

XX XX XX XX vs State of Kerala,

XX XX XX XX vs State of Kerala,

SooperKanoon Citation : sooperkanoon.com/1386772

Court : Kerala

Decided On : Dec-06-2023

Judge : Honourable Mr. Justice Gopinath P.

Appeal No. : Bail Appl./7586/2023

Appellant : XX XX XX XX

Respondent : State of Kerala,

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE GOPINATH P. WEDNESDAY,
THE 6TH DAY OF DECEMBER 2023 / 15TH AGRAHAYANA, BAIL APPL. NO.
7586 OF 2023 CRIME NO.530/2023 OF Edakkara Police Station, Malappuram

**ORDER DATED 08.08.2023 IN CRMP 184/2023 OF FAST TRACK
SPECIAL**

COURT, NILAMBUR PETITIONER: XX XX XX XX AGED 19 YEARS XX, PIN -
679331 BY ADVS. P.SAMSUDIN MILAN RACHEL MATHEW NASRIN WAHAB
RESPONDENTS:

1 STATE OF KERALA, REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, PIN - 682031 2 XXXXXXXXXXXX
XXXXXXXXXXXX XXXXXXXXXXXX * 3 THE SECRETARY, DEPARTMENT
OF EDUCATION, GOVERNMENT OF KERALA, SECOND FLOOR,
SOUTH SANDWICH BLOCK, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM - 695 001; * 4 THE SECRETARY,
DEPARTMENT OF HIGHER EDUCATION, GOVERNMENT OF
KERALA, I ST FLOOR, ANNEX II, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM - 695 001; * 5 SECRETARY TO
GOVERNMENT, WOMEN & CHILD DEVELOPMENT, GOVERNMENT
OF KERALA. GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM - 695 001; * 6 THE SECRETARY,
DEPARTMENT OF HEALTH & FAMILY WELFARE, GOVERNMENT OF
KERALA, ROOM NO- 603 ANNEX-II, GOVERNMENT SECRETARIAT
BUILDING, THIRUVANANTHAPURAMB.A.No.7586/2023 2 695 001; * 7
THE KERALA STATE LEGAL SERVICES AUTHORITY REPRESENTED
BY THE MEMBER SECRETARY, OFFICE OF THE KERALA STATE
LEGAL SERVICES AUTHORITY, NIYAMA SAHAYA BHAVAN, HIGH
COURT COMPOUND, ERNAKULAM, KOCHI; ADDL.RESPONDENTS 3
TO 7 ARE SUO MOTU IMPEADED AS PER THE ORDER IN THIS
BAIL APPLICATION

OTHER PRESENT: SRI. G SUDHEER (PP), SMT. A PARVATHI MENON
(PROJECT CO-ORDINATOR, VRC, KELSA THIS BAIL APPLICATION HAVING
COME UP FOR ADMISSION ON 06.12.2023, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING: B.A.No.7586/2023 3 (C.R.) GOPINATH P.,
JUDGE. ----- B.A.No. 7586 of 2023
----- Dated this the 6th day of December
2023

ORDER

The petitioner is the sole accused in Crime No.530/2023 of

Edakkara Police Station, Malappuram alleging commission of offences under Sections 376(2) (n), 376(2)(f), 376(AB) and 506 of the Indian Penal Code and Sections 5(l), 5(m), 5(n) r/w Section 6 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act) and Section 75 of Juvenile Justice (Care and Protection of Children) Act, 2015 (JJ Act). The allegation against the petitioner is that on 13.5.2022 and on an earlier occasion, the petitioner, who is the elder brother of the victim girl, [aged 13 years], had committed penetrative sexual assault on the victim and has also subjected her to physical assault. The petitioner, who is 19 years old, was arrested on 23.5.2023 and has been in custody from that date. The investigation has been completed, and the final report has already been filed.

2. The learned counsel for the petitioner would submit that

the petitioner is absolutely innocent in the matter. It is submitted that the petitioner was addicted to drugs and used to exhibit violent behaviour at home, and in order to keep him in custody for some time,

B.A.No.7586/2023 4 the family was advised to implicate him in the case, and therefore, the victim was compelled to give a statement implicating the petitioner. The learned counsel also pointed out that the victim is now lodged in a shelter home at Manjeri, and she had even scribbled a note to her mother asking her to take her back from the shelter home and also

expressing regret for having implicated her elder brother (petitioner/accused) by accusing him of having committed serious offences. It is submitted that since the investigation has been completed and the final report has been filed, the continued detention of the petitioner is not necessary.

3. The learned Public Prosecutor has referred to the facts and

circumstances of the case and would submit that the investigation revealed that the allegations raised against the petitioner were true, and therefore, a final report was filed in Court implicating the petitioner. It is submitted that in the peculiar facts and circumstances of this case, it might not be conducive to grant bail to the

petitioner as there is every chance that the victim may be influenced or intimidated if the petitioner is granted bail, especially since the victim and the petitioner normally live under the same roof.

