

(2022) 08 KL CK 0007

In the High Court Of Kerala

Case No : Bail Application No. 10066 Of 2021

Ani

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision : 01-08-2022

Acts Referred:

Code of Criminal Procedure, 1973 — Section 439

Indian Penal Code, 1860 — Section 376(1), 376(2)(j), 376(2)(L), 376(2)(n), 447

Citation : (2022) 08 KL CK 0007

Hon'ble Judges : Bechu Kurian Thomas, J

Bench : Single Bench

Advocate : Subhash Cyriac, S.Sreejith, Asha Jyothy, Noushad K.A.

Final Decision : Allowed

Judgement

Bechu Kurian Thomas, J

1. This is an application seeking regular bail filed under Section 439 of the Code of Criminal Procedure, 1973.
2. Petitioner is the sole accused in Crime No.1365/2021, of the Kunnicode Police Station, Kollam, alleging offences under Sections 376(1), 376(2)(j), 376(2)(L) and 376(2)(n) r/w Section 447 of the Indian Penal Code, 1860.
3. The prosecution case is that the petitioner committed rape upon the de-facto complainant, who is allegedly a mentally retarded person, after trespassing into the house of the defacto complainant and after promising to marry her. Later, when the defacto complainant became pregnant, the petitioner is alleged to have refused to marry her and thereby, committed the offences alleged against him.
4. Shri.Subhash Syriac, the learned counsel for the petitioner submitted that even though petitioner is willing to marry the victim, since the victim is no longer ready and his divorce case is only under consideration, the alleged rape under a false promise to marry is not legally and factually correct. He further submitted

that even if the entire prosecution case is assumed to be correct, still the same would only reveal a consensual relationship.

5. The learned Public Prosecutor opposed the grant of bail and submitted that the petitioner is alleged to have committed a serious offence. He further submitted that by interim order dated 10.01.2022, this Court had granted an interim bail to the petitioner. Thereafter, the investigation has been completed and final report was filed on 25.05.2022.

6. On an appreciation of the contentions raised by the learned counsel for the petitioner as well as the learned Public Prosecutor and on a perusal of the interim order of this Court dated 10.01.2022, I am satisfied that the interim order granted to the petitioner can be made absolute, especially since the final report has already been filed and custodial interrogation is no longer required.

7. Accordingly, by making the interim order dated 10.01.2022 absolute, this bail application is allowed on the following conditions:

i) The bond extended and sureties offered already shall continue until conclusion of trial.

ii) Petitioner shall participate and co-operate with the trial of the case.

iii) Petitioner shall not intimidate or threaten the victim or the witnesses in the crime.

(iv) Petitioner shall not commit other similar crimes.

(v) Petitioner shall not leave the country without obtaining permission from the jurisdictional Court.

8. In case of violation of any of the above conditions, the jurisdictional Court shall be empowered to consider the application for cancellation, if any, and pass appropriate orders in accordance with the law, notwithstanding the bail having been granted by this Court.