

Balkees vs State of Kerala

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Court : Kerala

Decided On : Dec-14-2020

Judge : Honourable Mr. Justice P.V.Kunhikrishnan

Appeal No. : Bail Appl./8137/2020

Appellant : Balkees

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN
MONDAY, THE 14TH DAY OF DECEMBER 2020 / 23RD
AGRAHAYANA, 1942 Bail Appl..No.8137 OF 2020 CRIME NO.616/2020
OF Changaramkulam Police Station , Malappuram

PETITIONER/3RD ACCUSED: BALKEES/ W/O.YAKOOB, AGED 45
YEARS VAKIYATHVALAPPIL HOUSE, NANNAMUKKU.P.O.,
MALAPPURAM BY ADV. SRI.C.A.CHACKO
RESPONDENT/COMPLAINANT: STATE OF KERALA REPRESENTED
BY PUBLIC PROSECUTOR,HIGH COURT OF KERALA PIN-682031 R1
BY PUBLIC PROSECUTOR OTHER PRESENT: SRI.E.C.BINEESH, PP

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 14.12.2020, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: B.A.No.8137 of 2020 2

P.V.KUNHIKRISHNAN, J.

----- B.A.No.8137 of 2020 -----

Dated this the 14th day of December, 2020

ORDER

This Bail Application filed under Section 438 of Criminal Procedure Code was heard through Video Conference.

2. Petitioner is the third accused in Crime No.616 of 2020 of Changaramkulam Police Station. The above case is registered against the petitioner alleging offences punishable under Sections 354A, 376 (2) (I), 506 & Section 109 r/w Section 34 of the IPC.

3. The prosecution case is that, on 4.4.2019, the second

accused who is the brother of the petitioner married the victim who is a mentally retarded lady. It is alleged that the defacto complainant conducted the said marriage of her daughter under the compulsion of accused Nos.1 and 2. Subsequent to the marriage, the second accused went abroad and the first B.A.No.8137 of 2020 3 accused who is the husband of the petitioner herein with the knowledge of the second accused committed rape on her and subjected her to unnatural sex. The allegation against the petitioner is that the petitioner instigated the parents of the defacto complainant to conduct the marriage.

4. Heard the counsel for the petitioner and the learned Public Prosecutor.

5. The counsel for the petitioner submitted that even if the entire allegations are accepted, no offence is prima facie

made out against the petitioner. The counsel submitted that the only allegation against the petitioner is that he abetted the offence. The counsel submitted that there is no evidence to attract the offence under Section 109 of the IPC. The counsel submitted that the petitioner is a lady and she is ready to abide any conditions if this Court grant her bail.

6. The learned Public Prosecutor opposed the bail

application. But the Public Prosecutor submitted that, the only allegation against the petitioner is that she instigated the parents of the victim to conduct the marriage. B.A.No.8137 of 2020 4

7. After hearing both sides, I think this Bail Application can be allowed on stringent conditions. There is no serious allegations against the petitioner. The main allegation is

against the first and second accused. I make it clear that if any bail application is filed by the first and second accused, the same will be considered strictly on merit without considering the fact that this bail application is allowed. Considering the entire facts and circumstances of the case, I think, the petitioner who is the third accused in this case can be released on bail on stringent conditions.

8. Moreover, considering the need to follow social

distancing norms inside prisons so as to avert the spread of the novel Corona Virus Pandemic, the Hon'ble Supreme Court in Re: Contagion of COVID-19 Virus In Prisons case (Suo Motu Writ Petition(C) No.1 of 2020) and a Full Bench of this Court in W.P(C)No.9400 of 2020 issued various salutary directions for minimizing the number of inmates inside prisons.

9. Moreover, it is a well accepted principle that the bail is the rule and the jail is the exception. The Hon'ble Supreme

B.A.No.8137 of 2020 5 Court in Chidambaram. P v Directorate of Enforcement (2019 (16) SCALE 870), after considering all the earlier judgments, observed that, the basic jurisprudence relating to bail remains the same inasmuch as the grant of

bail is the rule and refusal is the exception so as to ensure that the accused has the opportunity of securing fair trial.

10. Considering the dictum laid down in the above decision and considering the facts and circumstances of this case, this Bail Application is allowed with the following directions:

1. The petitioner shall appear before the Investigating Officer within ten days from today and shall undergo interrogation.

2. After interrogation, if the Investigating Officer propose

to arrest the petitioner, she shall be released on bail executing a bond for a sum of Rs,.50,000/-(Rupees Fifty Thousand only) with two solvent sureties each for the like sum to the satisfaction of the officer concerned.

3. The petitioner shall appear before the Investigating

Officer for interrogation as and when required. The petitioner shall co-operate with the investigation and shall not, directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the B.A.No.8137 of 2020 6 case so as to dissuade her from disclosing such facts to the Court or to any police officer.

4. Petitioner shall not leave India without permission of the Court.

5. Petitioner shall not commit an offence similar to the offence of which she is accused, or suspected, of the commission of which she is suspected.

6. The petitioner shall strictly abide by the various

guidelines issued by the State Government and Central

Government with respect to keeping of social distancing in the wake of Covid 19 pandemic.

7. If any of the above conditions are violated by the petitioner, the jurisdictional Court can cancel the bail in accordance to law, even though the bail is granted by this Court. Sd/- P.V.KUNHIKRISHNAN, JUDGE al/-

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