

Basil Eldho vs State of Kerala

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Court : Kerala

Decided On : Feb-24-2022

Judge : Honourable Mr. Justice Gopinath P.

Appeal No. : Bail Appl./329/2022

Appellant : Basil Eldho

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE GOPINATH P.
THURSDAY, THE 24TH DAY OF FEBRUARY 2022 / 5TH PHALGUNA,
1943 BAIL APPL. NO. 329 OF 2022 Crime No.11/2022 of Palarivattom
Police Station PETITIONER/ACCUSED: BASIL ELDHO AGED 25
YEARS, ELEVUMTHURUTHEL HOUSE, SOUTH
MAZHUVANNOOR,ERNAKULAM-682311 ERNAKULAM, PIN - 682311
BY ADV SACHIN RAMESH RESPONDENT: STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,HIGH COURT OF
KERALA ERNAKULAM, PIN - 682031 BY ADV PUBLIC PROSECUTOR
OTHER PRESENT: SMT. SEETHA .S. (SR.PP) THIS BAIL
APPLICATION HAVING COME UP FOR ADMISSION ON 24.02.2022,

ORDER

The petitioner is the accused in Crime No.11/2022 of Palarivattom Police Station, Ernakulam District alleging commission of offences under Sections 376 (2)

(n) and 417 of the Indian Penal Code.

2. The allegation against the petitioner is that after promising to marry

the de facto complainant, the petitioner entered into a relationship with her and thereafter withdrew from the promise of marriage. It is alleged that the promise of marriage was false at the inception. It is also alleged that the petitioner has misappropriated some valuables of the de facto complainant.

3. The counsel for the petitioner would submit that petitioner and the de

facto complainant were in love with each other from the time they were studying in 'Speed Wings Aviation Academy', Kaloor in 2018. It is submitted that the petitioner and the de facto complainant were living together and thereafter when the petitioner left for Qatar in connection with his employment he took the de facto complainant also along with him after spending money from his own earnings. It is submitted that the father of the de facto complainant was also aware of the relationship and that no support whatsoever was offered by the family of de facto complainant to take the de facto complainant to Qatar. It is submitted that while in Qatar the petitioner came across some material which suggested that the de facto complainant had relationship with other men, as result of which the petitioner was forced to withdraw from the relationship. It is submitted that this is not a case where the promise to marry was false at the inception and the petitioner is not guilty of the offences alleged against him.

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4. The learned Public Prosecutor refers to the First Information

Statement of the de facto complainant and points out that going by the contents of the First Information Statement the de facto complainant had been forced into the relationship only on the promise of marriage. It is submitted that when the promise of marriage is false at the inception, the offence of rape is attracted. It is submitted that the petitioner is not entitled to be released on bail as his interrogation is necessary for the purposes of investigation.

5. Having regard to the facts and circumstances of the case and

considering the fact that the petitioner and the de facto complainant were admittedly in a relationship from 2018 onwards and they were staying together (this is clear from the First Information Statement of the de facto complainant), I am of the view that prima facie there is merit in the contention of the learned counsel for the petitioner that this is not a case where the promise to marriage was false at the inception. Therefore, I am inclined to grant bail to the petitioner subject to conditions.

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.11/2022 of Palarivattom 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;

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

No.11/2022 of Palarivattom Police Station at 10 a.m on 08-03-2022, 09-03-2022 & B.A. No.329/2022 -4- on 10-03-2022 and thereafter as and when called upon to do so;

(iii) Petitioner shall not interfere with the investigation or to influence or intimidate the de facto complainant or any witness in Crime No.11/2022 of Palarivattom Police Station;

(iv) Petitioner shall surrender his passport before the jurisdictional Court.

(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.11/2022 of Palarivattom Police Station may file an application before the jurisdictional Court for cancellation of bail. Sd/- GOPINATH P. JUDGE AMG B.A. No.329/2022 -5- APPENDIX OF BAIL APPL. 329/2022 PETITIONER ANNEXURES

Annexure A1 COPY OF THE PHOTOGRAPHS PROVING THAT THE PETITIONER
Annexure A1(a) COPY OF THE PHOTOGRAPHS PROVING THAT THE PETITIONER
Annexure A1(b) COPY OF THE PHOTOGRAPHS PROVING THAT THE PETITIONER
Annexure All COPY OF THE WHATS-APP CONVERSATION DATED 15/12/2021
Annexure Alll COPY OF THE ORDER DATED 06/07/2020

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