4. Having regard to the facts noticed above, I had requested Adv. Parvathi Menon, Project Coordinator, Victim Rights Centre

B.A.No.7586/2023 5 (Ke.L.S.A), to assist this Court. Adv. Parvathi Menon has filed a report [dated nil] in a sealed cover. In so far as the victim is concerned, it is reported that the victim is a child who needs immense emotional support. The victim was a good student and has apparently slumped in her studies and is presently not showing any interest in pursuing her education. The report suggests that the victim feels guilty that the family has scattered due to her complaint against her elder brother (petitioner/accused). She has reportedly stated that she should rescue her elder brother and laments that she is forced to live in a shelter home due to the case. One of the members of the Victim Right Centre, Malappuram Unit, Adv. Sujatha Varma and Adv.Sapna. P., Prosecutor, POCSO Court, Perintalmanna visited the victim and, after interaction with the victim, stated that the victim was found to be sensible, brilliant and of an egalitarian nature. She was apparently affected by the death of her father two years ago due to a heart attack. She stated that hers was a very close-knit family, and she had to undergo counselling for depression after the death of her father. She has revealed that her elder brother (petitioner/accused) has been addicted to drugs. She has also opened up about the incident of sexual assault, and she firmly believes that the petitioner/accused had committed the said offences only on account of the fact that he was addicted to drugs. She even suggested

B.A.No.7586/2023 6 de-addiction treatment for the petitioner/accused. The victim has fond recollections about her elder brothers, including the petitioner/accused,

and also stated that they used to be overprotective of her. She reiterated that she is not at all comfortable in the shelter home and expressed her desire to live with her paternal uncle (father's brother). She also informed that the petitioner/accused is unlikely to visit her in her uncle's house as he is uncomfortable with his paternal uncle.

5. The mother of the petitioner/accused and the victim

revealed that the petitioner/accused has severe anger issues. It has stated that the petitioner/accused had lost a close friend due to suicide a few years back, and it was he who had found his friend's body after the suicide. She stated that this incident had severely affected the petitioner/accused. She also stated that the petitioner/accused was very strict about his sister's way of dressing and was very particular that she should not dress in a gaudy manner. According to her, both the elder siblings were very protective of their younger sister (the victim).

6. In so far as the petitioner/accused is concerned, the report

states that interactions of the Project Co-ordinator of the Victim Rights Centre with the Jail Superintendent of the Special Prison, Manjeri, revealed that the petitioner/accused could not be characterised as a drug addict, though he has a history of substance abuse. It has been

B.A.No.7586/2023 7 stated that he has not displayed any kind of withdrawal syndrome but was exhibiting severe anger issues. The Jail Superintendent has also reported that the petitioner/accused was subjected to psychiatric treatment in prison for his behavioural disorders and was given suitable medication. The Jail Superintendent reportedly has finer sentiments regarding the boy, though the boy exhibits severe anger issues at the drop of a hat. It has been reported that the petitioner/accused would cool down immediately after his outburst and would apologise to the officers for his erratic behaviour. It is reported that the maternal uncle of the petitioner/accused, who is a contractor, has stated that the petitioner/accused had a troubled childhood. It is also stated that the maternal uncle is willing to take care of the petitioner/accused by taking him to Wayanad, where the said maternal uncle works as a

Contractor. It is further reported that though offenders who have committed the offences of rape etc., and are accused in the POCSO Act will not come within the Probation of Offenders Act, the Probation Officer, Manjeri, is ready to include the petitioner/accused in the 'Mithram Padhadhi' of the Government of Kerala and to oversee and monitor the petitioner/accused when he is enlarged on bail. When the

Probation Officer, Manjeri, was informed that the maternal uncle of the petitioner/accused was willing to take the petitioner/accused with him

B.A.No.7586/2023 8 to Wayanad, the Probation Officer, Manjeri suggested that while the petitioner/accused stays with his uncle in Wayanad, he could report before the Probation Officer, Manjeri once a month and this will help him with family integration which is again a concept of probation. The Project Co-ordinator Victim Rights Centre has, however, suggested that, in the instant case, family integration might not be a good idea since the victim as well as the perpetrator are family members under the same roof. The Project Co-ordinator, Victim Right Centre has also suggested that, in the background of the facts of this case, it might be profitable and beneficial to the community as a whole, if certain directions were issued regarding the following issues:-

i) Sensitisation of teachers and staff of schools where victims of sexual abuse are studying and sensitisation of staff of shelter homes and other places where victims of sexual abuse are lodged following the detention of cases of sexual abuse; ii) The issuance of directions for extending scientifically based sex therapy to the survivors of sexual assault to help them lead a normal life on rehabilitation and to pave the way for reintegration into the mainstream of society; and iii) Formulation of a scheme with the help and guidance of experts for extending medical care (including psychiatric care)

B.A.No.7586/2023 9 to persons accused and to persons convicted of offences under the Protection of Children from Sexual Offences Act (POCSO Act). It is therefore suggested that this Court may suo motu implead as additional respondents to this bail application:- I) The Secretary, Department of Education, Government of Kerala,

