

XXXX vs State of Kerala

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Court : Kerala

Decided On : Jul-31-2023

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

Appeal No. : Bail Appl./5790/2023

Appellant : XXXX

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.172/2023 OF CHERUTHURUTHY POLICE STATION,
THRISSUR PETITIONER: XXXX AGED 35 YEARS XXXX, PIN - 680583
BY ADV T.RAJASEKHARAN NAIR RESPONDENT/S: 1 STATE OF
KERALA REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT
OF KERALA, PIN - 682031 2 THE SUPERINTENDENT VIYYUR SUB
JAIL, RAMAVARMAPURAM, THRISSUR, PIN - 680010 3 XXX (VICTIM)
AGED 20 YEARS XXXXX, PIN - 680583 BY ADV R1 & R2 BY ADV
SEETHA S - SR.PUBLIC PROSECUTOR R3 BY ADV NIDHEESH S
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 1st accused in Crime No.172/2023 of Cheruthuruthy Police Station. The offences alleged against the petitioner and other accused are under Sections 376, 376(f), 354A(i),(ii), 354C & 392 of IPC and also under Section 4(2) read with Section 3(a) & 6(1) read with Section 5(n) of POCSO Act and Section 66 E of IT Act.

2. The prosecution case is that, during the month of May, 2017 the petitioner, along with a relative of the victim had committed penetrative sexual assault on the victim, a girl aged 14

years. It is also alleged that, on 31.12.2022 the petitioner threatened the victim, obtained nude photographs of the victim in his mobile phone and threatened that the same would be forwarded to the person with whom the marriage of the victim was fixed. The crime was registered on the basis of an information furnished by the victim in the year 2023. As part of the investigation the petitioner was arrested on 29.06.2023 and since then he has been

under judicial detention.

3. Heard Sri.Rajasekharan Nair, learned counsel for the petitioner, Smt.Seetha S., learned Senior Public Prosecutor for the State and Sri.Nidheesh S, learned counsel for the defacto complainant.

4. The learned counsel for the petitioner submits that the

petitioner is innocent of all the allegations. It is also pointed out that, the crime itself happened to be registered on the basis of a misconception and now all the disputes between the petitioner and the defacto complainant have been settled. Crl.M.C. No.5763/2023 was also filed by the petitioner herein, seeking to quash the proceedings against the petitioner on the basis of settlement, wherein an interim order was passed by this Court by which the investigating agency was

directed not to file final report in the matter during the pendency of the CrI.M.C. The release of the petitioner was sought in such circumstances.

5. On the other hand, the learned Public Prosecutor

opposes the said application. However, the learned counsel appearing for the defacto complainant confirms that the matter is settled between the parties. The defacto complainant does not have any subsisting grievances and she has no objection in releasing the petitioner on bail.

6. I have gone through the records. Considering all the

material aspects, including the settlement between the parties and also the fact that the petitioner has been in custody since 29.06.2023, I do not find any necessity of further incarceration of the petitioner. Therefore, the petitioner is directed to be released on bail subject to the following conditions: i) The petitioner shall be released on bail on executing a bond for Rs.1,00,000/- (Rupees One Lakh only) with two solvent sureties each for the like sum to the satisfaction of the jurisdictional Court.

ii) The petitioner shall fully co-operate with the investigation. iii) The petitioner shall appear before the Investigating Officer between 10.00 a.m and 11.00 a.m on every Wednesday until the filing of final report. iv) The petitioner shall appear before the Investigating Officer as and when required. v) The petitioner shall not commit any offence of similar nature while on bail. vi) 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.

vii) The petitioner shall not leave India without the permission of the jurisdictional court. In case of violation of any of the above conditions, the jurisdictional Court 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 scs

