

XXXXX vs State of Kerala,

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Court : Kerala

Decided On : May-31-2023

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

Appeal No. : Bail Appl./2889/2023

Appellant : XXXXX

Respondent : State of Kerala,

Judgement :

B.A.No.2889/23 1

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.
WEDNESDAY, THE 31ST DAY OF MAY 2023 / 10TH JYAISHTA, 1945
BAIL APPL. NO. 2889 OF 2023 AGAINST THE
ORDER/JUDGMENTCRMC 166/2023 OF ADDITIONAL DISTRICT
COURT & SESSIONS COURT (ATROCITIES & SEXUAL VIOLENCE
AG PETITIONER/ACCUSED: XXXXXXXXXXXX XXXXXXXXXXXX
XXXXXXXXXX BY ADVS. K.K.DHEERENDRAKRISHNAN N.P.ASHA
RESPONDENTS/STATE: STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM,
PIN - 682 031. BY ADVS. SANTHARAM.P REKHA

ARAVIND(K/2130/1999)

P.G.GOKULNATH(K/000170/2017)

SMT.SEETHA S-SR PUBLIC PROSECUTOR THIS BAIL APPLICATION
HAVING COME UP FOR ADMISSION ON 31.05.2023, THE COURT ON
THE SAME DAY DELIVERED THE FOLLOWING: B.A.No.2889/23 2

ORDER

The petitioner is the accused in Crime No.234 of 2023 of Koyilandy Police Station. The offences alleged against the petitioner are under Sections 354A(2) IPC and Section 9(m), n r/ w Section 10 and 12 r/w 11 of the POCSO Act, 2012.

2. The prosecution case is that, on a day during December, 2022, the accused, the second husband of the mother of the victim, a girl aged ten years, subjected her to sexual

assault. The aforesaid assault includes hugging the victim and inserting his hands into his dress and chest, and holding her breast with sexual intent. Even though the incident occurred in December, 2022, the matter was reported to the police on 18.03.2023, and the crime was registered accordingly. This application is submitted by the petitioner seeking anticipatory bail as he apprehends arrest in connection with the investigation of the said case.

3. Heard Sri.K.K.Dheerendra Krishnan, learned counsel for the petitioner, Sri.P.Santharam, learned counsel for the victim and Smt.Seetha S., learned Public Prosecutor for the State. B.A.No.2889/23 3

4. The learned counsel for the petitioner contends that the

petitioner is innocent of all the allegations. According to him, the petitioner married the victim's mother on 06.11.2022. Thereafter, there were certain disputes between the petitioner and the mother of the victim; consequent to the same, the mother of the de facto complainant left the company of the petitioner on

15.03.2023. It is also alleged that the mother of the de facto complainant was having an illicit affair with another person, and the petitioner came to know about this and questioned him, which ultimately led the mother of the victim to leave the

residence of the petitioner. According to the learned counsel for the petitioner, a case was falsely fabricated by the victim due to the rivalry between the mother of the victim and the petitioner. He points out that the petitioner is ready and willing to cooperate with the investigation and shall abide by any of the conditions that may be imposed by this Court.

5. On the other hand, the learned Public Prosecutor and

the learned counsel for the victim stoutly opposed the prayer sought by the learned counsel for the petitioner. It is stated that there are specific allegations against the petitioner, and the

B.A.No.2889/23 4 matter is being investigated. Therefore, releasing the petitioner at this stage is not at all proper. It is further pointed out by the learned Public Prosecutor and the learned counsel for the petitioner that, even though there is some delay in reporting the matter, there is a clear explanation forthcoming. It is evident that the incident that happened was revealed by the victim during the month of March, 2023 only, when one of the teachers of the victim had an interaction with the child, since she was scoring lesser marks in the exams. This led to the revelation of the act, which is the subject matter of the crime. In such circumstances, dismissal of the bail application is sought.

6. I have gone through the records and heard the

contentions raised by both sides. Even though the learned counsel for the petitioner relies upon the disputes between the petitioner and the mother of the de facto complainant to show the false nature of the allegations, there are no materials available on record to substantiate the same. The learned counsel also points out the delay in reporting the matter to the Police. However, it is evident from the records that the child revealed the said incident only during the month of March, 2023, when having interaction

B.A.No.2889/23 5 with her teacher. As the teacher suspected some problems with the victim, the mother was called for, and the incident was

revealed in her presence. When going through the nature of allegations, it is to be noted that, in the statement of the victim given before the Police and also before the learned Magistrate, specific description of the sexual assault is mentioned. The victim is aged only ten years. In the facts and circumstances of the case, I do not find any materials to simply discard the aforesaid statement, even for the limited purpose of bail.

7. In such circumstances, I do not find this a fit case in

which anticipatory bail can be granted to the petitioner. However, when it was conveyed that this court is not prepared to grant anticipatory bail, the learned counsel for the petitioner submitted that the petitioner is ready and willing to surrender before the investigation officer. In such circumstances, this application is disposed of with the following directions:

(i) The petitioner shall surrender before the Investigation officer, within a period of ten days from the date of the order, for subjecting himself to interrogation;

(ii) Upon such surrender and after interrogation, if any, the petitioner shall be produced by the B.A.No.2889/23 6

investigation officer before the jurisdictional court having jurisdiction on the very same day of surrender itself to enable the petitioner to seek bail, provided the petitioner surrenders before 10.30 a.m on the day;

(iii) The jurisdictional court, upon production of the

accused and filing of the bail application, may consider the bail application in accordance with the law, and, if possible, dispose of the same on the very same day of filing of the said application, subject to such conditions, as deem fit. The Bail Application is disposed of with the above directions. Sd/- ZIYAD RAHMAN
A.A. JUDGE DG/2.6.23

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