the above petition seeking bail invoking section 482 of Cr.P.C.

4. I have heard Smt.M.Shajna, the learned legal aid counsel appearing for the petitioner and Smt.Sheeba Thomas, the learned Public Prosecutor.

5. This Court in Saidevan Thampi and Another v.

State of Kerala and Others (2013 KHC 694) has held that section 306(4)(b) does not cast an absolute bar on courts from releasing a person from custody who has been tendered pardon. It was further held that in appropriate cases, the approver can be ordered to be released from detention by the High Court invoking section 482 of Cr.P.C. As already stated, the petitioner is in custody for the last 2 years. The petitioner is a lady. She has no

-:4:- other relatives other than her age old ailing mother. The only allegation against her is that she has abetted the main accused to commit rape on the victim. Considering the entire facts and circumstances of the case, I am of the view that further detention of the petitioner is not necessary. Hence, the petitioner shall be released from detention on the following conditions:

(i) She shall execute a bond for `50,000/- (Rupees Fifty thousand only) with her mother as surety for the like sum each.

(ii) The petitioner shall make herself available for trial and she shall appear before the court as and when required.

(iii) The petitioner shall not in any way try to influence the witnesses or tamper with the evidence.

(iv) The petitioner shall not leave the State of Kerala without the permission of the trial court.

(v) The petitioner shall report before the District Legal Services Authority, Kasaragod on the second and fourth Saturday of every month between 10.00 a.m and 11.00 a.m.

(vi) If the petitioner fails to report as above, the District

-:5:- Legal Service Authority concerned shall report the same to this court. Forward a copy of this order to the Secretary, District Legal Services Authority, Kasaragod for compliance. Crl.M.C is allowed as above. Sd/- DR. KAUSER EDAPPAGATH JUDGE Rp -:6:- APPENDIX OF CRL.MC 450/2023 PETITIONER ANNEXURES

Annexure1 TRUE COPY OF THE ORDER PASSED BY THE

FAST TRACK SPECIAL COURT(RAPE & POCSO CASES) DATED 17/3/2022 IN
CMP NO. 126 OF 2022 IN SC 245 OF 2021.

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