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Bijoy vs the State of Kerala

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Court : Kerala Orders

Decided On : Feb-15-2023

Judge : Honourable Mr. Justice Bechu Kurian Thomas

Appeal No. : Bail Appl./826/2023

Appellant : BIJOY

Respondent : The State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS WEDNESDAY, THE 15TH DAY OF FEBRUARY 2023 / 26TH MAGHA, 1944 CRIME NO.749/2022 OF Kodakara Police Station, Thrissur AGAINST THE ORDER/JUDGMENTCRMP 3807/2022 OF ADDITIONAL SESSIONS COURT(ADHOC) III, THRISSUR PETITIONER/ACCUSED: XXXXXXXXXX XXXXXXXXXX XXXXXXXXXX BY ADV BIJU ABRAHAM RESPONDENT/DEFACTO COMPLAINANT: THE STATE OF KERALA REP. BY PUBLIC PROSECUTOR HIGH COURT OF KERALA, ERNAKULAM, PIN - 682035 PP- SRI.NOUSHAD K.A. THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 15.02.2023, THE COURT ON THE SAME DAY DELIVERED THE

FOLLOWING:

BECHU KURIAN THOMAS, J.

B.A. No. 826 of 2023 Dated this the 15th day of February, 2023

ORDER

This is an application for regular bail filed under Section 439 of the Code of Criminal Procedure, 1973.

2. Petitioner is the accused in Crime No.749 of 2022 of Kodakara Police Station, Thrissur District. The offences alleged against the

petitioner are punishable under Sections 354, 376(2)(f)(1)(n), 376AB and 323 of the Indian Penal Code,1860 apart from Section 6(1) r/w Section 5(k) (1)(m)(n) and 10 r/w Section 9 (k)(1)(m)(n) of the Protection of Children from Sexual Offences Act,2012 and Section 92(d) of Right of Person with Disabilities Act, 2016 and Section 75 of the Juvenile Justice(Care and Protection of Children) Act, 2015.

3. According to the prosecution, the accused who is the father of the victim had committed penetrative sexual assault on his daughter aged 11 years, while the mother of the victim was under quarantine in their residence.

4. Sri.Biju Abraham, the learned counsel for the petitioner

contended that the entire prosecution allegations are false and that the incident as alleged had not occurred. It was further pointed out that the allegations have been raised on account of the matrimonial dispute existing between the husband and wife and the petitioner has been

unnecessarily proceeded against. It was further submitted that petitioner was residing 80km away from his separated wife and therefore, there was no chance of any physical interaction with his daughter who was staying with the petitioner's estranged wife. Even otherwise, the learned counsel contended that taking note of the long period of detention already undergone, the petitioner ought to be released

on bail.

5. Sri.Noushad K.A., the learned Public Prosecutor opposed the

application and submitted that the alleged matrimonial dispute is not a reason for the allegations now raised against the petitioner. He further submitted that the victim had clearly specified the nature of the act committed by the petitioner in her statement under Section 164 apart from the medical evidence tallying with the allegations. The learned Public Prosecutor also pointed out that, during the period when the wife

was under quarantine, petitioner was staying with his daughter and wife in the same house. Learned Public Prosecutor also submitted that even though the final report was filed on 29-12-2022, considering the nature of allegations, petitioner ought not to be released on bail.

6. I have considered the rival contentions and have also perused the documents including the medical certificate as well as the statement under 164 Cr.P.C. a copy of which was handed over across the Bar.

7. Petitioner is alleged to have sexually abused his 11 year old

daughter. The medical evidence is in consonance with the allegations of penetrative sexual assault. The statement of the victim also reveals that on the alleged date of the incident, petitioner was staying along with the victim and her mother in the same house. Therefore the contention regarding the matrimonial dispute and the alleged separate residence cannot be given credence at this juncture.

8. Taking note of the nature of the allegations and the seriousness

of the offences alleged and also the petitioner's close relationship with the victim, I am of the view that this is not a fit case where the petitioner can be released on bail, despite the filing of the final report. Accordingly, I dismiss this bail application. BECHU KURIAN THOMAS JUDGE AJM/15/2/23

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