

C.D. Bobby @ Dr. Bobby Chemmanur Vs State Of Kerala

Court: High Court Of Kerala

Date of Decision: Jan. 14, 2025

Acts Referred: Constitution of India, 1950 " Article 21

Code of Criminal Procedure, 1973 " Section 41(1)(a), 41(1)(b), 41(1)(c), 41(1)(d), 41(1)(e)

Bharatiya Nagarik Suraksha Samhita, 2023 " Section 483

Bharatiya Nyaya Sanhita, " Section 75(1)(i), 75(1)(iv)

Information Technology Act, 2000 " Section 67

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

Bench: Single Bench

Advocate: B.Raman Pillai, M.R.Dhanil, Sujesh Menon V.B., Senitta P. Jojo, Vidhuna Narayanan, T.Anil Kumar, Geo Paul, Noushad K.A.

Final Decision: Allowed

Judgement

P.V.Kunhikrishnan, J

1. This Bail Application is filed under Section 483 of Bharatiya Nagarik Suraksha Sanhita.

2. Dr. Steve Maraboli, an American Motivational Speaker, said like this: "If you judge a woman by her appearance, it does not define her, it defines

you".

3. The prosecution case is that, on 07.08.2024, at the inauguration of Chemmannur International Jewellers Showroom, located at Alacode, Kannur, the

accused sexually harassed the defacto complainant, who was invited as a guest for the event. The accused adorned the defacto complainant with a

necklace in front of thousands of people and caught hold of her hand without her consent and twirled her around. The accused again turned her

around to show the back of the necklace, which was a sexual overture, submitted the de facto complainant. On the same day itself, it is stated that the

accused also made other sexually coloured remarks about the defacto complainant. The prosecution alleged that, after the said incident, the defacto

complainant refused to participate in other functions of the petitioner, for which invitation was also extended to the accused. The accused who was

disgruntled by the same, made several sexually coloured remarks about the defacto complainant on various YouTube channels and other social media

platforms and thereby harassed her sexually. Hence it is alleged that the accused committed the offences under Sections 75(1)(i) and 75(1)(iv) of the

Bharatiya Nyaya Sanhita (for short, BNS). The offence punishable under Section 67 of the Information Technology Act (for short, IT Act) is also

alleged. The petitioner was arrested on 08.01.2025 and he is in judicial custody.

4. Heard the learned Senior Counsel Sri B. Raman Pillai, assisted by Sri. M.R. Dhanil and Sri. Geo Paul, for the petitioner, and the learned Senior

Public Prosecutor Sri.K.A. Noushad.

5. The Senior Counsel submitted that even if the entire allegations are accepted, no offence is made out against the petitioner. The Senior Counsel also

submitted that the subsequent conduct of the de facto complainant after the alleged incident would show that she has no grievance against the

petitioner. The Senior Counsel also submitted that there is a long delay in filing the complaint. The Senior Counsel took me through the First

Information Statement and submitted that even if the entire allegations are accepted, the offences alleged are not attracted.

6. The Public Prosecutor seriously opposed the bail application. The Public Prosecutor submitted that if this Court grants bail to the petitioner, that will

give a wrong message to the society. The Public Prosecutor took me through the First Information Statement and submitted that the same amounts to

the offences alleged. The petitioner is continuously using double meaning words against the defacto complainant. The Public prosecutor made

available another video of the petitioner which is shown to the Senior Counsel also from the Court. In that video, the petitioner demonstrates the

defacto complainant's body structure using his hands. The Public Prosecutor submitted that the petitioner claims that he is a celebrity and he has

several followers in social media. If he is making these statements against a woman, that will attract the offences alleged.

7. This Court considered the contentions of the petitioner and the Public Prosecutor. This Court carefully perused the First Information Statement also.

Prima facie I am of the opinion that there are ingredients to attract the offences alleged against the petitioner. The petitioner is using words with

double meanings. Any Malayalee who reads the First Information Statement can easily understand that the words used by the petitioner are with

double meanings. Therefore I am of the considered opinion that prima facie, the ingredients of the offences alleged are attracted. Even though the

Senior Counsel tried to argue before me that the ingredients of the offences are not attracted, I cannot agree with him on the same.

8. Moreover, the petitioner in the bail application itself narrated his achievements in life and also his social activities in the society in detail. He is also

the owner of Chemmannur International Jewellery, which is an establishment available not only in India, but in other countries also. After narrating all

these, he says that he is a celebrity. Thereafter in Ground-I of the bail application, it is stated that nobody has a claim that the defacto complainant has

exceptional talent or has won recognition from society as an actor, singer, musician, sportswoman, or professional in any field. This Court asked the

Senior Counsel about Ground-I of the bail application and whether he is pressing that Ground. This Court also observed that the petitioner need not

take the vakkalath of the other citizens about the recognition of the defacto complainant in the society. The Senior Counsel fairly submitted that he is

not pressing Ground-I in the bail application. The Senior Counsel also submitted that the petitioner will not make any such statement on social media in

future and the same can be recorded. Accordingly, the submission of the Senior Counsel on behalf of the petitioner is recorded.

9. The next question to be decided is whether the petitioner can be released on bail. The offences alleged against the petitioner are under Sections

75(1)(i) and 75(1)(iv) of BNS. The maximum punishment that can be imposed under Section 75(1)(i) of BNS is three years or with fine or with both.

