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Mohammed Musthaque 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./2405/2020

Appellant : Mohammed Musthaque

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.2405 OF 2020 (In Crime No. 134/2020 of Perinthalmanna Police Station in Malappuram District.) Petitioner/ Accused. Mohammed Musthaque. Aged 28 years, S/o. Hydrass, Irayathra House, Aliparamba, Thekkepuram, Vazhenkada, Thootha, Perinthalmanna amsom, PerinthalmannaTaluk, Malappuram District. By Adv.P.Samsudin Respondents/Complainant

1. State of Kerala represented by the Public Prosecutor High court of Kerala Ernakulam -682 031. (In Crime No. 134/2020 of Perinthalmanna

Police Station in Malappuram District).

2. The Sub Inspector of Police, Perinthalmanna Police Station in Malappuram District).

3. Ashraf, S/o Abdu, Poyyakkadi House, Aliparamba, Thekkepuram,

Vazhenkada, Thootha, Perinthalmanna amsom, Perinthalmanna Taluk, Malappuram District. BY Public Prosecutor Smt.Sreeja.V THIS BAIL APPLICATION HAVING BEEN FINALLY HEARD ON 24.04.2020, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: ..2..

ORDER

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

2. The petitioner is the accused in Crime No. petitioner is alleged to have committed the offences punishable under Sections 376 of IPC and Section 4 r/w 3(a) of POCSO Act.

3. The prosecution case, in brief, is that: the victim while studying in the VIIth standard had fallen in love with the petitioner, who provided his mobile phone

number to the victim. In the month of June, 2020, the accused went to the house of the victim, while the other inmates were not present, and committed penetrative sexual assault without the consent and knowledge of the victim. Thus, the petitioner has committed the above offences.

4. The petitioner was arrested on 01.03.2020. His application for bail was dismissed by the Special ..3.. Court for the Trial of Offences against Children (Additional Sessions Court - I, Manjeri) by order dated 13.03.2020 in Crl.M.P.No.559 of 2020.

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 petitioner was in love with the victim. In fact the subject matter in dispute between the parties has been settled between them. The victim's father has agreed to solemnize the marriage between the petitioner and the victim, on the victim attaining majority, on 04.10.2020. The 3rd respondent, the victim's father, has sworn an affidavit before this Court that he has no objection in bail being granted to the petitioner. The petitioner is innocent of the accusations. hence, he may be enlarged on bail.

7. The learned Public Prosecutor opposed the application.

8. The Hon'ble Supreme Court in Sanjay ..4.. 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 ..5..

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,

particularly the fact that the petitioner has been in incarceration for the last 54 days; that the investigation in the case is completed; that the petitioner's continued ..6.. detention is unnecessary; the legal propositions laid down by the Honourable Supreme Court in the aforecited decisions while granting bail; and the directions of the Hon'ble Supreme Court and a 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 ..7.. 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. ..8..

(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 kkj/24.04.2020

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