

Nishad vs State of Kerala

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Court : Kerala Orders

Decided On : Apr-30-2021

Judge : Honourable Dr. Justice Kauser Edappagath

Appeal No. : Bail Appl./3062/2021

Appellant : Nishad

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH
FRIDAY, THE 30TH DAY OF APRIL 2021 / 10TH VAISAKHA, 1943 Bail
Appl..No.3062 OF 2021 CRIME NO.147/2021 OF Kottiyam Police
Station , Kollam PETITIONER/1ST ACCUSED: NISHAD AGED 37
YEARS SHEEJA MANDIRAM, KANNANALLOOR , KOLLAM 691576 BY
ADV. SRI.R.KISHORE (KALLUMTHAZHAM) RESPONDENTS/STATE: 1
STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM 2 STATION HOUSE
OFFICER AGED 35 YEARS KANNANALLOOR R1 BY PUBLIC
PROSECUTOR SRI.M.R.DHANIL THIS BAIL APPLICATION HAVING
COME UP FOR ADMISSION ON 27-04-2021, THE COURT ON 30-04-

O R D E R

Dated this the 30th day of April, 2021 This is an application filed u/s 438 of Code of Criminal Procedure seeking pre-arrest bail.

2. The petitioner is the accused No.1 in Crime No.147/2021 of Kottiyam Police Station. The offences alleged are under Sections 451, 354 & 354A(i) & (ii) r/w 34 of IPC.

3. The prosecution case in short is that the petitioner

trespassed into the residence of the victim, a deaf and dumb lady aged 19 years only, and sexually assaulted her by catching hold on her breast and kissing her and thereby committed the offence.

4. Heard both sides and perused the case diary.

5. The learned counsel for the petitioner submitted that

the petitioner is absolutely innocent and he has been falsely implicated in the present case. He further submitted that there are no materials to connect the petitioner with the alleged crime and hence he is entitled to get bail. The learned Public Prosecutor opposed the bail application. He contended that the alleged -:3:- incident occurred as a part of the intentional criminal acts of the petitioner and if the petitioner is released on bail at this stage, it would affect the course of investigation.

6. The law with regard to the grant or refusal of pre-

arrest bail is well settled. Pre-arrest bail cannot be granted as a matter of course. The power u/s 438 of Cr.P.C could be exercised only when a special case is made out, that too, recording reasons thereof. Perusal of the case diary would reveal that the accusation made against the petitioner is well founded. The allegations made against him is very serious in nature and it prima facie show a premeditated criminal act on his part. The investigation is in a preliminary stage. The custodial

interrogation of the petitioner is necessary for the purpose of investigation. As rightly argued by the learned Public Prosecutor, the possibility of the petitioner influencing the witnesses and interfering with the investigation cannot be ruled out if he is released on bail. The victim is a deaf and dumb lady. Hence, considering the gravity of the offence and stage of investigation, I feel that it is not a fit case where extra ordinary jurisdiction vested with this Court u/s 438 of Cr.P.C. could be invoked. The application is only to be

-:4:- dismissed. In the result, the bail application is dismissed. Sd/- DR. KAUSER
EDAPPAGATH Rp True Copy JUDGE PS to Judge

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