

Suni 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./10428/2023

Appellant : SUNI

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. 10428 OF 2023 CRIME
NO.1194/2023 OF ARYANCODE POLICE STATION,
THIRUVANANTHAPURAM CRMC 2858/2023 OF ADDITIONAL
DISTRICT COURT & SESSIONS COURT (ATROCITIES & SEXUAL
VIOLENCE AGAINST WOMEN & CHILDREN),
THIRUVANANTHAPURAM PETITIONER/ACCUSED: SUNI AGED 30
YEARS, S/O VIJAYAN, NULLIYODU, THADATHARIKATHU VEEDU,
KUDAPPANAMOODU POST, KATTAKADA, THIRUVANANTHAPURAM
DISTRICT, PIN - 695 505. BY ADV K.RAKESH RESPONDENTS/STATE

& DEFACTO COMPLAINANT:

1 STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM, KOCHI, PIN - 682 031. 2
THE STATION HOUSE OFFICER ARIYANCODE POLICE STATION,
THIRUVANANTHAPURAM DISTRICT, PIN - 695 125. 3 SIVALAKSHMI
D/O.GEETHA, KAITHARAKUZHI MELE PUTHEN VEEDU, ATTOOR
DESOM, OTTASEKHARAMANGALAM VILLAGE,
THIRUVANANTHAPURAM DISTRICT, PIN - 695 125. BY ADV. SRI
NOUSHAD K.A. (SR PP) THIS BAIL APPLICATION HAVING COME UP
FOR ADMISSION ON 30.11.2023, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING: B.A.No.10428/2023 2

ORDER

This is an application for anticipatory bail.

2. Petitioner is the sole accused in Crime No.1194/2023 of Ariyancode Police Station,

Thiruvananthapuram district, alleging commission of offences under Sections 447, 294(b) & 324 of the Indian Penal Code and Section 31(1) of the Protection of Women from Domestic Violence Act, 2005 (Domestic Violence Act in short)

3. The allegation against the petitioner is that the

petitioner violated the order passed in favour of the defacto complainant under the provisions of the Domestic Violence Act and trespassed into the residence of the defacto complainant and abused her and caused injury to her mother by pelting stones and thereby he committed the offences alleged against him.

4. Learned counsel for the petitioner would submit

that the petitioner is absolutely innocent in the matter. It is B.A.No.10428/2023 3 submitted that the allegations are falsely raised on account of matrimonial disputes between the petitioner and the

defacto complainant. It is submitted that the alleged incident took place on 11-10-2023, which was the 4th birthday of the child born out of the relationship between the petitioner and the defacto complainant. It is submitted that the petitioner had gone to the house to see his child as he had rights of visitation in terms of Annexure-B order of

the Family Court, Nedumangad. It is submitted that thereafter a false case has been registered against the petitioner containing the allegations as noticed above. It is submitted that apart from the offence under Section 31 of the Domestic Violence Act, all other offences under the Indian Penal Code are bailable offences.

5. Learned Public Prosecutor opposes the grant of

bail. He submits that though on the allegations contained in the present crime the petitioner could have been granted anticipatory bail, the fact that the petitioner is an accused of committing a similar offence on an earlier occasion should act as an impediment in the grant of anticipatory bail to the B.A.No.10428/2023 4 petitioner. It is submitted that Crime No.790/2022 has been registered at the very same Police Station alleging commission of offences under Sections 447, 427 & 506 of the Indian Penal Code and Section 31(1) of the Domestic Violence Act against the petitioner. It is submitted that the petitioner was granted bail in the said case and the petitioner again committed similar offence and therefore the petitioner should not be granted anticipatory bail in the present case.

5. Having heard the learned counsel for the

petitioner and the learned Public Prosecutor, I am of the opinion that the petitioner can be granted anticipatory bail subject to conditions. It is noteworthy that as per the birth certificate issued in respect of the child born out of the relationship between the petitioner and the defacto complainant, the child was born on 11-10-2019. The allegation which lead to registration of Crime No.1194/2023 is that the petitioner had trespassed into the house where the defacto complainant is residing along with her mother and the child on 11-10-2023, which happens to be the 4 th

B.A.No.10428/2023 5 birthday of the child. Therefore, the contention taken by the learned counsel for the petitioner that the petitioner had gone to the house only to visit the child on his birthday cannot be completely ruled out especially taking note of Annexure-B order of the Family Court, Nedumangad, which permits visitation rights to the petitioner, every month.

6. In the result, this application is allowed. It is

directed that the petitioner shall be released on anticipatory bail, in the event of arrest in Crime No.1194/2023 of Ariyancode Police Station, Thiruvananthapuram district, 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.1194/2023 of Ariyancode Police Station, Thiruvananthapuram district at 11.00 am on 16-12-2023 and thereafter whenever called upon to do so;

(iii) Petitioner shall not attempt to contact the de facto

B.A.No.10428/2023 6 complainant or interfere with the investigation or to influence or intimidate any witness in Crime No.1194/2023 of Ariyancode Police Station, Thiruvananthapuram district;

(iv) Petitioner shall not involve in any other crime while on bail.

(v) Petitioner shall not violate any order passed under the provisions of the Domestic Violence Act. If any of the aforesaid conditions are violated, the

Investigating officer in Crime No.1194/2023 of Ariyancode Police Station, Thiruvananthapuram district may file an application before the jurisdictional Court for cancellation of bail. Any observation in this order is only for the purpose of considering the entitlement of the petitioner for bail and shall not be treated as a finding by this Court on any point. Sd/- GOPINATH P. ats JUDGE