

Vishnu Vs. State of Kerala

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Court : Kerala

Decided On : Dec-26-2014

Judge : Honourable Mr. Justice K.Ramakrishnan

Appellant : Vishnu

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN FRIDAY, THE 26TH DAY OF DECEMBER 2014 5TH POUSHA, 1936 Bail Appl..No. 8583 of 2014
----- CRIME NO. 2188/2014 OF KUNNATHUNADU
POLICE STATION , ERNAKULAM DISTRICT -----
PETITIONER(S)/ACCUSED NOS 1 TO 3:
----- 1. VISHNU, AGED 23 YEARS,
S/O.SASI, ONODIKKUDI HOUSE, PERUMANI KARA, ARAKKAPADY VILLAGE,
VENGOLA P.O., ERNAKULAM DISTRICT.

2. SHIYAS, AGED 35 YEARS, S/O.KOYA, MANGALIPPARA HOUSE,
VALAYANCHIRANGARA P.O., MAZHUVANNOOR, ERNAKULAM DISTRICT.

3. ABDUL MANAF, AGED 32 YEARS, S/O.ABOOBACKER, KOPPARAMBIL
HOUSE, PATHALAPARAMBU KARA, AIRAPURAM VILLAGE,
VALAYANCHIRANGARA P.O., ERNAKULAM DISTRICT. BY ADV. SRI.JOHN

VIPIN RESPONDENT(S)/STATE : ----- STATE OF KERALA, REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM - 682 031. BY PUBLIC PROSECUTOR SRI.N.SURESH THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 26.12.2014, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: Msd. K. RAMAKRISHNAN,J.

----- B.A. No. 8583 of 2014
----- Dated this the 26th day of December, 2014

ORDER

Accused numbers 1 to 3 in Crime No. 2188 of 2014 of Kunnathunadu Police Station have filed this application for anticipatory bail under Section 438 of the Code of Criminal Procedure.

2. The case of the prosecution in nutshell was that the accused persons as the Cleaner, Conductor and Driver of the bus with an intention to humiliate the de facto complainant/victim girl without allowing her to enter the bus abused her with obscene language and also when she attempted to get into the bus, she was insulted by the first accused and also touched her body with an intention to outrage her modesty and thereby all of them have committed the offences punishable under Section 294(b) and 354 read with Section 34 of the Indian Penal Code. B.A. No. 8583 of 2014 2 3. The counsel for the petitioners has submitted that an incident happened on 11.11.2014 in which the father of the de facto complainant attacked the first petitioner and on the basis of the statement given by the father of the de facto complainant, a crime was registered against the present petitioners alleging offences under Sections 294(b), 323 and 341 read with Section 34 of the Indian Penal Code. Though a complaint was filed by the first petitioner, no crime was registered against the father of the victim in respect of that incident. So he was forced to file a private complaint before the concerned Magistrate Court as Cr. M.P. No.1846 of 2014, and that is pending. It is thereafter that the present complaint has been filed through the de facto complainant and allegations are not correct. So he prayed for allowing the application.

4. The application was opposed by the Public Prosecutor on the ground that the allegations were grave in nature and custodial interrogation is required for proper investigation of the case.

5. Head both sides and perused the records.

6. It is seen from the records that Crime No. B.A. No. 8583 of 2014 3 2188/2014 was registered on the basis of a complaint filed by the victim girl before the Vanitha Cell, Aluva, alleging the misconduct of the accused persons while she was travelling in the bus in which they were working as Door Checker, Driver and Conductor respectively, alleging offences under Section 294(b) and 354 read with Section 34 of the Indian Penal Code. It is seen from the documents produced by the petitioner himself that on 11.11.2014 another incident occurred in which the father of the petitioner sustained some injuries, and on the basis of the statement given by him, Annexure B crime was registered as Crime No. 2127/2014 of Kunnathunadu Police Station against the present petitioners alleging offences under Sections 294(b), 323, 341 read with Section 34 of Indian Penal Code. The petitioner also produced the copy of the complaint filed by him as Annexure C, which according to the counsel for the petitioner, is pending enquiry with the Magistrate. It is seen from the Case Diary that on the basis of the complaint made by the victim girl, a preliminary enquiry was conducted by the Vanitha Cell only after satisfaction that some incident occurred as alleged in the complaint, it was forwarded to the B.A. No. 8583 of 2014 4 Police on the basis of which the crime was registered. However, even assuming that the allegations were accepted, it appears that no offence under Section 354 of Indian Penal Code has been attracted against the accused numbers 2 and 3. But, however, they were also responsible for not taking the students in the bus, i.e. the only allegation against them. So, under the circumstances this Court feels that anticipatory bail can be granted to accused numbers 2 and 3 as their custodial interrogation is not required in connection with the investigation.

7. However, as regards the first accused is concerned, this Court feels that it is not a fit case to invoke the power under Section 438 of Code of Criminal Procedure to grant anticipatory bail to him and if the first petitioner surrenders before the

Investigating Officer on 05.01.2015 between 9 a.m and 10 a.m and after interrogation if the Investigating Officer feels that his arrest is required, then after recording his arrest produce him before the concerned Magistrate Court on the same day, and on such production if the first petitioner files an application for regular bail, then learned Magistrate is directed to consider and dispose of the bail B.A. No. 8583 of 2014 5 application as far as possible on the date of filing itself, after hearing the Assistant Public Prosecutor of that Court, in accordance with law.

8. As regards petitioners 2 and 3 are concerned, this Court feels that anticipatory bail can be granted to them with some conditions: i) If the petitioners 2 and 3 are arrested by the respondent or the Investigating Officer as the case may be in connection with above crime, then they are directed to release them on bail on executing a bond for Rs.25,000/- (Rupees twenty five thousand only) each with two solvent sureties for the like sum each to the satisfaction of the Arresting Officer/Respondent/Investigating Officer, as the case may be. ii) Petitioners 2 and 3 shall appear before the Investigating Officer for the purpose of interrogation two consecutive days between 9 a.m and 12 noon immediately after such arrest and release and thereafter as and when required by him for this purpose in connection with the B.A. No. 8583 of 2014 6 investigation of the case in writing to do so, till the final report is filed. iii) Petitioners 2 and 3 shall not influence or intimidate the witnesses. iv) If the petitioners 2 and 3 surrender before the Judicial First Class Magistrate Court, Kolencherry and move for regular bail, then the learned Magistrate is directed to release them on bail on the same conditions as stated above. With the above directions and observations, the petition is allowed in respect of petitioners 2 and 3 and dismissed in respect of the first petitioner. K. RAMAKRISHNAN JUDGE DMR/-

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