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Mubarak vs State of Kerala

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Court : Kerala

Decided On : Nov-30-2023

Judge : Honourable Mr. Justice Gopinath P.

Appeal No. : Bail Appl./9923/2023

Appellant : Mubarak

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE GOPINATH P. THURSDAY, THE 30TH DAY OF NOVEMBER 2023 / 9TH AGRAHAYANA, 1945 BAIL APPL. NO. 9923 OF 2023 CRIME NO.868/2023 OF Harippad Police Station, Alappuzha AGAINST THE ORDER/JUDGMENT CRMP 4844/2023 OF DISTRICT & SESSIONS COURT, ALAPPUZHA PETITIONER/ACCUSED: MUBARAK AGED 39 YEARS S/O JAMALUDHEENKUNJU, THARAYIL (H), KADATHUR.P.O., KOLLAM, PIN - 690523 BY ADVS. A.RAJASIMHAN VYKHARI.K.U SHARAFUDHEEN M.K. RESPONDENT/STATE: STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR,HIGH COURT OF KERALA, PIN - 682031 SRI VIPIN NARAYAN (SR PP) THIS BAIL

APPLICATION HAVING COME UP FOR ADMISSION ON 30.11.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER

Petitioner is the accused in Crime No.868 of 2023 of Haripad Police Station, Alappuzha District, alleging commission of offences under Sections 354, 354 A(1) (I), 354(1)(ii),354 A(2), 354B,365 and 376 of the IPC. The allegation against the petitioner is that on 25.09.2023, the petitioner who was the friend of the husband of the defacto complainant had offered a lift to the defacto complainant while she was returning after meeting her mother-in-law at the hospital and the petitioner took her to a hotel and committed rape on her.

2. Learned counsel appearing for the petitioner

would submit that the petitioner is absolutely innocent in the matter. It is submitted that the allegations against the petitioner are totally false. It is submitted that the statement of the defacto complainant/victim is that after the petitioner had offered her a lift, the

petitioner had taken her to a hotel and had committed rape on her. It is submitted that the CCTV images of the hotel in question have been recovered by the Police and the same would show that the petitioner and the victim had visited the hotel and had left the place on completely friendly terms. It is submitted that this is sufficient to show that there was no rape as alleged by the defacto complainant. It is submitted that Annexure A1 is a pen drive containing voice messages sent by the defacto complainant/victim to the petitioner from her mobile number to the mobile number of the petitioner which would indicate that even after the alleged date of incident the defacto complainant/victim had been requesting the petitioner to meet her on several occasions. It is submitted that pertinently the defacto complainant/victim has lodged two other FIRs against two other persons on 07.10.2023 and 12.10.2023 containing

almost similar allegations. It is submitted that the FIR lodged against

the petitioner is dated 13.10.2023. It is submitted that this is a clear case of honey trap and the petitioner has been named as an accused only on account of the fact that the petitioner had refused to meet the illegal demands made by the defacto complainant/victim and her associates.

3. The learned Public Prosecutor opposes the

grant of bail. He submits that the fact that the very same defacto complainant had filed cases containing similar allegations against two other persons is no ground to hold that the petitioner is innocent of the allegations levelled against him. It is submitted that the matter is under investigation and a clearer picture will be available only after the investigation is completed. It is submitted that the allegations against the petitioner are serious. Therefore, the petitioner cannot be granted anticipatory bail. It is submitted that the custody of the petitioner is necessary for the purpose of completing the investigation.

4. Having heard the learned counsel for the

petitioner and the learned Public Prosecutor, I am of the view that the petitioner can be granted anticipatory bail subject to conditions. The allegations against the petitioner ae as noticed above. The allegations against the petitioner are no doubt serious. However, one cannot ignore the fact that there are some materials to suggest that the relationship between the petitioner and the defacto complainant was consensual and there was no element of rape as alleged. That apart, if the co-operation of the petitioner can be ensured with the investigation, there is no reason to deny anticipatory bail to him. The only apprehension can be that the defacto complainant/victim may be influenced or intimidated if the petitioner is granted anticipatory bail. The same can be taken care of by imposing suitable conditions. Therefore, it is directed that the petitioner shall be released on bail, in the event of arrest in

connection with Crime No.868 of 2023 of Haripad Police Station subject to the following conditions:

(i) 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 arresting officer;

(ii) Petitioner shall appear before the

investigating officer in Crime No.868 of 2023 of Haripad Police Station, Alappuzha District at 11.00 am on 06.12.2023 and 13.12.2023 and thereafter as and when called upon to do so until further orders;

(iii) Petitioner shall not attempt to interfere with the investigation or to influence or intimidate any witness in Crime No.868 of 2023 of Haripad Police Station.

(iv) Petitioner shall not involve in any other crime while on bail. If any of the aforesaid conditions are violated, it is open to the Investigating officer in Crime No.868 of 2023 of Haripad Police Station or the defacto complainant to approach this Court for

cancellation of bail. Observations, if any, in this order

are only for the purpose of considering the petitioners entitlement to bail and shall not be treated as a finding by this Court on any point. Sd/- GOPINATH P. JUDGE SSK/30/11 APPENDIX OF BAIL APPL. 9923/2023 PETITIONER ANNEXURES Annexure A2 TRUE COPY OF THE ORDER IN CRLMP NO. 4844 OF 2023 OF THE SESSIONS COURT, ALAPPUZHA DATED 31-10-2023

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