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Anto Alias Antappan, vs State of Kerala,

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Court : Kerala

Decided On : Apr-24-2020

Judge : Honourable Mr.Justice C.S.Dias

Appeal No. : Bail Appl./2059/2020

Appellant : Anto Alias Antappan,

Respondent : State of Kerala,

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE C.S.DIAS FRIDAY, THE 24TH DAY OF APRIL 2020 / 4TH VAISAKHA, 1942 Bail Application. No.2059 OF 2020 CRIME NO.25/2020 OF CHITTARIKKAL POLICE STATION, KASARGOD DISTRICT PETITIONER/ACCUSED: ANTO ALIAS ANTAPPAN, S/O.CHACKO, CHITTARIKKAL VILLAGE, KASARGOD DISTRICT. BY ADV. SRI.V.S.CHANDRASEKHARAN RESPONDENT/COMPLAINANT: STATE OF KERALA REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM-682 031. SMT.SREEJA.V. PUBLIC PROSECUTOR THIS BAIL APPLICATION HAVING FINALLY HEARD ON 24.04.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER

This is an application filed under Section 439 of the Code of Criminal Procedure.

2. The petitioner is the accused in Crime No.25 of 2020 of the Chittarickkal Police Station. The petitioner is alleged to have committed the

offences punishable under Sections 354 (A)(1)(i), 376(2)(n) of IPC read with Section 5,10 read with 9 and 12 r/w 11(iv), 11(v) of Protection of Children from Sexual Offences Act, 2012.

3. The prosecution case, in brief, is that: The petitioner in 2018, with an

intention to commit sexual assault against the victim, sent messages to her phone and called her several days in July, 2019, with an intention to outrage her modesty. He molested her. Thereafter, on 8, 9, and 10 in September, 2019 he committed rape on the victim at her house and thereafter threatened to publish the videos, which he had taken in his mobile phone. Thus, the petitioner has committed the above offences.

4. The petitioner was arrested on 2.2.2020. His application for bail was

dismissed by the Additional Sessions Court-I, Kasaragod by order dated 24.2.2020 in Crl.M.P. No.590 of 2020. The petitioner has been in judicial custody for the last 82 days.

5. Heard the learned counsel for the petitioner and the learned Public Prosecutor via video-conferencing.

6. The learned counsel for the petitioner argued that the victim is the

neighbour of the petitioner. The petitioner is conducting a workshop. The victim used to visit the petitioner and disclosed to him about the ill-treatment and misbehaviour meted out on her by her uncle. She disclosed that her uncle had on many occasions, tried to molest her. When the uncle came to know about the said revelation, he made the victim lodge the above false complaint against the petitioner. The complaint is a fabricated one. Petitioner is absolutely innocent and

he may be released on bail.

7. The learned Public Prosecutor opposed the bail application.

8. The Hon'ble Supreme Court in Sanjay Chandra v. CBI [2012 (1) SCC 40]

held as follows:

"27. This Court, time and again, has stated that bail is the rule and committal to jail an exception. It is also observed that refusal of bail is a restriction on the personal liberty of the individual guaranteed under Article 21 of the Constitution".

9. Recently, the Honourable Supreme Court in Nikesh Tarachand Shah v.

Union of India [2018 (11) SCC 1] after going back to the days of the Magna Carta and after referring to Gurbaksh Singh Sibbia v. State of Punjab [(1980) 2 SCC 565] has reiterated the same view in Sanjay Chandra v. CBI (supra). Again, in P.Chidamabram v. Directorate of Enforcement [(2019) SCC Online SC 1549] the above proposition has been fortified.

10. After the outbreak of the Novel Corona Virus (COVID -19) pandemic in the country, the Hon'ble Supreme Court in In Re: Contagion of COVID-19 Virus In

Prisons case (Suo Motu Writ Petition (C) No.1 of 2020) observed that the issue of overcrowding of prisons is a matter of serious concern. The State Governments were directed to take adequate measures to de-congest the prisons. Following the above direction, the Home Department, Government of Kerala has promulgated

order dated 25.03.2020, inter alia, directing the release of under-trial prisoners

alleged to have committed offences punishable with punishment for seven years or less. Later, a Full Bench of this Court by order dated 25.03.20202 in W.P.(C) No.9400 of 2020 (Suo Motu), has issued directions to de-congest the prisons in the State, keeping in mind the proposition that bail is the rule and jail is the exception.

11. Having regard to the facts and circumstances of the case, particularly the

fact that that the petitioner has been in incarceration for the last 82 days; and that investigation in the case is complete; and that petitioner's continued detention is no longer necessary; and in view of the legal proposition laid down by the Honourable Supreme Court while granting bail and also the directions of the Hon'ble Supreme Court and also Full Bench of this Court to decongest prisons in view of Covid-19 pandemic, I am inclined to allow this bail application.

12. In the result this bail application is allowed, on the following conditions:-

(i) Due to the present National lock-down and the closure of

Courts, the Jail Superintendent, where the petitioner is incarcerated, is directed to release the petitioner on him furnishing his permanent address and phone number and the addresses and phone numbers of his proposed sureties/immediate relatives. The petitioner shall also file an undertaking to the Jail Superintendent that he and his sureties will

execute the bail bond before the jurisdictional Court within one week of its re-opening. The Jail Superintendent after ensuring the compliance of the above conditions, shall release the petitioner to the Station House Officer of the Police Station where the crime has been registered, who shall after noting down the above details, release the petitioner. The Investigating Officer shall keep a close vigil on the whereabouts of the petitioner.

(ii) The petitioner shall within one week from the re-opening of the

jurisdictional Court, if not already re-opened, execute a bond for a sum of Rs.50,000/- (Rupees fifty thousand only) with two solvent sureties for the like sum each to the satisfaction of the jurisdictional Court.

(iii) The petitioner shall appear before the Investigating Officer on all Saturdays between 10.00 a.m and 11 a.m till final report is filed.

(iv) The petitioner shall not tamper with the evidence or influence the witnesses in the case, in any manner, whatsoever.

(v) The petitioner shall not commit any offence while on bail.

(vi) The petitioner shall not leave the State of Kerala without the permission of the jurisdictional court.

(vii) Needless to mention that, if the petitioner violates any of the

above conditions, the Station House Officer shall be at liberty to approach the jurisdictional Court and file appropriate application seeking for cancellation of the bail. Sd/- C.S.DIAS, JUDGE sou.

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