

Salini vs State of Kerala

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Court : Kerala

Decided On : Oct-31-2019

Judge : Honourable Mr. Justice Alexander Thomas

Appeal No. : Bail Appl./3471/2019

Appellant : Salini

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS
THURSDAY, THE 31ST DAY OF OCTOBER 2019 / 9TH KARTHIKA,
1941 Bail Appl..No.3471 OF 2019 CRIME NO.1167/2019 OF
Kayamkulam Police Station , Alappuzha PETITIONER/5th ACCUSED:
SALINI,AGED 23 YEARS W/O. BLESSEN, MEPPURATHU HOUSE,
SHALOM PURAM, ENADIMANGALAM, PATHANAPURAM, KOLLAM
NOW RESIDING AT KINGANACHIRA, PAYIPPAD KOCHUPALLY,
THIRUVALLA BY ADVS. SRI.T.P.PRADEEP SRI.S.SREEDEV
RESPONDENTS/COMPLAINANTS: 1 STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF
KERALA-682 031 2 SUB INSPECTOR OF POLICE, KAYAMKULAM

POLICE STATION, ALAPUZHA-690 502 R1-2 BY PUBLIC PROSECUTOR OTHER PRESENT: SRI.SAIGI JACOB PALATTY, PUBLIC PROSECUTOR THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 31.10.2019, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: B.A.No.3471/2019 2

ALEXANDER THOMAS, J.

----- B.A.No.3471 of 2019
----- Dated this the 31st day of October,
2019

ORDER

The sole petitioner in this application is accused No.5 in the instant Crime No.1167/2019 of Kayamkulam Police Station, which has been registered for offences punishable under Sections 366, 354 & 376 r/w.Sec. 34 of the IPC, on the basis of the First Information Statement given by the lady de facto complainant on 25.4.2019 at about 2.40 p.m in respect of the alleged which happened for the period from 15.3.2018 to 13.4.2019.

2. The prosecution case in short is that A1, who is none other

than the husband of the lady de facto complainant herein, while residing along with her at their house in Krishnapuram, had forced her to have sexual intercourse with accused Nos.2 to 7 for various periods starting from 15.3.2018 till 13.4.201.

3. The learned counsel for the petitioner would point out that

the above said allegations raised against the petitioner herein are false and baseless and further that even going by the admitted allegations of the prosecution to the extent it is directed as against the petitioner herein, it can be seen that no serious offences are disclosed as against B.A.No.3471/2019 3 her (A5) or her husband (A6).

4. Both sides have elaborately taken this Court's attention to

the contents of the first information statement in this crime, which is about eight pages. The learned Public Prosecutor has made available the copies of F.I.R. and F.I.S. along with his memo filed on 18.10.2019. Both sides would also concur that the relevant allegations to the extent it is directed as against the petitioner herein (A5) as well as A6 (husband of the petitioner) are contained in latter portion of internal Page No.6 and the top portion of internal Page No.7 of the First Information Statement in this case and the said relevant portion reads as follows: , % % ' . 13 - / % 2 % 9 : - . : - %/ . . . ' . ' : . % . % . . . 9 : ' / . ' % . ' . ' . % 10.30 ' - . % % . . The said admitted allegations in the F.I.S to the extent it is directed as against the petitioner herein are as follows:- A1 (husband of the victim) had then taken her to a place in Thiruvalla, after getting contacts about sexual sharing activities, as he was previously introduced to A6

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(husband of the petitioner) and A5 (petitioner herein). That on 13.4.2019, the lady victim was taken by her husband (A1) to the house of A5 (petitioner) and A6 (petitioner's husband). That A1 (the lady victim's husband) got an immediate liking for A5 (petitioner herein) and A1 had told the said couple that he had previous experience in sex sharing activity. That A5 and A6 had then said that the sex sharing activity could be done in two separate rooms, but A1 had insisted that it should be done in a single room and all four of them viz., A1 (victim's husband), lady victim, A5 (petitioner) and A6 (petitioner's husband) then went to a room and there A1(lady victim's husband) had sexual intercourse with the petitioner herein (A5). That A5 had also persuaded the lady victim to have sex with A6 (petitioner's husband) quite a few times, which the lady victim refused. It is further stated that since A6 (petitioner's husband) did not have condoms, he did not have any sexual intercourse with the lady victim and that later, A1 and the lady victim had left the house of the

above said couple (A5 and A6). These are the only allegations raised as against the petitioner (A5) and her husband (A6). One of the allegations raised is that A5 (petitioner) had sexual intercourse with A1 (victim's husband), which even going by the lady victim's version was consensual and that too with the consent of the petitioner's husband. Further that the petitioner herein (A5) had persuaded the lady victim to have sexual intercourse with A6 (petitioner's husband) which the lady victim had refused. Later, A6

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(petitioner's husband) did not have any sexual intercourse with the lady victim for the aforesaid reason. If that be so, at least from the limited consideration of the above anticipatory bail application, this Court is constrained to take the view that no serious offences are disclosed as against the petitioner (A5). True that there is an allegation that she had tried to persuade the lady victim to have sexual intercourse with A6 (petitioner's husband). But, from the admitted case of the victim, she does not have any case that other than orally requesting her to do so, that the petitioner herein (A5) has done any other act to in any manner coerce or force the lady to have sexual intercourse with A5. Whereas on the other hand, the victim has stated that she had refused the request of the petitioner (A5) as well as A6 to have sexual intercourse with A6 and it is also her case that A6 did not have any sexual intercourse with her for the reason mentioned above. If that be so, this Court is constrained to take the view that the petitioner has made out a strong probable case and that her custodial interrogation is not necessary or warranted for effectuating smooth and fair conduct of the investigation in this crime. This Court had repeatedly queried the prosecution agency as to whether apart from the above said allegations, any other allegations have been made as against the petitioner herein

(A5) and it is now appraised by this Court that apart from the above said allegations raised in the latter portion of internal Page No.6 and the top portion of

been made as against A5 and A6. However, the learned Public Prosecutor has appraised this Court that as of now the petitioner (A5) has not so far appeared before the Investigating Officer for the interrogation process. So, the petitioner will have to immediately appear before the Investigating Officer concerned for completing the interrogation process. Accordingly, the following directions and orders are passed: 1) The petitioner (A5) will immediately personally appear before the Investigating Officer in relation to the above said crime for interrogation purposes without any further delay, at any rate, by 10 a.m. on any day on or before 14.11.2019 or within such time limit that may be extended by the Investigating Officer as he deems fit and proper. 2) The petitioner will fully co-operate with the Investigating Officer in the above interrogation process.

3) After the interrogation process is over, if the Investigating Officer arrests the petitioner in relation to the above said crime, then she shall be released on bail on her executing a bond for Rs.40,000/- (Rupees forty thousand only) and on her furnishing two solvent sureties each to the satisfaction of the Investigating Officer concerned. However, the grant of bail will be subject to the following conditions:

(i) The petitioner shall not involve in any criminal offences of similar nature.
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(ii) The petitioner shall fully co-operate with the investigation.

(iv) The petitioner shall report before the Investigating Officer as and when required in that connection.

(v) The petitioner shall not influence witness or shall not tamper or attempt to tamper evidence in any manner, whatsoever.

If there is any violation of the abovesaid conditions by the petitioner, then the jurisdictional court concerned will stand hereby empowered to consider the plea for cancellation of bail at the appropriate time. With these observations and directions, the above Bail Application stands disposed of. sd/- ALEXANDER THOMAS, JUDGE. acd

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