

Sanal vs State of Kerala

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Court : Kerala Orders

Decided On : Jun-23-2023

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

Appeal No. : Bail Appl./4112/2023

Appellant : SANAL

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.
FRIDAY, THE 23RD DAY OF JUNE 2023 / 2ND ASHADHA, 1945 BAIL
APPL. NO. 4112 OF 2023 CRIME NO.839 OF 2022 OF
MANNANCHERRY POLICE STATION, ALAPPUZHA PETITIONER:
SANAL, AGED 47 YEARS, S/O SASIDHARAN, KODIVEETIL HOUSE,
KATTOOR P.O., MARARIKULAM THEKKU PANCHAYATH,
ALAPPUZHA, PIN: 688 522. BY ADVS. M.SUNILKUMAR S.SANDEEP
(S-3458) NIDHEESH P. RAJEESH V.R. RAKESH R. RESPONDENT:
STATE OF KERALA, REPRESENTED BY THE PUBLIC
PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM, PIN: 682
031. ADV SEETHA S - SR PP THIS BAIL APPLICATION HAVING

COME UP FOR ADMISSION ON 23.06.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER

This is an application filed under Section 439 of the Code of Criminal Procedure seeking regular bail.

2. The petitioner is the accused in Crime No.839 of 2022 of

Mannancherry Police Station. The said crime was registered alleging offences punishable under Sections 354, 354A(1), 354(B), 376(3), 376AB, 376(2)(f), 376(2)(k) and 376 (2)(n) of the Indian Penal Code, Sections 4(1)(2) r/w Section 3(a), 3(b), 6 r/w Section 5(j)(i)(iii), 5(l), 5(n), 5(m), 8 r/w Section 9(j)(l)(iii), 9(l), 9(n) and 9(m) of the Protection of Children from Sexual Offences Act and also under Section 75 of the Juvenile Justice (Care and Protection of Children) Act. The crime was registered based on the information furnished by the victim, the petitioner's daughter, aged 14 years. It is alleged that, on the day of August 2018, May 2020 and 23.11.2022, the accused committed penetrative sexual assault on the victim in their bedroom and thereby committed the offences. The crime was registered in such circumstances, and as part of the investigation of the said case, the petitioner was arrested on 01.12.2022 since he has been under judicial detention. This is an application for regular bail submitted in such circumstances.

3. Heard Sri. M. Sunil Kumar, learned counsel appearing for

the petitioner, Smt.Seetha S., the learned Public Prosecutor appearing for the State and Smt. C.M.Karishma, the learned counsel appearing for the defacto complainant.

4. The learned counsel for the petitioner submits that a false

case has been registered against the petitioner at the instance of the mother of the victim, as there are certain matrimonial disputes between them. The learned counsel further points out that the allegations raised against the petitioner are highly improbable, and the learned counsel specifically brought the attention of this

court to a letter sent by the victim, a copy of which is produced as Annexure-B along with the bail application. It is pointed out that the victim clearly opened up her mind in the said communication and explained, in detail, about the reasons for her mental status after referring to several instances. However, the incidents relating to the sexual assaults as alleged against the petitioner are conspicuously absent in the said communication, and according to the learned counsel, that aspect clearly indicates the improbabilities in the allegations raised against the petitioner.

5. The learned counsel further points out that he has been in

custody since 01.12.2022, and now the investigation in this case is already over, and there is no fruitful purpose in continuing the detention of the petitioner. The case is now pending trial as S.C.No.145 of 2023 before the Additional Sessions Court -I (Special court for the trial of offences against Women and Children), Alappuzha. Therefore, the learned counsel contends that there is no fruitful purpose in keeping the petitioner in custody.

6. The learned Public Prosecutor and the learned counsel

appearing for the defacto complainant oppose the said application. It is pointed out that there are specific allegations raised against the petitioner, and there are ample materials to establish the same, which were revealed during the investigation. The learned Public Prosecutor made available the relevant records of the case, including the statements of the victim given before the police and also before the learned Magistrate.

7. I have carefully scrutinized the documents produced before

me and heard the contentions raised by all the parties. When going through the statements of the victim given by the police, it can be seen that the instances of sexual assaults are clearly mentioned therein. All the said aspects are very explicitly mentioned. In S.164 also, the sequence of events was mentioned with more clarity. When taking into consideration the nature of the aforesaid statements, I find that there are prima facie materials against the petitioner. Even

though the learned counsel for the petitioner specifically highlighted the relevance of the Annexure-B letter issued by the victim, I am not inclined to accept the contention. It is true that, as pointed out by the learned counsel for the petitioner, there is no reference to any sexual assault in Annexure B, as alleged in the final report. However, merely because of that reason, it cannot be assumed that the allegations raised in the police report based on the statements of the victim are not genuine. The circumstances under which Annexure-B happened to be issued, or the purpose for which it was made are not known to this court. Therefore, mere absence of any reference to such sexual assaults in Annexure B, cannot be taken as a ground to suspect the veracity of the allegations raised against the petitioner.

8. It is true that the petitioner has been in custody since.

1.12.2022. However, I am of the view that alone cannot be the factor to determine the question as to whether the petitioner is to be released or not. In this case, the petitioner is none other than the father of the victim, and most of the witnesses are either relatives or neighbours of the parties. The allegations are very serious. When taking into consideration the aforesaid aspect, I am of the view that the release of the petitioner on bail may not be proper.

Thus, I do not find any justifiable reason to allow the bail application, and accordingly, it is dismissed. However, it is ordered that every endeavour shall be taken by the Special Court to expedite the trial, considering that the petitioner is under judicial detention. Sd/- ZIYAD RAHMAN A.A. JUDGE ak

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