

Nihal vs State of Kerala

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Court : Kerala Orders

Decided On : May-26-2023

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

Appeal No. : Bail Appl./3036/2023

Appellant : NIHAL

Respondent : State of Kerala

Judgement :

B.A.No.3036/23 1

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.
FRIDAY, THE 26TH DAY OF MAY 2023 / 5TH JYASHTA, 1945 BAIL
APPL. NO. 3036 OF 2023 PETITIONER/ACCUSED: XXXXXXXXXXXX
XXXXXXXXXXXX XXXXXXXXXXXX BY ADVS. AJITH MURALI MOHANAN
M.K. SWAPNA VIJAYAN RESPONDENTS/STATE & COMPLAINANT: 1
STATE OF KERALA, REPRESENTED BY THE PUBLIC
PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM., PIN - 682
031. 2 XXXXXXXXXXXX XXXXXXXXXXXX XXXXXXXXXXXX
SRI.C.N.PRABHAKARAN -SR.PUBLIC PROSECUTOR THIS BAIL
APPLICATION HAVING COME UP FOR ADMISSION ON 26.05.2023,

THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

B.A.No.3036/23 2

ORDER

This is an application for pre-arrest bail. The petitioner is the accused in Crime No.419 of 2023 of Thoppumpady Police Station. The offences alleged against the petitioner are under Sections 323, 506 and 377 of IPC and also under Sections 3(a), (b), 5(l), (m), 6, 7, 8, 10 read with Section 11(iii) of the POCSO Act.

2. The allegation against the petitioner is that, during various dates in the year 2022, while the de facto complainant was seven years old, the petitioner committed unnatural sexual

acts with the victim. It is also alleged that the aforesaid allegations include touching the private parts of the victim, a minor boy. The child revealed the commission of the crime during the counselling session conducted during the Month of February, 2023 in his school. The matter was informed to the police, and the crime was registered accordingly. This application for anticipatory bail is submitted by the petitioner in B.A.No.3036/23 3 such circumstances as he apprehends arrest in connection with the investigation of the said case.

3. Heard Sri.Ajith Murali, learned counsel for the petitioner and Sri.C.N.Prabhakaran, learned Public Prosecutor for the State.

4. The learned counsel for the petitioner submits that

the petitioner is innocent of all the allegations. He was falsely implicated in the said case, and he places reliance upon the delay in reporting the matter to the Police as one of the grounds to substantiate the said contention. It is further pointed out that the petitioner has been in custody since 09.03.2023. There is no purpose in keeping him under detention any longer, contends the learned counsel for the petitioner. He further submits that the petitioner is willing to cooperate with the investigation and the trial by abiding by all the conditions that may be imposed by this Court.

5. On the other hand, the learned Public Prosecutor would oppose the contentions raised by the petitioner. The Public Prosecutor relied on the First Information Statement and B.A.No.3036/23 4

the statement of the victim recorded under Section 164 Cr.P.C. to substantiate the serious nature of the allegations. The copies of the same were also made available to this Court for perusal. It is pointed out that the matter is being investigated, and if the petitioner is released on bail, the chances of the investigation

being hampered cannot be ruled out. Thus, dismissal of the application is sought by the learned Public Prosecutor.

6. I have gone through the records, including the

statements of the victim given before the police and also before the learned Magistrate under Section 164 Cr.P.C. It is evident therefrom that a clear description of the sexual acts committed

by the petitioner has been given by the child. At the time of giving the said statement, the child was ten years old, and he was subjected to sexual atrocities at the age of seven. On going through the nature of the statement, I am of the view that the chances of a small boy of that age giving a false description of such kind of events are much less, and thus it has to be concluded there are prima facie materials against the petitioner. As regards the delay in reporting the matter to the police, it is

B.A.No.3036/23 5 evident from the records that the child was frightened, and the

same was not revealed by him earlier. The incident came out during the course of a counselling session conducted in the school after three years. The aforesaid explanation appears to be a reasonable one, and in such circumstances, I do not find any reason to accept the contention put forward by the learned counsel in this regard. Thus, after considering all the relevant aspects, I do not find this as a fit case in which anticipatory bail can be granted to the petitioner at this stage.

Accordingly, this bail application is dismissed. Sd/- ZIYAD RAHMAN A.A. JUDGE
DG/29.5.23

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