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Binil vs State of Kerala

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SooperKanoon Citation : sooperkanoon.com/1764365

Court : Kerala

Decided On : Apr-17-2020

Judge : Honourable Mr.Justice C.S.Dias

Appeal No. : Bail Appl./2386/2020

Appellant : BINIL

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT: THE HONOURABLE MR.JUSTICE C.S. DIAS FRIDAY, THE 17TH DAY OF APRIL 2020/28th CHAITHRA 1942 (In connection with Crime No. 137/2020 of Mulanthuruthy Police Station) Petitioner/Accused: Binil, aged 40, S/o. K Balachandran, Kunnumpurath House, Marithazham P.O, Parapakode, Kanjiramattom By Adv.Vinod K.R. Respondent:

1. State of Kerala represented by The Public Prosecutor, High Court of Kerala, Kochi -682 031.

2. Sub Inspector of Police

Mulamthuruthi Police Station Ernakulam PIN-682314 By Public Prosecutor Sri.Amjad Ali THIS B.A. HAVING BEEN FINALLY HEARD ON 17.04.2020, THE COURT ON THE SAME PASSED THE FOLLOWING:

ORDER

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

2. The petitioner is the accused in Crime

No.137/2020 of Mulanthuruthy .Police Station. The petitioner is alleged to have committed the offences punishable under Sections 363, 450, 376 (2) (n), 376AB, 354A(1)(i) and 506 of the Indian Penal Code and Secs.5(l)

(m) r/w.Secs.6 and 8 r/w Sec.7 of the Protection of Children from Sexual offences Act, 2012.

3. The petitioner was arrested on 14.02.2020.

4. The prosecution case in brief is that the petitioner kidnapped the victim and raped her in April, 2016 and subsequently in 2018 and finally on 26.01.2020.

5. Heard the learned counsel for the petitioner and the learned Public Prosecutor, through video conferencing.

6. The learned counsel for the petitioner argued that going by the allegations of the prosecution case, the petitioner had allegedly raped the victim as early as in 2016 and the present crime has been initiated against the petitioner in the year 2020 by itself substantiates the

hollowness in the prosecution case. According to the learned counsel for the petitioner, the victim was found in a compromising position with a boy which the petitioner happened to see. The petitioner informed the victim and the boy that he would complain about the incident to the victim's parents. It was out of the said animosity that the present crime was registered. The petitioner is living with his wife and two children and is a known person of the locality. His continued

detention would cause severe harm to his name and reputation. Hence the learned counsel prayed that the petitioner be enlarged on bail.

7. The learned Public Prosecutor on instructions

submitted that the victim was a minor child aged 12 years at the time of the first incident which occurred in 2016. Subsequently also in 2018 and in 2020, the petitioner had sexually molested the victim. She prayed that the application be dismissed.

8. It is trite law as held by the Hon'ble Supreme Court in Nikesh Tarachand Shah v. Union of India [2018

(11) SCC 1] that grant of bail is a rule and refusal is an exception, and that an accused who enjoys freedom will be in a much better position to defend himself than in custody.

9. In view of the Covid-19 pandemic that has occurred in the country, the Hon'ble Supreme Court in W.P

(C) 1/2020 has directed all courts to decongest the prisons in the country. The same view has been taken by a Full Bench of this Court in W.P (C) No.9400/2020 and exhaustive guidelines have issued.

10. Having regard to the above facts and

circumstances of the case especially considering the fact that the petitioner has already undergone detention for a period of 63 days and also in view of the directions of the Hon'ble Supreme Court and a Full Bench of this Court, I am inclined to grant bail to the petitioner on the following conditions:

(i) The Superintendent of Jail where the

> petitioner is incarcerated is directed to release the petitioner on furnishing his phone number and the phone number of his immediate relative. The Superintendent of jail shall verify the above details and

release the petitioner to the Station House Officer of the Police Station which has registered the crime, who shall in turn release the petitioner.

(ii) The petitioner shall within one week

from the re-opening of the court, if not already re-opened, execute a bond for a sum of Rs.50,000/- 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 the final report is laid.

(iv) It is further directed that the petitioner shall not enter the jurisdictional limits of the Mulamthuruthy Police Station till the final report is filed.

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

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

(vii) The petitioner shall not enter the

jurisdictional limits of the Mulamthuruthy Police Station except for appearing before the Investigating Officer on all Saturdays. Needless to mention that if the petitioner violates any of the conditions above, the Station House Officer shall be at liberty to approach the Jurisdictional court and file appropriate applications, seeking for cancellation of bail. Sd/- ma C.S.DIAS, JUDGE Annexure A1: The copy of the order in Bail (No.1/2020 dated 07.04.2020 of Sessions Court, Ernakulam

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