

Pradeepkumar Vs State Of Kerala

Court: High Court Of Kerala

Date of Decision: Nov. 23, 2020

Acts Referred: Code Of Criminal Procedure, 1973 " Section 439
Indian Penal Code, 1860 " Section 323, 376, 376(2)(n), 376C(b), 506(i)
Constitution Of India, 1950 — Article 21

Hon'ble Judges: P.V. Kunhikrishnan, J

Bench: Single Bench

Advocate: P. Anoop, Renjith. T.R.

Final Decision: Allowed

Judgement

1. This Bail Application filed under Section 439 of Criminal Procedure Code was heard through Video Conference.

2. Petitioner is the accused in Crime No.1438/2020 of Pangode Police Station. The above case is registered against the petitioner alleging offences

punishable under Sections 323, 506(i), 376, 376(2)(n), 376C(b) of IPC.

3. The prosecution case is that the accused is a Junior Health Inspector working at Kulathupuzha Community Health Centre. The prosecutrix in this

case was working at Malappuram as a Home Nurse. It is the case of the victim that on 30.8.2020, she contacted the Health Inspector and C.I

Kulathupuzha for her inter district arrival at Kulathupuzha during this pandemic period. On 31.8.2020 she reached her house at Kulathupuzha and

contacted the Health Inspector regarding her arrival. On the next day she was tested Covid-19 negative and she called the Health Inspector for

getting her Covid-19 negative certificate. As advised by the accused, she went to the residence of the accused at Chettakadumukku of Barathannur in

Pangode Village. While so, it is alleged that the accused assaulted the victim and pushed her down. It is alleged that the accused tied both hands of the

victim at her back and mouth was blocked with a dothi. Then her both legs were tied together and the other end of the same tied at the cot and

thereafter accused raped her. It is alleged that subsequently the petitioner removed the cloth from her mouth and threatened her that if the matter is

divulged to anybody, she has to face consequences. This is the sum and substance of the allegation in the first information statement given by the

victim.

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

5. The petitioner filed two bail applications before this Court. The first bail application was dismissed by this Court on 17.9.2020. Actually on that date

I was not inclined to grant bail to the petitioner because of the serious averments in the first information statement given by the victim against the

petitioner. In such a situation, the learned counsel for the petitioner requested for withdrawing the bail application. That prayer was allowed.

Thereafter, again the petitioner filed a bail application before this Court and that was also withdrawn on 9.11.2020. On that day also I was not inclined

to grant bail because of the seriousness of the case.

6. Now the petitioner produced an affidavit of the victim, which is produced as Annexure A4. It is an affidavit attested by a notary. In the affidavit it

is stated like this:

7. I am surprised, after reading this affidavit. The registration of the above case was widely covered by the media in the State. Almost all the people in

Kerala knows about this case. The allegation is that a Health Inspector committed rape on a lady when she approached him for getting certificate for

Covid- 19 negative. After reading the first information statement given by the victim, this Court also refused bail to the petitioner because the

allegation in the statement was so serious. She even stated that her both hands were tied at her back and the mouth was blocked with a dothi.

Thereafter there was a forceful rape. Now this victim is deposing before this Court in a notary attested affidavit that there is no such incident and it

was a consensual sexual intercourse. It is stated in the affidavit that she gave such a statement to the police because of the pressure from her

relatives.

8. It is an admitted fact that the petitioner is in custody for the last 77 days. If the averments in the affidavit of the victim is accepted, the petitioner is

in illegal custody for the last 77 days. This should be taken very seriously. Nobody should make such false complaint against a person. The petitioner

was working as a Junior Health Inspector. Hundreds and hundreds of health workers are working in the State against the pandemic Covid-19. In such

a situation, this particular incident gave a black mark to the health workers in the State. It even affected their morale. Now this victim is coming

before this Court and saying that it was a consensual sexual intercourse and there was no forceful sex as stated in the FI statement. The personal

liberty of a citizen is his fundamental right under Article 21 of the Constitution of India. This is a fit case in which the petitioner should be released on

bail forthwith. Not only that, according to me, the contents of the affidavit is to be looked into by the Director General of Police of the State and take

appropriate action in accordance to law against the alleged victim or relatives of the victim in accordance to law. If sexual intercourse was with the

consent of a lady, no prima facie case is made out. Admittedly the victim in this case is major. Of course, the action of the petitioner may not be

acceptable morally but that is not a reason to punish him like this. The allegation in the first information statement in this case tarnished the image of

health workers in the state. If anybody is responsible for the same, the law of the land should act swiftly.

9. Considering the entire facts and circumstances of this case, this Bail Application is allowed with the following directions:

1. Petitioner shall be released on bail on executing a bond for Rs.50,000/- (Rupees Fifty Thousand only) with two solvent sureties each for the like

sum to the satisfaction of the jurisdictional Court.

2. 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 case so as to

dissuade him from disclosing such facts to the Court or to any police officer.

3. 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.

Registry will forward a copy of this order to the Director General of Police. The Director General of Police will authorise a senior officer to conduct

an enquiry on Annexure A4 affidavit. Thereafter, the Director General of Police will take appropriate action based on that report in accordance to

law. I don't want to make any observation about the merit of the case. The criminal justice delivery system cannot go like this. Based on a false

complaint, a person is in jail for about 77 days. This Court cannot shut its eye in such situations. The Director General of Police should take this case

very seriously and do the needful and file a report based on the enquiry before the Registrar General of this Court within three months. I make it clear

that, the enquiry officer will conduct the enquiry untrammelled by any observations in this order.