

Gopalakrishnan vs the State of Kerala

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Court : Kerala

Decided On : Mar-17-2023

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

Appeal No. : Bail Appl./2049/2023

Appellant : Gopalakrishnan

Respondent : The State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A. TH
FRIDAY, THE 17 DAY OF MARCH 2023 / 26TH PHALGUNA, 1944 BAIL
APPL. NO. 2049 OF 2023 [CRIME NO.97/2023 OF NEDUMKANDAM
POLICE STATION, IDUKKI DISTRICT] PETITIONER/2nd ACCUSED:
GOPALAKRISHNAN AGED 53 YEARS YEARS, S/O GOVINDAPILLA
NILACKAL HOUSE, PAMPADUMPARA VILLAGE UDUMBANCHOLA
TALUK, IDUKKI, PIN - 685554 BY ADVS. PRANOY K.KOTTARAM
S.RAJEEV RESPONDENT/STATE: THE STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, ERNAKULAM, PIN - 682031 OTHER PRESENT: ADV
SRI.M.P.PRASHANTH, PUBLIC PROSECUTOR THIS BAIL

APPLICATION HAVING COME UP FOR ADMISSION ON 17.03.2023,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER

Dated this the 17th day of March, 2023 The petitioner is the 2nd accused in crime No.97/2023 of Nedumkandam Police Station, which was registered under the offences punishable under Sections 354, 354A (1)(i), 354B and 376(2)(n) of IPC and also under Section 66E and 67 of Information Technology Act, 2000.

2. The prosecution case is as follows: the defacto complainant, a lady aged 27 years, was working as an employee of the establishment run by the 1st accused. According to the defacto

complainant, the petitioner was an employee of the said establishment. It is alleged that, from 10.07.2020 to 21.01.2023, on several occasions, the 1st accused forcibly engaged in sexual intercourse with the defacto complainant. It is also alleged that the images of the 1st accused having sexual intercourse with the defacto complainant were captured by the petitioner herein, and he later by using the said images allegedly threatened her that the

said videos will be circulated. The complaint was submitted in such circumstances. This application for anticipatory bail is submitted by the petitioner, as he apprehends arrest.

3. Heard Sri. S. Rajeev, the learned counsel appearing for the petitioner and Sri.M.P.Prashanth, the learned Public Prosecutor for the State.

4. The learned counsel for the petitioner contends that the

petitioner is falsely implicated in this case. According to him, even going by the prosecution case, the offences under Section 354, 354A(1), 354B and 376(2)(n) of the IPC would not be attracted against the petitioner. The main allegations are against the 1 st accused. As far as the petitioner/2nd accused is concerned, at the most, the offences that can be attracted is under Section 66E and 67 of the Information Technology Act, 2000 and the same are

bailable offences. It is further submitted that the petitioner is prepared to abide by any conditions that may be imposed by this Court and shall cooperate with the investigation.

5. On the other hand, the learned Public Prosecutor

opposes the aforesaid prayer. It is pointed out that, even though as per the FI Statement given by the defacto complainant the role of the petitioner is confined to the capture of the images of the defacto complainant and the 1st accused having sexual intercourse with the 2nd respondent, in the statement of the defacto complainant recorded under Section 164 of Cr.P.C., certain other

allegations of sexual assault are also raised against the petitioner/2nd accused. It is also pointed out that, in the aforesaid statement, the role of the petitioner in facilitating the rape of the victim by the 1st accused was also revealed, as according to the defacto complainant, it was the petitioner herein, who had given her a soft drink, after consumption of which, she lost her consciousness and thereafter she was subjected to sexual assault. Therefore it is pointed out that, there are specific allegations against the petitioner and hence, the learned Public Prosecutor seeks to dismiss the bail application.

6. I have gone through the records and heard the

contentions raised by both sides. It is true that the statement of the victim recorded under Section 164 of Cr.P.C., reveals some more allegations which were not in the FIS. However, one of the crucial aspects to be noticed is the discrepancy with regard to the role allegedly played by the petitioner, when considering the version of the victim in the FI statement and the statement

recorded under section 164 statement. When comparing the contents of the First Information Statement and the Section 164 Statement, it can be seen that in the FIS, it was mentioned that, the 1st accused offered a soft drink and upon consuming the same,

the defacto complainant lost consciousness. It was also specifically mentioned in the FIS, that the petitioner herein was not at all present in the office on that day.

However, there is some variation in the description of the said event in the statement of the victim, under Section 164 of Cr.P.C. In the said statement, she had stated that it was the petitioner, who had given the soft drink to her, upon consumption of which, she lost consciousness. Thus, there is a clear discrepancy between these statements. Besides the same, as per the statement under Section 164 Cr.P.C, the petitioner also committed some sexual assaults upon the victim. But, it is to be noted that, no such incident was mentioned in the FIS. When all these aspects are taken into consideration, I find some force in the contention put forward by the learned counsel for the petitioner. I am not going deep into the aforesaid aspects, as the matter is

even now under investigation. However, as pointed out by the learned counsel for the petitioner, when the allegations contained in the FIS are taken into consideration as to the role of the petitioner herein, apparently the same would attract only the offences under the Information Technology Act, 2000, which are bailable.

7. Therefore, considering the aforesaid aspect, an order

can be passed to protect the personal liberty of the petitioner, in the peculiar facts and circumstances of this case. However, taking note of the nature of the allegations, the cooperation of the petitioner with the investigation is also to be ensured. In such circumstances, the application is disposed of on the following conditions:- i) The petitioner shall surrender before the Investigating Officer, within a period of two weeks from today, for subjecting himself to interrogation. ii) After interrogation, the petitioner shall be released on bail on the very same day of surrender upon the petitioner executing a bond for Rs 1,00,000/- (Rupees One Lakh only) with two sureties each for the like sum, to the satisfaction of the Investigating Officer iii) The petitioner shall fully cooperate with the investigation, including subjecting himself to the deemed police custody for the purpose of recovery, if any, as and when demanded.

iv) The petitioner shall appear before the Investigating Officer between 10.00 a.m and 11.00 a.m every Saturday until the filing of the final report. v) The petitioner shall also appear before the Investigating Officer as and when required. vi) The

petitioner shall not commit any offence of like nature while on bail. vii) The petitioner shall not make any attempt to contact any

of the prosecution witnesses, directly or through any other person, or in any other way try to tamper with the evidence or influence any witnesses or other persons related to the investigation. viii) The petitioner shall not leave the State of Kerala without the permission of the Jurisdictional Court. In case of violation of any of the above conditions, the jurisdictional Magistrate shall be empowered to consider the application for cancellation of bail, if any, and pass appropriate orders in accordance with the law. Sd/- ZIYAD RAHMAN A.A. JUDGE TR

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