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Saviour Edison vs State of Kerala

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Court : Kerala Orders

Decided On : Jan-18-2023

Judge : Honourable Mr. Justice Bechu Kurian Thomas

Appeal No. : Bail Appl./9478/2022

Appellant : Saviour Edison

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS WEDNESDAY, THE 18TH DAY OF JANUARY 2023 / 28TH POUSHA, 1944 PETITIONER/ACCUSED: SAVIOUR EDISON AGED 44 YEARS S/O VICTOR EDISON,SINDHU COTTAGE,KATTADITHOPE VEEDU,BACK SIDE OF KINFRA,MENAMKULAM,THIRUVANANTHAPURAM, PIN - 695582 S.K.ADHITHYAN AKARSH S. MANU MOHAN (M-1378) RAJESH KUMAR C. RESPONDENT/S: 1 STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR,HIGH COURT OF KERALA, PIN - 682031 2 ADDL.R2. XXX IS SUO MOTU IMPLEADED AS PER ORDER DATED 15-12-2022. PUBLIC PROSECUTOR M.KABANI DINESH OTHER

PRESENT: SRI. NOUSHAD. K. A - PP THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 18.01.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

BECHU KURIAN THOMAS, J.

---------- B.A.NO. 9478 of 2022
---------- Dated this the 18th day of January, 2023

ORDER

This is an application for pre-arrest bail filed under Section 438 of the Code of Criminal Procedure, 1973.

2. Petitioner is the sole accused in Crime No.895 of 2022 of

Kazhakuttom Police Station, Thiruvananthapuram District, alleging offences under Sections 366A, 342, 376(3) and 506(i) of the Indian Penal Code, 1860 apart from Section 3(a) r/w Section 4(2), 5(j)(ii)(n) r/w Section 6(1) of the Protection of Children from Sexual Offences Act, 2012.

3. According to the prosecution the accused who is the maternal

uncle of the minor victim and residing in the neighbourhood had raped her on a day prior to 26-01-2022. The prosecution also alleges that the victim delivered a child in the 25 th week and the accused thus committed the offences alleged.

4. Sri.S.K.Adhithyan, the learned counsel for the petitioner

contended that the prosecution allegations are false and that the incident as alleged had not occurred. It was further submitted that since petitioner was arrested on 6-07-2022, the continued detention is not essential, especially since the final report has already been filed. The learned counsel for the petitioner also submitted that the victim is presently studying at Pandalam while the petitioner's house is at Thiruvananthapuram and therefore the possibility of influencing or intimidating the victim does not arise.

5. Smt.Kabani Dinesh, the learned counsel for the defacto

complainant on the other hand, vehemently opposed the application and submitted that petitioner is not only a neighbour but also the maternal uncle of the victim and that if he is released on bail there is every chance that he will influence and intimidate the victim and her family. It was further submitted that the victim was a brilliant student who had reposed complete faith and trust on the petitioner. However, he exploited her and destroyed her life. The learned counsel also pointed out that already the petitioner and his family members are attempting to intimidate the victim and therefore petitioner ought not to be released on bail.

6. Sri.Noushad K.A., the learned Public Prosecutor opposed the

grant of bail and contended that the close relationship between the victim and the petitioner apart from the proximity of their residence must compel this Court to reject the application despite lapse of 6 months from the date of arrest.

7. I have considered the rival contentions and have also perused the records produced.

8. The victim had specifically stated that her maternal uncle had

taken her to his house after informing her that his wife is inside and thereafter pushed her into his bedroom and brutally committed the rape. The victim is stated to have been a brilliant student who was force to undergo this heinous and traumatic incident.

9. Taking note of the close relationship with the victim, and also the fact that the petitioner is her neighbour, I am of the view that this

is not a fit case to release the petitioner on bail. Even though the victim- a minor, is presently studying at Pandalam, the possibility of influencing the victim cannot be brushed aside. Accordingly, this bail application is dismissed. BECHU KURIAN THOMAS JUDGE AJM

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