

Arshad vs State of Kerala

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Court : Kerala Orders

Decided On : Feb-24-2023

Judge : Honourable Mr.Justice Ziyad Rahman a.a.

Appeal No. : Bail Appl./845/2023

Appellant : Arshad

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.
FRIDAY, THE 24TH DAY OF FEBRUARY 2023 / 5TH PHALGUNA,
1944 BAIL APPL. NO. 845 OF 2023 [CRIME NO.759/2022 OF
PARAPPANANGADI POLICE STATION, MALAPPURAM DISTRICT]
PETITIONER/S: XXXXXXXXXXXX XXXXXXXXXXXX XXXXXXXXXXXX BY ADV
E.C.AHAMED FAZIL RESPONDENT/S: 1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,HIGH COURT OF
KERALA, PIN - 682031 2 THE STATION HOUSE OFFICER,
PARAPPANAGADI PARAPPANAGADI POLICE STATION,
MALAPPURAM DISTRICT PIN - 676319 3 XXXX IS IMPLEADED AS
ADDL.R3 AS PER ORDER DATED OTHER PRESENT: R1 AND R2 BY

ADV M P PRASHANTH - PP THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 24.02.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: :2 :

ORDER

The petitioner is the accused in crime No.759/2022 of

Parappanangadi Police Station. The aforesaid crime was registered for the offences punishable under Sections 354(B), 376, 376AB, 506(i) of the Indian Penal Code and also under Sections 3 read with Section 4, 5(1)(m)(n) read with the Section 6 of the Protection of Children from Sexual Offences (POCSO) Act and Section 75 of the Juvenile Justice Act.

2. The prosecution case against the petitioner is as follows: The petitioner is the husband of the mother's sister of

the victim girl, aged 12 years. It is alleged that during the month of February, 2017, the petitioner committed penetrative sexual assault against the victim girl while she was in the residence of the petitioner. It is alleged that the aforesaid acts were repeated on several occasions, and the final act was on the last week of August, 2022 at the mother's house of the victim. It is also alleged that the petitioner threatened to kill the victim if she discloses the matter to anyone. Later, the matter was reported to the Police, and the crime was registered

:3 : thereupon. The petitioner was arrested in connection with the said crime on 25.10.2022. Since then, the petitioner has been under judicial detention. This application has been submitted in such circumstances.

3. The learned counsel for the petitioner submits that

the petitioner is innocent of all the allegations. According to him, he was falsely implicated on account of certain disputes within the family, and It is also pointed out that further incarceration of the petitioner is not necessary as the investigation, in this case, is already completed and the final report submitted.

4. On the other hand, the learned Public Prosecutor

would oppose the contentions above and the prayers sought by the petitioner. According to the learned Public Prosecutor, the statement of the victim contained in the First Information Statement and in the statement under Section 164 Cr.P.C. would disclose a clear description of the sexual atrocities committed by the petitioner. Therefore, the release of the petitioner on bail is opposed. The fact that the final report has been submitted is, however, confirmed by the learned :4 : Public Prosecutor.

5. I have gone through the records and heard the

contentions raised from either side. One of the contentions put forward by the learned counsel for the petitioner is that he was implicated falsely in the case on account of certain disputes within the family. However, on carefully going through the F.I.S. and the statement of the victim under Section 164 Cr.P.C., as rightly pointed out by the learned Public Prosecutor, it contained a clear description of the sexual assault committed by the petitioner upon the victim. The victim is a girl aged 12 years, and under normal circumstances, such a description cannot be expected from such a small child unless she has gone through the same. Moreover, it is a fact that the victim is a girl whose father is no more and was studying in a school and is

accommodated in an orphanage. The petitioner is a close relative of the petitioner, and therefore, I am of the view that the release of the petitioner may not be proper as the possibility of influence being exerted upon the victim and other witnesses cannot be ruled out. :5 : In such circumstances, I do not find this as a fit case in which bail can be granted to the petitioner at this juncture. Accordingly, this bail application is dismissed. Sd/- ZIYAD RAHMAN A.A. JUDGE ncd

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