

Unmasked AS Vs State Of Kerala

Court: High Court Of Kerala

Date of Decision: Jan. 14, 2025

Acts Referred: Code of Criminal Procedure, 1973 â€” Section 438, 438(4)

Bharatiya Nagarik Suraksha Samhita, 2023 â€” Section 482

Indian Penal Code, 1860 â€” Section 376(2)(n), 376AB

Protection of Children from Sexual Offences Act, 2012 â€” Section 5(l), 5(m), 5(n), 5(p), 6

Hon'ble Judges: G.Girish, J

Bench: Single Bench

Advocate: Julia Priya Reshmy, T.Sajayan Jacob, Abdul Manaf M., S.Rajeev, K.Reeha Khader, Seetha S.

Final Decision: Dismissed

Judgement

G.Girish, J

1. This petition, under Section 482 of the Bharatiya Nagarik Suraksha Samhita, 2023, has been filed by the accused in Crime No.475/2024 of Cusba

Police Station, Kozhikode. The crime registered against him is in connection with the commission of offence under Section 376(2)(n) and 376AB of

IPC and under Sections 5(l), 5(m), 5(n) and 5(p) read with Section 6 of POCSO Act.

Ã, 2. The victim is a four year old girl who is the daughter of the petitionerÃ¢â€s wifeÃ¢â€s sister. The accusation against the petitioner is that he had

applied his fingers and tongue upon the genitals of the little child and thereby committed penetrative sexual assault.

Ã, 3. The father and mother of the victim child were having a chequered history of marital discord. Due to the above strained marital relationship, and

also due to the issues with the mother-in-law, the mother of the victim child had been residing at her parental home along with the victim child, who is

her youngest daughter. The two elder sisters of the victim were living at the house of their father. While so, the victimÃ¢â€s father committed suicide

on 23.04.2024. While the victim was taken to her fatherÃ¢â€s house for the

performance of the post funeral rites, and lodged there, she is said to have disclosed to her paternal grandmother the sexual assault perpetrated upon

her by the petitioner while she was residing along with her mother. Accordingly, the matter was intimated to the District Child Protection Unit Officer

who alerted the police, leading to the registration of this crime. The statement of the victim child was recorded by a Woman Police Officer on

08.06.2024 in the presence of a Psychologist at the house of the victim's father's sister. On the basis of the above statement, the S.I of

Police, Kozhikode Cusba Police Station registered the F.I.R on 08.06.2024, and commenced the investigation. The medical examination of the victim

child revealed 0.5 cm old tear at 11 O clock position in her hymen. The Medical Officer reported that the above injury was consistent with the

history of the alleged sexual assault. The statement of the victim child, recorded by the Magistrate, also confirmed the penetrative sexual assault

perpetrated upon her by the petitioner.

4. In the present petition, the petitioner would contend that he has been falsely implicated in this case to wreak vengeance since he had supported

the victim's mother in the issues with her in-laws, and also rendered all assistance to her in getting back the custody of the victim child from her

mother-in-law and sister-in-law. According to the petitioner, he has been made a scapegoat by the mother-in-law and sister-in-law of the victim's

mother to forestall the attempts of the victim's mother to retain the custody of that child.

5. Heard the learned counsel for the petitioner, the learned Public Prosecutor representing the first respondent and the learned counsel representing

the paternal grandmother of the victim.

6. The fact that the four year old victim girl had been subjected to penetrative sexual assault, is writ large from the medical examination report. The

first information statement given by the victim child, in the presence of a Psychologist, implicate the petitioner herein as the culprit who resorted to that

wretched act of sexual violence upon a tiny tot. So also, the statement given by the victim child to the Magistrate, depicts the petitioner as the offender

who resorted to the sexual abuse upon her.

7. The learned counsel for the petitioner would contend that the victim child has been tutored by her paternal grandmother and paternal aunt to

implicate the petitioner in this crime with the evil motive of preventing that child's mother from getting custody of that child. By adverting to

various decisions of this Court, the learned counsel for the petitioner argued that there is rampant misuse of the provisions of the POCSO Act to

wreak vengeance upon innocent persons, and unless the courts concerned are cautious and vigilant against such misuse, the lives of many innocent

persons would be in peril. It is also pointed out that the non-disclosure of the alleged sexual abuse by the victim child to her mother, itself show that the

indictment against the petitioner is a story concocted by the inlaws of the victim's mother. To substantiate the above contention, the learned

counsel for the petitioner brought to my notice the complaints preferred by the victim child's mother on 14.05.2024 and 28.05.2024 to the Police,

against the act of her inlaws retaining the custody of the victim child.

8. The argument advanced by the learned counsel for the petitioner in the above regard cannot be accepted for multiple reasons. Firstly, it is to be

stated that if there was any dubious intention on the part of the paternal grandmother of the victim child to raise false accusation of sexual abuse of

that child to prevent that child's mother from getting custody of the child, she could have indicted the brother of the victim child's mother as

the culprit, since the victim child along with her mother, has been living in the same house along with that person. There is absolutely no reason to think

that the paternal grandmother and aunt of the victim child might have preferred the petitioner who resides separately in another house with his wife, as

the person who sexually abused that child, with the ulterior motive to forestall the efforts of that child's mother to get her custody. Furthermore, it

is pertinent to note that the mother of the victim child has now come forward with the allegation that she had been subjected to coercion and

misrepresentation by the counsel who represented the petitioner at the Special Court, Kozhikode, to file an affidavit to the effect that the petitioner had

been falsely implicated in this case. In the affidavit filed by the victim child's mother on 25.11.2024 before this Court, she had requested to ignore

her earlier affidavit dated 29.08.2024 which was obtained under coercion and misrepresentation, and to show no leniency to the petitioner. Thus, as

matter stands now, the contention of the petitioner about his false implication in the crime by the paternal grandmother and aunt of the victim child, to

prevent the child's mother from getting custody of the child, cannot be reconciled in view of the aforesaid factual scenario.

9. The learned Public Prosecutor, as well as the learned counsel for the grandmother of the victim child pointed out the bar contained Section 438(4)

Cr.P.C. against entertaining pre-arrest bail application in respect of offences under Section 376 AB IPC. Per contra, it is submitted by the learned

counsel for the petitioner that there is no absolute bar in invoking the powers under Section 438 Cr.P.C in a case where it would prima facie appear

that the accusations against the applicant are ex facie unsustainable. The decision rendered by a Single Judge of this Court in xxx v. State of Kerala

[2023 (5) KLT 514] has been relied on by the learned counsel for the petitioner in support of the above argument. The dictum laid down by this Court

in the above regard has got no applicability in the present case since there are prima facie materials pointing to the involvement of the petitioner in the

crime. It is not possible to accept the argument of the learned counsel for the petitioner that the victim child has been tutored to tender false

statements implicating the petitioner in a crime of this nature. Since the materials gathered by the prosecution in the instant case, prima facie point to

the involvement of the petitioner in the crime, and also since the custodial interrogation of the petitioner is indispensable for an effective and fruitful

investigation, the prayer in this petition for pre-arrest bail cannot be entertained.

In the result, the petition is hereby dismissed.