

XXX vs the State of Kerala Represented by Public Prosecutor

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Court : Kerala

Decided On : Feb-08-2022

Judge : Honourable Mr. Justice Gopinath P.

Appeal No. : Bail Appl./345/2022

Appellant : XXX

Respondent : The State of Kerala Represented by Public Prosecutor

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE GOPINATH P.
TUESDAY, THE 8TH DAY OF FEBRUARY 2022 / 19TH MAGHA, 1943
BAIL APPL. NO. 345 OF 2022 Crime No.447/2021 of Kumbamettu
Police Station PETITIONER/ACCUSED: XXX AGED 21 YEARS X
P.CHANDRASEKHAR K.K.MOHAMED RAVUF SATHEESH V.T.
MANJARI G.B. RESPONDENT/COMPLAINANT/DEFACTO
COMPLAINANT: 1 THE STATE OF KERALA REPRESENTED BY
PUBLIC PROSECUTOR HIGH COURT OF KERALA, ERNAKULAM. 2
HARRIS ELAMKULATH HOUSE, BALANPILLA CITY, KRISHNAPURAM
BHAGAM, RAMAKKALMEDU KARA, KARUNAPURAM VILLAGE,
IDUKKI DISTRICT - 685 552. Anil Prasad SABU

P.JOSEPH(K/1406/1998) C.N.SREEKUMAR(K/716/1996) MANJU PAUL(K/362/1998) OTHER PRESENT: ADV RENJITH -SR.PP THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 08.02.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: B.A. No.345/2022 -2-

ORDER

The petitioner is the accused in Crime No.447/2021 of Kumbamettu Police Station, Idukki District alleging commission of offences under Sections 356, 376 (2) (n), 376 AB of the Indian Penal Code and Section 3A, 4, 5 (m), 6, 7, 8, 9 (l), 9 (m) and 10 of the Protection of Children from Sexual Offences Act.

2. The allegation against the petitioner is that during petitioner from 01-

01-2017 to 20-03-2020 the petitioner sexually assaulted the minor victim by grabbing her on her private parts and also by forcing her to grab his private parts. It is alleged that the victim was residing in a house rented out by the father of the petitioner and that the victim used to be tutored by the petitioner. It is alleged that the petitioner had sexually assaulted the victim at the time when he was tutoring her.

3. The learned counsel for the petitioner would submit that the allegations

against the petitioner are fanciful and unbelievable. It is submitted that going by Annexure-A1 Birth Certificate, the petitioner attained the age of majority only on 05-12-2019. It is submitted that the major portions of the period during which it is alleged that the petitioner had sexually assaulted the minor victim, he was also a minor. It is submitted that the allegations have been raised only on account of some disputes between the father of the petitioner and the father of the victim girl and there is no truth in any of the allegations.

4. The learned Public Prosecutor and the learned counsel appearing for

the de facto complainant would submit with reference to the statements given by the victim girl that this is case where the victim has clearly specified the manner in

B.A. No.345/2022 -3- which she was assaulted by the petitioner. It is submitted that if the statements are found to be true, the victim was very brutally and cruelly treated by the petitioner at a time when she was between the ages of 6 and 8. It is submitted that the petitioner is not entitled to be released on bail taking into account the nature of the allegations raised against him.

5. The learned counsel for the petitioner points out that the petitioner has been in custody from 15-12-2021 and has completed 55 days in custody. It is submitted that as on date the petitioner is aged 20 years and his continued detention is not necessary for the purposes of any investigation. It is submitted that the petitioner has a valid defence to the allegations raised against him. It is submitted that the petitioner can be released on bail subject to strict conditions.

6. Having regard to the facts and circumstances of the case and despite the vehement objections of the learned Public Prosecutor and the learned counsel appearing for de facto complainant, I am of the opinion that the petitioner can be released on bail especially considering his age and also considering the fact that the majority of the allegations relate to a period before which the petitioner attained the age of majority. Question as to whether the petitioner can be tried as an adult under the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015 is a matter to be considered later. Since the petitioner has been in custody from 15-12- 2021 and his continued detention may not be necessary for the purposes of any investigation, I am of the view that the petitioner can be granted bail subject to conditions.

B.A. No.345/2022 -4- In the result this bail application is allowed. It is directed that the petitioner shall be released on bail, subject to the following conditions:-

(i) The 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) The Petitioner shall report before the Investigating officer in Crime No.447/2021 of Kumbamettu Police Station on every Saturday at 11 a.m until filing of final

report;

(iii) The petitioner shall not attempt to interfere with the investigation, influence or intimidate the victim or any witness in Crime No.447/2021 of Kumbamettu Police Station;

(iv) The 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.447/2021 of Kumbamettu Police Station may file an application before the jurisdictional Court for cancellation of bail. Sd/- GOPINATH P. JUDGE AMG

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