

N a Varghese vs State of Kerala

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Court : Kerala

Decided On : Aug-03-2023

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

Appeal No. : Bail Appl./6298/2023

Appellant : N a Varghese

Respondent : State of Kerala

Advocate for Pet/Ap. : Sri. S. Rajeev

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.
THURSDAY, THE 3RD DAY OF AUGUST 2023 / 12TH SRAVANA, 1945
CRIME NO.261/2023 OF PANAMARAM POLICE STATION, WAYANAD.
PETITIONER/ACCUSED: N.A. VARGHESE, AGED 65 YEARS, S/O.
N.K. ELIAS, NIRAPPIL, PUTHENPURAYIL, ANCHUKUNNU P.O.,
MANANTHAVADY-670 645. BY ADVS. S.RAJEEV V.VINAY
M.S.ANEER SARATH K.P. PRERITH PHILIP JOSEPH ANILKUMAR
C.R. RESPONDENT/STATE: STATE OF KERALA REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM-
682 031 (CRIME NO.261/2023 OF PANAMARAM POLICE STATION,

WAYANAD) SMT. S. SEETHA, SENIOR PUBLIC PROSECUTOR THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 03.08.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: -2-

ORDER

Dated this the 3rd day of August, 2023 This is an application filed u/s 439 of the Code of Criminal Procedure seeking regular bail.

2. The petitioner is the accused in Crime

No.261/2023 of Panamaram Police Station which was registered for the offences punishable under Sections 376(2) (1), 376(2)(n), 354(1)(i) of IPC and Section 92B of the Right of Persons with Disabilities Act.

3. The prosecution case is that, on 01.01.2023 and

several occasions thereafter, the petitioner had penetrative sexual intercourse with the de facto complainant, aged 23 years, against her consent and thereby committed the offences. It is pointed out that the de facto complainant is a person having certain mental ailments. The crime was registered in such circumstances and as part of the investigation, the petitioner was arrested on 12.06.2023. Since then, he has been under judicial detention. This

application for regular bail is submitted in such circumstances. -3-

4. Heard Sri. S. Rajeev, learned counsel for the petitioner and Smt. S. Seetha, learned Senior Public Prosecutor for the State.

5. Learned counsel for the petitioner submits that the

petitioner is innocent of all the allegations. According to him, the sexual intercourse between the parties was on the basis of consent and the same is evident from the statement of the victim. Now the investigation in this case is already over and there is no purpose in keeping the petitioner in judicial detention.

6. On the other hand, the learned Public Prosecutor

opposes the said application by pointing out that there are specific allegations against the petitioner and there are materials supporting the same. However, it is submitted that the investigation in this case is already over and the final report is submitted.

7. I have carefully gone through the records. It is

true that there are certain allegations against the petitioner. But the fact remains that the investigation in this case is already over and the final report is submitted. The specific -4-

case of the petitioner is that, the sexual intercourse was on the basis of mutual consent and he is also disputing the case of the prosecution that the de facto complainant is having mental ailment. Anyhow, those are all matters to be established during the trial. Since the investigation in this case is already over and the petitioner does not have any

criminal antecedents, I am of the view that further incarceration of the petitioner is not necessary. Therefore, he can be released on bail with appropriate conditions to ensure that the petitioner is not trying to influence or intimidate the witnesses.

8. In such circumstances, this bail application is allowed and the petitioner is directed to be released on bail subject to 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 for the like sum each to the satisfaction of the jurisdictional Court.

(ii) The petitioner shall fully co-operate with the investigation. -5-

(iii) The petitioner shall appear before the investigating officer as and when required by him.

(iv) The petitioner shall not commit any offence of similar nature while on bail.

(v) 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.

(vi) The petitioner shall not leave India without the permission of the trial 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 bpr -6- APPENDIX OF BAIL APPL. 6298/2023
PETITIONER'S ANNEXURES Annexure-I A COPY OF THE ORDER IN CRL MC
NO ADDITIONAL SESSIONS JUDGE-II, KALPETTA

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