

Rajesh vs the State of Kerala

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Court : Kerala

Decided On : Jan-25-2022

Judge : Honourable Mr. Justice Gopinath P.

Appeal No. : Bail Appl./283/2022

Appellant : Rajesh

Respondent : The State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE GOPINATH P.
TUESDAY, THE 25TH DAY OF JANUARY 2022 / 5TH MAGHA, 1943
BAIL APPL. NO. 283 OF 2022 PETITIONER/SOLE ACCUSED: RAJESH
AGED 40 YEARS S/O VIJAYAN, THACHAKKARAPARAMBU HOUSE,
NEAR VETERINARY HOSPITAL, MARTIN NAGAR DESOM, MURIYAD
P O, MUKUNDAPURAM TALUK, THRISSUR DISTRICT, PIN-680683.
BY ADV N.L.BITTO RESPONDENT/COMPLAINANT: 1 THE STATE OF
KERALA REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH
COURT OF KERALA, ERNAKULAM-682031. 2 XXX XXX THIS BAIL
APPLICATION HAVING COME UP FOR ADMISSION ON 25.01.2022,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: B.A.

ORDER

The petitioner is the accused in Crime No.627/2021 of Aloor Police Station, Thrissur District alleging commission of offence under Section 376 of the Indian Penal Code.

2. The allegation against the petitioner is that on a day in the month of August 2020, the petitioner committed rape on the de facto complainant while she was working as a sweeper in a COVID treatment centre.

3. The learned counsel for the petitioner submits that the petitioner was

helping one Brother Mavaroos Maliakkal who was helping underprivileged people by building small houses for them and offering them other support. It is submitted that the petitioner had associated with Brother Mavaroos Maliakkal and several

cottages were built. It is submitted that the de facto complainant was the beneficiary of one of the cottages and since it was found that she was engaging in some immoral activities, Brother Mavaroos Maliakkal had required her to vacate from the cottage and when she refused he had filed O.S. No.774/2021 before the Munsiff Court, Irinjalakuda where that suit is still pending. It is submitted that the petitioner was roped in on the basis of false allegations only on account of the fact that the de facto complainant believes that the petitioner was instrumental in convincing Brother Mavaroos Maliakkal that the de facto complainant should not be given any cottage. It is submitted that in respect of incident which is alleged to have been happened in the month of August 2020, a complaint has been filed only on 17-11-2021. It is submitted that delay itself suggests that the allegation against the petitioner are incorrect. It is also submitted that at any rate the custodial

B.A. No.283/2022 -3- interrogation of the petitioner is not necessary.

4. The learned Public Prosecutor vehemently opposes the grant of bail.

It is submitted that the de facto complainant comes from a completely underprivileged background. It is submitted that according to the First Information Statement she is HIV positive. It is submitted that in cases where an allegation of rape is raised, the custody of the petitioner is absolutely necessary for the prosecution for the purpose of conducting potency test and for identifying the location where the offence was committed etc. It is submitted that the grant of anticipatory bail to the petitioner will affect the progress of investigation.

5. 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 a condition that his limited custody is available to the prosecution for the purpose of investigation. While deciding to grant of bail to the petitioner, I take note of the fact that in respect of an incident which is alleged to have taken place in the month of August, 2020 a complaint was filed only in the month of November 2021.

In the result, this bail application is allowed. It is directed that the petitioner shall be released on bail, in the event of arrest in connection with Crime No.627/2021 of Aloor Police Station subject to the following conditions:-

(i) Petitioner shall execute a 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; B.A. No.283/2022 -4-

(ii) Petitioner shall report before the Investigating officer in Crime

No.627/2021 of Aloor Police Station at 9 a.m on 31-01-2022, 01-02-2022 & 02-02-2022 and thereafter whenever called upon to do so; The petitioner shall co-operate with the investigation in every manner.

(iii) Petitioner shall not attempt to contact the de facto complainant or interfere with the investigation or to influence or intimidate any witness in Crime No.627/2021 of Aloor Police Station;

(iv) The petitioner shall not enter the local limits of Aloor police station till filing of final report in Crime No.627/2021 except for the purpose of complying with condition No.(ii) above;

(v) 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.627/2021 of Aloor Police Station may file an application before the jurisdictional Court for cancellation of bail. Sd/- GOPINATH P. JUDGE AMG

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