Second Floor, South Sandwich Block, Government Secretariat, Thiruvananthapuram - 695 001; II) The Secretary, Department of Higher Education, Government of Kerala, I st Floor, Annex II, Government

Secretariat, Thiruvananthapuram - 695 001; III) Secretary to Government, Women & Child Development, Government of Kerala. Government Secretariat, Thiruvananthapuram - 695 001; IV) The Secretary, Department of Health & Family Welfare, Government of Kerala, Room No- 603 Annex-II, Government Secretariat Building, Thiruvananthapuram-695 001; V) The Kerala State Legal Services Authority represented by the Member Secretary, Office of the Kerala State Legal Services Authority, Niyama Sahaya Bhavan, High Court Compound, Ernakulam, Kochi;

7. Considering the reports and taking into consideration the

circumstances mentioned in the report, I am of the opinion that the suggestions of the Project Co-ordinator, Victim Rights Centre, are only to be accepted. Therefore, the aforementioned officials are suo motu

B.A.No.7586/2023 10 impleaded as additional respondents 3 to 7 in this bail application. The registry will carry out necessary amendments to the cause title. In the exercise of the jurisdiction vested in this Court under Article 226 of the Constitution of India, the following directions are issued considering the suggestions put forth by the Project Co-ordinator, Victim Rights Centre;

i) The Secretary, Higher Education Department, Government

of Kerala and the Secretary, General Education Department, Government of Kerala shall formulate instructions to be issued to all schools (including private schools not following State curriculum) & care homes (where victims may be housed following reports of sexual abuse) so as to sensitise teachers/staff and caregivers regarding the handling and treatment of victims of sexual abuse while studying in the respective educational institutions or when lodged in care homes. The instructions shall be prepared in consultation with the Member- Secretary, Kerala State Legal Services Authority and the Project Co- ordinator, Victim Rights Centre, Kerala State Legal Services Authority and shall include instructions to ensure that victims of sexual abuse are not identified or treated in any manner differently from other students in the school;

ii) Kerala State Legal Services Authority in consultation with B.A.No.7586/2023 11 the Department of Health Services, Government of Kerala and Department of Social Justice, Government of Kerala shall frame a scheme with the help and guidance of experts for providing treatment

including intense psycho therapy /pharmacological intervention/psychiatric treatment if found necessary to the inmates in Prisons and Correctional Homes accused of having committed offences under the POCSO Act, be it remand prisoners, under trial prisoners or convicts and the first respondent shall implement the same in collaboration with the Director General of Police (Prisons) in all Prisons and Correctional Homes in Kerala in order to reduce recidivism of such gruesome offences to a reasonable extent.

iii) The Secretary, Department of Social Justice, Government of

Kerala shall formulate a Scheme in consultation with the Department of Health Services, Government of Kerala and the Kerala State Legal Services Authority for extending scientifically based sex therapy to the survivors/victims of sexual assault in order to help them lead a normal life on rehabilitation and to enable them to have reintegration into the main stream of the society and shall take steps to implement the same.

8. The petitioner can be granted bail subject to certain special conditions that have to be imposed considering the peculiar facts of this case. The petitioner is aged 19. He has been in custody since 23.5.2023.

B.A.No.7586/2023 12 The investigation has been completed, and the final report has already been filed. Therefore there is no need to continue the petitioner in custody. The petitioner shall be released on bail subject to the following conditions:-

(i) The petitioner shall execute bond for a sum of Rs.50,000/- (Rupees fifty thousand only) with two solvent sureties each for the like sum to the satisfaction of the jurisdictional Court;

(ii) The Petitioner shall appear before the Investigating Officer in Crime No.530/2023 of Edakkara Police Station, Malappuram as and when called upon to do so;

(iii) The petitioner shall not attempt to influence or intimidate the victim or any witness in Crime No.530/2023 of Edakkara Police Station, Malappuram ;

(iv) The petitioner shall not enter the Malappuram District except for the purposes of compliance with any condition imposed in this

order;

(v) The petitioner shall report before the Probation Officer, Manjeri

once a month or as directed by the Probation Officer, Manjeri. It is made clear that the Probation Officer, Manjeri will not consider family integration in the peculiar facts and circumstances of this case; B.A.No.7586/2023 13

(vi) The petitioner shall not involve in any other crime while on bail. If any of the aforesaid conditions are violated, the investigating officer in Crime No. 530/2023 of Edakkara Police Station, Malappuram may file an application before the jurisdictional Court for cancellation of bail. It is further directed that the Investigating Officer in Crime No.530/2023 of Edakkara Police Station shall, in consultation with the mother of the victim, consider whether the victim can be allowed to stay at the house of her paternal uncle, as desired by her. If the said arrangement requires the modification or addition of any condition, the

said officer may file an application before this Court for the said purpose. Registry shall communicate a copy of this order to the Project Co-ordinator, Victim Rights Centre, and also to additional respondents 3 to 7 forthwith. The help rendered by the Project Co-ordinator, Victim Rights Centre and other Advocates associated with the Victim Rights Centre has been invaluable and is highly appreciated. sd/-
GOPINATH P. JUDGE acd

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com