The maximum punishment that can be imposed under Section 75(1)(iv) of BNS is one year or with fine or with both. The maximum punishment that

can be imposed under Section 67 of IT Act is three years for the first offence. In *Arnesh Kumar v. State of Bihar and Another* [(2014) 8 SCC 273],

the Apex Court observed that the offences punishable with imprisonment for a term which may be less than seven years or which may extend to

seven years with or without fine, the accused cannot be arrested by the Police Officer without sufficient reasons. The relevant portion of the above

judgment is extracted hereunder:

“7.1. From a plain reading of the aforesaid provision, it is evident that a person accused of offence punishable with imprisonment for a term which may be less than

seven years or which may extend to seven years with or without fine, cannot be arrested by the police officer only on its satisfaction that such person had committed

the offence punishable as aforesaid. Police officer before arrest, in such cases has to be further satisfied that such arrest is necessary to prevent such person from

committing any further offence; or for proper investigation of the case; or to prevent the accused from causing the evidence of the offence to disappear; or tampering

with such evidence in any manner; or to prevent such person from making any inducement, threat or promise to a witness so as to dissuade him from disclosing such

facts to the Court or the police officer; or unless such accused person is arrested, his presence in the court whenever required cannot be ensured. These are the

conclusions, which one may reach based on facts.

7.2. The law mandates the police officer to state the facts and record the reasons in writing which led him to come to a conclusion covered by any of the provisions

aforsaid, while making such arrest. The law further requires the police officers to record the reasons in writing for not making the arrest.

7.3. In pith and core, the police officer before arrest must put a question to himself, why arrest? Is it really required? What purpose it will serve? What object it will

achieve? It is only after these questions are addressed and one or the other conditions as enumerated above is satisfied, the power of arrest needs to be exercised. In

fine, before arrest first the police officers should have reason to believe on the basis of information and material that the accused has committed the offence. Apart

from this, the police officer has to be satisfied further that the arrest is necessary for one or the more purposes envisaged by sub-clauses (a) to (e) of clause (1) of

Section 41 CrPC.

In the light of the above principle, I think the petitioner can be released on bail after imposing stringent conditions.

10. Before concluding, I am forced to say that body shaming is not acceptable in our society. Comments about the body of a person as too fat, too

skinny, too short, too tall, too dark, too black, etc. should be avoided. There is a sense that we are all "too something" and we are all "not

enough". This is life. Our bodies will change, our minds will change and our hearts will change. Everybody should be vigilant while making comments

about others, whether they are men or women. I leave it there.

11. Moreover, it is a well accepted principle that the bail is the rule and the jail is the exception. The Hon'ble Supreme Court in Chidambaram. P v

Directorate of Enforcement [2019 (16) SCALE 870], after considering all the earlier judgments, observed that, the basic jurisprudence relating to bail

remains the same inasmuch as the grant of bail is the rule and refusal is the exception so as to ensure that the accused has the opportunity of securing

fair trial.

12. Moreover, in Jalaluddin Khan v. Union of India [2024 KHC 6431], the Hon'ble Supreme Court observed that:

"21. Before we part with the Judgment, we must mention here that the Special Court and the High Court did not consider the material in the charge sheet

objectively. Perhaps the focus was more on the activities of PFI, and therefore, the appellant's case could not be properly appreciated. When a case is made out for a

grant of bail, the Courts should not have any hesitation in granting bail. The allegations of the prosecution may be very serious. But, the duty of the Courts is to

consider the case for grant of bail in accordance with the law. "Bail is the rule and jail is an exception" is a settled law. Even in a case like the present case where there

are stringent conditions for the grant of bail in the relevant statutes, the same rule holds good with only modification that the bail can be granted if the conditions in

the statute are satisfied. The rule also means that once a case is made out for the grant of bail, the Court cannot decline to grant bail. If the Courts start denying bail in

deserving cases, it will be a violation of the rights guaranteed under Art.21 of our Constitution. (underline supplied)

13. In *Manish Sisodia v. Directorate of Enforcement* [2024 KHC 6426], also the Hon'ble Supreme Court observed that:

“53. The Court further observed that, over a period of time, the trial courts and the High Courts have forgotten a very well - settled principle of law that bail is not

to be withheld as a punishment. From our experience, we can say that it appears that the trial courts and the High Courts attempt to play safe in matters of grant of

bail. The principle that bail is a rule and refusal is an exception is, at times, followed in breach. On account of non - grant of bail even in straight forward open and

shut cases, this Court is flooded with huge number of bail petitions thereby adding to the huge pendency. It is high time that the trial courts and the High Courts

should recognize the principle that "bail is rule and jail is exception".

14. Considering the dictum laid down in the above decisions and considering the 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/her from disclosing such

facts to the Court or to any police officer.

3. Petitioner shall not commit an offence similar to the offence of which he is accused, or suspected, of the commission of which he is suspected.

4. If any of the above conditions are violated by the petitioner, the jurisdictional Court can cancel the bail in accordance to law, even though the bail is granted by

this Court. The prosecution and the victim are at liberty to approach the jurisdictional court to cancel the bail, if there is any violation of the above conditions.