

Aneesh, vs State of Kerala

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Court : Kerala

Decided On : Jun-30-2020

Judge : Honourable Mr. Justice Raja Vijayaraghavan V

Appeal No. : Bail Appl./3767/2020

Appellant : Aneesh,

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V TUESDAY, THE 30TH DAY OF JUNE 2020 / 9TH ASHADHA, 1942 Bail Appl..No.3767 OF 2020 CRIME NO.1623/2020 OF OCHIRA POLICE STATION , KOLLAM

PETITIONER: ANEESH, AGED 36 YEARS S/O. BHASKARAN PILLAI, GEETHA NIVAS, KUTHIRAPANTHY P.O., KOLLAM-690 523 BY ADVS. SRI.P.B.SAHASRANAMAN SRI.T.S.HARIKUMAR RESPONDENTS: 1 STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM,PIN-682031 2 THE STATION HOUSE OFFICER, OCHIRA POLICE STATION, OACHIRA, (P.O), KOLLAM-690 526 SRI AJITH MURALI PUBLIC PROSECUTOR THIS

BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 30.06.2020, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: Bail Appl..No.3767 OF 2020 2

ORDER

The petitioner herein is arrayed as accused in Crime No.1623 of 2020 of Oachira Police Station registered under Section 376(2)(n) of

the Indian Penal code. He has approached this Court seeking an order

of pre-arrest bail.

2. This application is taken up and heard through Videoconferencing.

3. The de facto complainant is a married lady and the

mother of two children. She is a Graduate as well. When her relationship with her husband got strained, she approached the Family court and obtained a decree of divorce. She states that while the proceedings were pending before the Family Court, she had occasion to meet the petitioner, who is also a married man with a wife and child. His relationship with his wife was also strained at that time. They became close and started having a sexual relationship. The informant alleges that she acceded to his wishes to have a relationship based on his assurance that he would marry her. She was taken to

Bail Appl..No.3767 OF 2020 3 the house of the petitioner on numerous occasions and to various resorts. Later, the petitioner started avoiding her. It was due to the above turn of events that she approached the police and set the law in motion.

4. Sri. T.S.Harikumar, the learned counsel appearing for the

petitioner, submitted that the narration of events by the de facto complainant would itself show that the offence under Section 376 of the IPC will not be attracted. The petitioner as well as the de facto complainant were married when they had become close and decided to have a sexual relationship. Both are adults and the relationship was purely consensual, is the submission. The fact that the petitioner was married and the father of a child was also known to the de facto complainant, contends the learned counsel.

5. The learned Public Prosecutor has opposed the prayer.

6. I have considered the submissions advanced and have gone through the case diary.

7. It is evident from the prosecution records that the de facto complainant as well as the petitioner were married when they decided to have a fling. She admittedly had gone to the house of the petitioner Bail Appl..No.3767 OF 2020 4

on more than a dozen occasions. Now the question is whether, on these allegations, the petitioner should be forced to undergo custodial interrogation. The Apex Court in Dr. Dhruvram Muralidhar Sonar

v. State of Maharashtra and Others [2019 (1) KHC 403] has held

that there is a clear distinction between rape and consensual sex. The question to be considered in such cases is whether the accused had actually wanted to marry the victim or had mala fide motives and had made a false promise to that effect only to satisfy his lust. The former is not rape but the latter will fall within the ambit of cheating and deception. It has also been held that there is a subtle distinction between mere breach of a promise and not fulfilling a false promise. If the materials prima facie suggest that the prosecutrix agreed to have sexual intercourse on account of her love and passion for the accused and not solely on account of the misconception created by accused, or where an

accused, on account of circumstances which he could not have foreseen or which were beyond his control, was unable to marry her despite having every intention to do, such cases will not fall within the ambit of rape and will have to be considered differently. In other words, if the consent given by the prosecutrix to sexual intercourse with a person with whom she is deeply in love on a promise that he would marry her on a later date, then such consent cannot be said to

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be given under a misconception of fact. (See Uday v. State of Karnataka (2003) 4 SCC 46). It is difficult to accept at this stage that a false promise was given to engage her in a sexual relationship and that it was under such misconception of fact that she had acceded to the wishes of the petitioner. Having considered the facts and circumstances in all its perspectives, I am of the considered opinion that the custodial interrogation of the petitioner is not necessitous for an effective investigation. Having regard to the nature of accusations, the role assigned to the petitioner, I am of the considered opinion that the custodial interrogation of the petitioner is not necessary for an effective investigation in the instant case.

In the result, this application will stand allowed. The petitioner shall appear before the Investigating Officer within ten days from today and shall undergo interrogation. Thereafter, if he is proposed to be arrested, he shall be released on bail on his executing a bond for a sum of Rs.50,000/- (Rupees Fifty thousand only) with two solvent sureties each for the like sum. The above order shall be subject to the following conditions:

- i) The petitioner shall cooperate with the investigation and shall appear before the Investigating Officer on all Saturdays between 9 a.m. and 11 a.m., for two months or till the final report is filed, whichever is earlier. Bail Appl..No.3767 OF 2020 6 ii)

He shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him/ her from disclosing such facts to the court or to any police officer. iii) He shall not commit any similar offence while on bail. In case of violation of any of the above conditions, the jurisdictional Court shall be empowered to consider the application for cancellation, if any, and pass appropriate orders in accordance with the law.
Sd/- RAJA VIJAYARAGHAVAN V JUDGE ps

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