

(2023) 03 KL CK 0075

High Court Of Kerala

Case No: Bail Application No.1190 Of 2023

XXX

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision: March 8, 2023

Acts Referred:

- Code of Criminal Procedure, 1973 - Section 438
- Indian Penal Code, 1860 - Section 34, 323
- Juvenile Justice (Care and Protection of Children) Act, 2015 - Section 75

Hon'ble Judges: Dr Kauser Edappagath, J

Bench: Single Bench

Advocate: Dinesh R.Shenoy, P.Rohit Premanandan Shenoy, Silesh S. Prabhu, C S.Hritwik

Final Decision: Dismissed

Judgement

Dr Kauser Edappagath, J

1. This application is filed u/s 438 of the Code of Criminal Procedure seeking pre-arrest bail.
2. The applicant is the accused in Crime No.273/2023 of Central Police Station, Ernakulam. The offences alleged are punishable under Sections 323 r/w 34 of the I.P.C. and Section 75 of the Juvenile Justice Act.
3. The prosecution case, in short, is that on 21/01/2023, while the applicant and her son were sitting in the Court premises as per the order of the Family Court, Ernakulam, the son quarrelled with the applicant. At that time, she called the 2nd accused, who accompanied the applicant. The 2nd accused pitched on the child's body parts. The allegation against the applicant is that she allowed the 2nd accused to assault the child

and thereby committed the offence.

4. I have heard Sri.Dinesh R.Shenoy, the learned counsel for the applicant and Sri.Hrithwik C.S., the learned Senior Public Prosecutor. Perused the case diary.

5. The learned counsel for the applicant submitted that the applicant is innocent and has been falsely implicated in the present case. The counsel further submitted that no materials are on record to connect the applicant with the alleged crime; hence, she is entitled to get bail. The learned Public Prosecutor, on the other hand, submitted that the alleged incident occurred as a part of the intentional criminal acts of the applicant, and if she is released on bail at this stage, it will affect the course of the investigation.

6. The crime was registered at the instance of the father of the child. The case is pending before the Family Court between the applicant and her husband over the custody of the child. The alleged incident took place when the child was produced at the Court premises as per the order of the Court. Admittedly, even going by the prosecution case, the applicant did not assault the child. The 2nd accused assaulted the child. The statement of fact submitted by the investigating officer shows that in the investigation conducted so far, no evidence could be collected to connect the applicant with the crime. Considering the allegations levelled against the applicant, her custodial interrogation does not appear to be necessary. For these reasons, it is a fit case where pre-arrest bail can be granted to the applicant.

In the result, the application is allowed on the following conditions:-

(i) The applicant shall be released on bail in the event of her arrest on executing a bond for Rs.1,00,000/- (Rupees One lakh only) with two solvent sureties for the like sum each to the satisfaction of the arresting officer/investigating officer, as the case may be.

(ii) The applicant shall fully cooperate with the investigation, including subjecting herself to the deemed police custody for discovery, if any, as and when demanded.

(iii) The applicant shall appear before the investigating officer between 10.00 a.m. and 11.00 a.m. every Saturday until further orders. She shall also appear before the investigating officer as and when required.

(iv) The applicant shall not commit any offence of a like nature while on bail.

(v) The applicant shall not attempt to contact any of the prosecution witnesses, directly or through any other person, or in any other way try to tamper with the evidence or influence any witnesses or other persons related to the investigation.

(vi) The applicant shall not leave the State of Kerala without the permission of the trial Court.

(vii) The application, if any, for deletion/modification of bail conditions or cancellation of bail on the grounds of violating the bail conditions shall be filed at the jurisdictional court.