

Sudhakaran vs State of Kerala

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Court : Kerala Orders

Decided On : Oct-27-2023

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

Appeal No. : Bail Appl./9388/2023

Appellant : Sudhakaran

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.
FRIDAY, THE 27TH DAY OF OCTOBER 2023 / 5TH KARTHIKA, 1945
CRIME NO.154/2023 OF BALARAMAPURAM POLICE STATION,
THIRUVANANTHAPURAM PETITIONER/ACCUSED: SUDHAKARAN
AGED 63 YEARS S/O PONNAPPAN ASARI, VIPANCHIKA,
CHAVADINADA, VENGANOOR.P.O, THIRUVANANTHAPURAMAM.,
PIN - 695523 BY ADVS. SALIM V.S. A.M.FOUSI A.B.AJIN
RESPONDENTS/COMPLAINANT: 1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, PIN - 682031 2 XXXXXXXXXXXX XXXXXXXXXXXX XXXXXXXXXXXX
BY ADV ADV.JACOB E.SIMON - PUBLIC PROSECUTOR THIS BAIL

APPLICATION HAVING COME UP FOR ADMISSION ON 27.10.2023,
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 sole accused in Crime No.154/2023

of Balaramapuram Police Station which was registered for the offences punishable under Sections 376(2)(j), 376(2)(n), 376(2)(f), 376 AB, 354A(1)(ii) of the IPC and Section 3(a)(b) read with Section 4, Section 5(1)(m) read with Section 6, Section 7 read with Section 8, Section 9(1)(m) read with Section 10, 11(1)(iii), 12 and 15 of the Protection of Children from Sexual Offences Act, 2012.

3. The prosecution case is that on 28.04.2019, the

petitioner, a man aged 63 years, with sexual intent, exhibited obscene videos and photographs on his mobile to the defacto complainant, a girl aged only nine years at the relevant time. It is also alleged that, later, the petitioner inserted his hand through her dress and caressed her breast as well as her vagina. There is also an allegation that on certain occasions, the petitioner inserted his private parts into the mouth of the victim and rubbed on the private

parts of the victim. The crime was registered based on the information furnished by the mother, and as part of the investigation, the petitioner was arrested on 30.01.2023. Since then, he has been under judicial detention. Even though the petitioner has approached this Court seeking regular bail, on an earlier occasion, the same culminated in Annexure 1 order by which the same was dismissed. This is the 2nd application submitted by him.

4. Heard Sri.V.S. Salim, learned counsel appearing for the petitioner, Sri.Jacob E. Simon, learned Public Prosecutor for the State and Sri.D. Kishore, learned counsel, appearing for the defacto complainant.

5. The learned counsel for the petitioner would submit that

the petitioner is innocent of all the allegations. It is also pointed out that he has been in judicial custody for the past nine months. The investigation in this case is already over, and final report has been submitted. He is ready and willing to cooperate with the trial and shall not influence or intimidate the victim. Now, the victim is staying 40 kilometres away from the residence of the petitioner,

even though, at the relevant time, they were neighbours. Therefore, the chances of influencing the victim are also less, and he is prepared to keep away from the district in which the victim is residing.

6. On the other hand, the learned Public Prosecutor and the

learned counsel for the defacto complainant stoutly oppose the said application. The learned counsel for the defacto complainant submits that on account of the sexual assaults and other acts of the petitioner, the family of the victim was compelled to sell the property near the residence of the petitioner, and now they are

residing away. They also apprehend the interference of the petitioner in the trial to be conducted.

7. I have carefully gone through the records. In Annexure

1 order, this Court already considered in detail all the contentions raised by the petitioner and entered into a categorical finding that, as the offences alleged against the petitioner attract the punishment of life imprisonment, unless there are specific reasons in existence, the release of the petitioner cannot be ordered. This Court has

specifically found that the allegations raised are very serious and heinous. Therefore, the bail application was dismissed as per Annexure 1 by taking note of the aforesaid aspect. Of course, it is true that the said order was passed on 15.06.2023, and about four months have elapsed since the date of the order. However, the mere passage of time alone cannot be treated as a change in

circumstances so as to warrant an order of bail.

In this case, considering the nature of the allegations raised and the circumstances under which the same were committed, I do find any justification in granting bail to the petitioner. The reasons for which the earlier bail application was dismissed by this court still persist. Therefore, I do not find any merit in this case, and accordingly, it is dismissed. Sd/- ZIYAD RAHMAN A.A. JUDGE scs APPENDIX OF BAIL APPL. 9388/2023 PETITIONER ANNEXURES Annexure 1 TRUE COPY OF THE ORDER OF THE HONOURABLE HIGH COURT OF KERALA DATED 30.01.2023 IN B.A NO. 3691/2023 Annexure 2 ORDER DATED 14.08.2023 OF THE FAST TRACK SPECIAL COURT -II, NEYYATTINKARA IN CRL.M.P NO. 05/2023.

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