

Binod Das vs State of Kerala

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Court : Kerala Orders

Decided On : Feb-23-2023

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

Appeal No. : Bail Appl./919/2023

Appellant : Binod Das

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.
THURSDAY, THE 23RD DAY OF FEBRUARY 2023 / 4TH PHALGUNA,
1944 BAIL APPL. NO.919 OF 2023 CRIME NO.1600/2022 OF THE
ERNAKULAM TOWN NORTH POLICE STATION, ERNAKULAM
PETITIONER/ACCUSED: BINOD DAS AGED 45 YEARS, S/O DAS,
RESIDING AT UTHUPS HOUSE, BANK ROAD, KALOOR, PIN - 682017
BY ADVS. V.S.CHANDRASEKHARAN S.JAYAKUMAR LEKSHMI
SWAMINATHAN SHAHIM BIN AZIZ N.S.SOUMYA MOL
RESPONDENTS:

1 STATE OF KERALA REPRESENTED BY THE PUBLIC
PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM DISTRICT,
PIN - 682031 2 THE STATION HOUSE OFFICER ERNAKULAM TOWN
NORTH POLICE STATION, ERNAKULAM DISTRICT, PIN - 682018 3
ISHA MARTHA MATHEW CORRECTED AS ESHA MARTHA MATHEW
(SOUGHT TO BE IMPEADED) PETUNIA VEEGALAND FLAT, FLAT
2B, SASTHA TEMPLE ROAD, KALOOR ELAMKULAM, ERNAKULAM (
SOUGHT TO BE IMPEADED) BY ADVS FOR R3 BY NIHARIKA
HEMA RAJ FOR R1 & R2 BY M P PRASANTH - PP

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON
23.02.2023, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING: .. 2 ..

ORDER

The petitioner is an accused in Crime No.1600/2022 of Ernakulam Town North Police Station, Ernakulam. The offences alleged against the petitioner are under Sections 354, 354 A (1) (i), 354 A (1) (ii), and 354 A (1) (iv) of the Indian Penal Code.

2. The prosecution case is that on 29.12.2022 at about

11.45 PM, the victim went to the ancestral home of the accused as a guest, and while she was sleeping with the other children, who were the relatives of the victim as well as the accused, the petitioner, with an intention to sexually harass the victim, came near to the victim, touched her private parts and thereby committed the offences. The crime was registered in such circumstances, and the petitioner submits this application for anticipatory bail as he apprehends arrest.

3. The learned counsel for the petitioner contends that there is some rivalry within the family, and the complaint happened to be submitted in connection with the same. It is submitted that the petitioner is innocent of all the allegations, and a false complaint has been submitted against him. The specific case of the petitioner is that, even according to the .. 3 ..

statement of the victim, at the relevant time, the victim was sleeping along with the twin daughters of the petitioner herein, and therefore allegation of commission of such a sexual assault at that point of time is highly improbable.

4. On the other hand, the learned Public Prosecutor as

well as the learned counsel appearing for the Addl. 3rd respondent/victim stoutly opposes the prayer sought by the petitioner. The learned Public Prosecutor specifically pointed out that, in the FI statement and the statement of the victim under Section 164 of the Cr.P.C., a detailed description of the sexual assaults committed by the petitioner has been mentioned. Under no circumstances can the same be disbelieved. The learned counsel appearing for the 3rd respondent/victim also supports the contentions put forward by the learned Public Prosecutor and reiterates that the specific allegations of sexual assault, which would constitute the offences alleged against the petitioner. Therefore, both counsels seek dismissal of the bail application.

5. I have gone through the records and heard the contentions raised from both sides. The crucial contention raised .. 4 ..

by the learned counsel for the petitioner is that there is some rivalry within the family, and the petitioner is being framed on account of the same. In support of the contention, the learned counsel for the petitioner relied upon Anx.A3, which is a

message sent by the victim's father to the petitioner, threatening that the petitioner would be put in jail. Apart from the above, he also places reliance upon Anx.A2 photographs showing that the victim and the other children were lying in the room. The photograph was taken at 11.39 hours on 29.12.2022, whereas the incident occurred at the same place at 11.45 on the same day. But on careful scrutiny, it can be seen that the said contention is not sustainable. As rightly pointed out by the learned counsel appearing for the 3rd respondent/victim, as per the statement of the victim, the victim reached the ancestral home at about 11.45. Anx.A2 photograph shows they were in the ancestral home at 11.39 pm on the same day. However, as per the statement, the victim reached there only at 11.45 p.M

on the same day. However, not much reliance could be placed upon the same, as nobody is expected to mention the exact .. 5 .. time of these events with arithmetical precision under normal circumstances, and therefore the discrepancy cannot be treated as a relevant aspect for the purpose of consideration of this application.

6. The learned counsel for the petitioner further places

reliance upon the judgment passed by this Court in BA No.2158/2022, wherein anticipatory bail was granted by this Court for similar offences despite the fact that a clear description of the sexual assaults were made mention in the FIS as well as the statement of the victim under Section 164 of the Cr.P.C. However, on going through the contents and factual

circumstances in the said case, it is revealed that the allegations, which were the subject matter of the said case, were about certain acts committed by the accused while the accused was applying bridal makeup to the victim. However, the factual circumstances in this case, are entirely different as, according to the victim, the petitioner, a relative of the victim, went near the defacto complainant while she was sleeping and committed the sexual assaults. In my view, a comparison could .. 6 ..

not be made between the factual circumstances in this case, and the case relied on by the petitioner. Therefore, the decision taken in the said case can have no relevance as far as this case is concerned. Apart from the above, the learned counsel for the petitioner also places reliance upon the decisions rendered by the High Court of Bombay in [(2020) SCC Online Bom 8007] Raviraj Bhagwatiprasad Gupta V. State of Maharashtra and Ms Poonam & Ors V. State of NCT of Delhi [(2016) SCC

Online Del 3570], rendered by the High Court of Delhi. I have

gone through the aforesaid decisions as well. However, it is discernible that the factual circumstances in both those cases

are also entirely different. Even otherwise, as far as the bail application is concerned, the same can be considered only on the basis of the specific factual situation of the case at hand. In this case, I have carefully gone through the contents of the FIS and other related documents. The victim is aged just 18 years, and she had given a clear description of all the sexual assaults

allegedly committed by the petitioner. Even though the petitioner has a case that there was some rivalry within the .. 7 ..

family, which resulted in the registration of the crime, no materials are placed before me to establish the same. The only document is the Anx.A3 message sent by the father of the victim to the petitioner, but I am of the view that the same would not under any circumstances indicate any rivalry between the persons and the possibility of sending such a message on account of the alleged sexual assault committed by the petitioner, cannot be ruled out.

7. In the said circumstances, after considering all the

relevant aspects, I am of the view that this is not a case in which the order of pre-arrest bail can be granted to the petitioner. Therefore, I do not find any merits in this application. Accordingly, it is dismissed. Sd/- ZIYAD RAHMAN A.A. JUDGE
ded/23.02.2023

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