

Vishnu vs State of Kerala

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Court : Kerala Orders

Decided On : Jul-31-2023

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

Appeal No. : Bail Appl./4988/2023

Appellant : Vishnu

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.
MONDAY, THE 31ST DAY OF JULY 2023 / 9TH SRAVANA, 1945
CRIME NO.508/2023 OF CHANGARAMKULAM POLICE STATION,
MALAPPURAM DISTRICT PETITIONER/ACCUSED: XXXXXXXXXXXX
XXXXXXXXXXXX XXXXXXXXXXXX BY ADV BABU S. NAIR
RESPONDENTS/STATE & COMPLAINANT: 1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, ERNAKULAM, KOCHI, PIN - 682031 2 THE STATION
HOUSE OFFICER CHANGARAMKULAM POLICE STATION,
MALAPPURAM DISTRICT, PIN - 679575 BY ADV PUBLIC
PROSECUTOR ADV.SEETHA S.- SR.PUBLIC PROSECUTOR THIS

BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 31.07.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER

The petitioner is the accused in Crime No.508/2023 of

Changaramkulam Police Station, which was initially registered for the offences punishable under Section 354A(1), 354A(2), 354D(1) of the IPC and also under Sections 9, 10, 11 and 12 of POCSO Act and under Section 75 of the Juvenile Justice (Care and Protection of Children) Act. Subsequently, the offence under Section 376 (2)(f) (n), 376AB, and 509 of the IPC & Section 6 read with Section 5 (I)

(p) under Section 10 read with Section 9(I)(m)(p) and 15 of POCSO

Act and 67B(b) of Information Technology Act were also incorporated. The prosecution case is that on various occasions thereafter, the petitioner committed penetrative sexual assault on the victim, a girl aged seven years, by touching and inserting his fingers on the private parts of the victim. As part of the investigation, the petitioner was arrested on 28.05.2023, and since then, he has been under judicial detention.

2. Heard Smt.Smitha Babu, learned counsel for the petitioner and Smt.Seetha S., learned Public Prosecutor for the

State. Even though notice of this application was served to the defacto complainant/victim, there was no representation for her when the application was taken up.

3. The learned counsel for the petitioner submits that the

petitioner is innocent of all the allegations. According to him, in the FIS, there was no allegation of any penetrative sexual assault, and it was only made subsequently. It is pointed out that the allegations raised are highly improbable. It

is pointed out that the victim, aged seven years, as well as her sister, who is aged eleven years old, have raised similar allegations against the petitioner as well as the father of the petitioner and based on all the said information, separate crimes were registered against both of them. The specific case of the learned counsel for the petitioner is that the complaints with false allegations were submitted at the instance of the parents of the victim due to certain disputes they had with the father of the petitioner. The learned counsel further submits that the petitioner is in custody for more than 65 days, and there is no purpose in keeping the petitioner under detention as the final report was also submitted.

4. On the other hand, the learned Public Prosecutor

opposes the said application by pointing out that there are specific allegations against the petitioner. The relevant records, including the statements of the victim, were also made available before this Court for perusal.

5. I have gone through the records. In the statement given

by the victim before the Police and also before the learned Magistrate under Section 164 of Cr.P.C., a clear description of the sexual assaults committed by the petitioner is mentioned. It is true that, in the FIS, the penetrative sexual assaults are not very clearly mentioned.. However, thereafter an additional statement was given by the victim to the effect that the petitioner inserted his fingers inside the vagina of the victim. Moreover, in the statement under Section 164 of Cr.P.C., the allegation of touching on the private parts of the victim is mentioned. Going by the contents of the aforesaid statement and also the age of the victim, I do not find any

reason to suspect the veracity of the same prima facie. The allegations raised against the petitioner are grave, and one more crime at the instance of the sister of the victim, against the petitioner, with similar allegations. The petitioner is a relative of the victim, and therefore, the chances of influencing the victim and other witnesses if the petitioner is released on bail also cannot be ruled out. In such circumstances, I do not find any reason to grant bail to the petitioner; hence, this bail application is dismissed. Sd/- ZIYAD RAHMAN A.A. JUDGE scs