

(2023) 05 KL CK 0192

High Court Of Kerala

Case No: Bail Application No. 3226 Of 2023

Anandu Mohanan

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision: May 25, 2023

Acts Referred:

- Code of Criminal Procedure, 1973 - Section 164, 439
- Indian Penal Code, 1860 - Section 307, 354D(1), 354(1)(i), 363, 366, 376(2)(n), 450, 506
- Protection of Children from Sexual Offences Act, 2012 - Section 3(a), 3(b), 4(1), 5(1), 6, 7, 8, 11(ii), 11(iv), 12
- Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 - Section 3(1)(w)(i), 3(2)(v)
- Information Technology Act, 2000 - Section 66E

Hon'ble Judges: Ziyad Rahman A.A, J

Bench: Single Bench

Advocate: S.K.Adhithyan, Balamurali Krishna M., C.S.Hrithwik

Final Decision: Dismissed

Judgement

Ziyad Rahman A.A, J

1. This is an application filed u/s 439 of Code of Criminal Procedure seeking regular bail.
2. The petitioner is the accused in Crime No.443 of 2023 of Eravipuram Police Station. The aforesaid crime was registered alleging commission of offences punishable under Sections 354D(1), 354(1)(i), 363, 366, 376(2)(n), 450 and 506 of IPC along with Sections 4(1) r/w 3(a), 3(b), 6 r/w 5(1), 8 r/w 7, 12 r/w 11(ii) (iv) and 15(2) of PCSO Act, 2012 and Section 3(2)(v) and 3(1)(w)(i) of the Scheduled Castes and Scheduled Tribes (Prevention of

Atrocities) Act, 1989 and Section 66E of the Information Technology Act.

3. The prosecution case is that, the petitioner enticed the minor victim belonging to Scheduled Caste Community in the social media and on promise to marry her, obtained nude photos and videos. Thereafter during the month of September, 2021, when the victim was studying in 10th standard, took her in an autorickshaw and kissed her. On 08.11.2021 she was taken by the petitioner on his motorcycle to his house and committed penetrative sexual assault. Similar incidents were repeated on several occasions consequently. Later, on the basis of information furnished by the victim the aforesaid crime was registered in the year 2023, consequent to which the petitioner was arrested on 10.03.2023 and since then he has been under judicial detention. This bail application is submitted in such circumstances.

4. Heard Sri.S.K.Adithyan, learned counsel for the petitioner and Sri.C.S.Hrithwik, learned Public Prosecutor for the State.

5. Eventhough notice of this bail application was furnished to the victim, there is no appearance for the de facto complainant. The learned Public Prosecutor made available the acknowledgment evidencing the service of notice to the victim on 16.05.2023.

6. Specific contention put forward by the learned counsel for the petitioner is that, the petitioner is innocent of all the allegations. According to him, the petitioner and the victim were in a love affair and later their relationship got strained and a complaint was submitted in such circumstances. Learned counsel for the petitioner submits that the petitioner is ready and willing to comply with any of the conditions that may be imposed by this Court. It is further pointed out that the petitioner is under judicial detention since 10.03.2023 and no fruitful purpose would be served in continuing the incarceration of the petitioner.

7. On the other hand, the learned Public Prosecutor would oppose the aforesaid application. It is pointed out that there is specific allegations against the petitioner in the statement given by the de facto complainant. Copies of the FIS as well as the statement recorded under Section 164 Cr.P.C. were also made available before this Court. Besides the same, it is also submitted that the petitioner is involved in three other cases for committing assaults on other persons and in one of the said crimes, offence under Section 307 IPC is involved. In such circumstances, learned Public Prosecutor seeks for dismissal of the application.

8. I have gone through the records and heard the contentions raised from both sides. It is true that there are certain allegations against the petitioner and he was also involved in some other cases. However, the fact remains that the petitioner is in custody since 10.03.2023. Investigation in this case is over and final report submitted. Apart from the same, on going through the statement of the victim, it is evident that the petitioner and the de facto complainant were maintaining a relationship between them and the sexual intercourse alleged were happened during such relationship. As far as the criminal cases in which the petitioner is involved are concerned, it is to be noted that the said crimes were in the years

2014, 2016 and 2019.

9. In such circumstances, after considering all the relevant aspects, particularly, the fact that the final report is already submitted, I am of the view that the petitioner can be released on bail by incorporating appropriate conditions to ensure that the petitioner is not interfering with the trial by influencing or intimidating the witnesses. Accordingly, this bail application is allowed.

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

- (i) The petitioner shall be released on bail 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 jurisdictional Magistrate/Court.
- (ii) The petitioner shall fully co-operate with the investigation.
- (iii) The petitioner shall appear before the investigating officer as and when required by him.
- (iv) The petitioner shall not commit any offence of similar nature while on bail.
- (v) The petitioner shall not make any attempt to contact any of the prosecution witnesses, directly or through any other person, or any other way try to tamper with the evidence or influence any witnesses or other persons related to the investigation.
- (vi) The petitioner shall not leave State of Kerala without the permission of the trial Court.

In case of violation of any of the above conditions, the jurisdictional Magistrate/Court shall be empowered to consider the application for cancellation of bail, if any, and pass appropriate orders in accordance with the law.