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Biju vs State of Kerala

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Court : Kerala Orders

Decided On : Jun-28-2022

Judge : Honourable Mr. Justice Bechu Kurian Thomas

Appeal No. : Bail Appl./4426/2022

Appellant : BIJU

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS TUESDAY, THE 28TH DAY OF JUNE 2022 / 7TH ASHADHA, 1944 (CRIME NO.189/2022 OF POTHANIKADU POLICE STATION) PETITIONER/S: XXXXXXXXXX XXXXXXXXXX XXXXXXXXXX BY ADV PEEYUS A.KOTTAM RESPONDENT/S: STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR,HIGH COURT OF KERALA, PIN - 682031 BY ADV PUBLIC PROSECUTOR OTHER PRESENT: PP SRI. NOUSHSD. K. A THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 28.06.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

BECHU KURIAN THOMAS, J.

========== B.A.No.4426 of 2022
---------- Dated this the 28th day of June, 2022

ORDER

This is an application for regular bail filed under Section 439 of the Code of Criminal Procedure, 1973.

2. Petitioner is the accused in Crime No.189/2022 of

Pothanikadu Police Station, Ernakulam. The offences alleged against the petitioner are under Sections 376(2)(f), 376AB of the Indian Penal Code, 1860. r/w Sections 4(2), 3(a), 5(n) and 9(m) of the Protection of Children from Sexual Offence Act, 2012.

3. The prosecution case is that on a night in 2017, the

accused committed penetrative sexual assault on the victim, who was only 9 years then, in the bed room of the house of the victim and yet again on another day, he committed penetrative assault, thereby committing the offences alleged against him.

4. Sri.Peeyus A.Kottam, learned counsel for the petitioner

vehemently contended that the entire prosecution case is falsely foisted against him, due to certain disputes and that the petitioner is totally innocent. He submitted that the petitioner is willing to abide by any condition that may be imposed by this Court. It was further submitted that he was arrested on 08.03.2022 and the continued detention of the petitioner may not be warranted in the case.

5. Sri.K.A.Noushad, learned Public Prosecutor, opposed the

grant of bail and submitted that petitioner is the immediate relative of the victim and that releasing him on bail would cause prejudice to the prosecution case.

6. I have perused the case diary including the medical report.

7. The offences alleged against the petitioner are serious in nature. The relationship between the petitioner and the victim creates to a large extent, the possibility of threat/ intimidation/inducement of the victim, who is only 13 years as on date.

8. In such circumstances, I am of the view that the releasing

the petitioner on bail would prejudice the trial of the case. Accordingly, I dismiss this application. Sd/ BECHU KURIAN THOMAS JUDGE jm/ APPENDIX OF BAIL APPL. 4426/2022 PETITIONER ANNEXURES Annexure1 CERTIFIED COPY OF THE ORDER DATED 03.06.2022 OF THE HONORABLE ADDITIONAL DISTRICT AND SESSIONS COURT(POCSO), ERNAKULAM DATED 03/06/2022 IN CRL.M.P NO: 369/2022

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