

(2020) 11 KL CK 0099
In the High Court Of Kerala
Case No : Bail Application No. 7665 Of 2020

Francis @ Saji Sebastin

APPELLANT

Vs

State Of Kerala And Anr

RESPONDENT

Date of Decision : 24-11-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 438
Indian Penal Code, 1860 — Section 323, 324, 354A(1)(iv), 363, 506(1)
Protection Of Children From Sexual Offences Act, 2012 — Section 11, 12
Juvenile Justice (Care And Protection Of Children) Act, 2015 — Section 75

Citation : (2020) 11 KL CK 0099

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

Bench : Single Bench

Advocate : A.C. Venugopal, Renjith. T.R.

Final Decision : Allowed

Judgement

1. This Bail Application filed under Section 438 of Criminal Procedure Code was heard through Video Conference.
2. Petitioner is the accused in Crime No.380 of 2020 of Kudiyanmala Police Station. The above case is registered against the petitioner alleging offences punishable under Sections 323, 324, 354A(1), (iv), 506(1) IPC. The offence under Section 12 r/w Section 11 of the Protection of Children from Sexual Offences Act, 2012 is also alleged. Section 75 of the Juvenile Justice (Care and Protection of Children) Act is also alleged against the petitioner.
3. The prosecution case is that the petitioner who is the father of the victim in this case physically assaulted them. Hence it is alleged that the accused committed the offences.

4. Heard the counsel for the petitioner and the learned Public Prosecutor.

5. The counsel for the petitioner submitted that the offence under Section 11 or 12 of the POCSO Act is not made out even if the entire allegations are accepted. The counsel also submitted that no offence under Section 75 of the Juvenile Justice Act is attracted in this case. The counsel submitted that there was some dispute between the petitioner and his former wife. Subsequently, the matter was settled and as per the agreement, the children are with the petitioner. Now, the former wife of the petitioner is creating problem. On one day, the children left the house and the petitioner made a complaint before the police. The police registered crime No.370/2020 of Kudiyanmala Police Station under Section 363 I.P.C. Thereafter, the present complaint is filed. The counsel submitted that this complaint is filed by the children at the instance of the former wife. The counsel submitted that the petitioner is ready to abide any conditions if this Court grant him bail.

6. The Public Prosecutor opposed the bail application. The Public Prosecutor made available the F.I statement given by the children.

7. After hearing both sides, I think, this bail application can be allowed on stringent conditions. I perused the F.I statement given by the children. In the last sentence in the F.I.statement given by the victim, it is clearly stated that there is no sexual harassment from the petitioner. The other offences alleged against the petitioner are all bailable offences. Considering the entire facts and circumstances of the case, I think this bail application can be allowed on stringent conditions.

8. Moreover, considering the need to follow social distancing norms inside prisons so as to avert the spread of the novel Corona Virus Pandemic, the Hon'ble Supreme Court in Re: Contagion of COVID-19 Virus In Prisons case (Suo Motu Writ Petition(C) No.1 of 2020) and a Full Bench of this Court in W.P(C)No.9400 of 2020 issued various salutary directions for minimizing the number of inmates inside prisons.

9. 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.

10. Considering the dictum laid down in the above decision and considering the facts and circumstances of this case, this Bail Application is allowed

with the following directions:

1. The petitioner shall appear before the Investigating Officer within ten days from today and shall undergo interrogation.

2. After interrogation, if the Investigating Officer propose to arrest the petitioner, he shall be released on bail executing a bond for a sum of

Rs.50,000/-(Rupees Fifty Thousand only) with two solvent sureties each for the like sum to the satisfaction of the officer concerned.

3. 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 from disclosing such facts to the Court or to any police officer.

4. Petitioner shall not leave India without permission of the Court.

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

6. The petitioner shall strictly abide by the various guidelines issued by the State Government and Central Government with respect to keeping of

social distancing in the wake of Covid 19 pandemic.

7. 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.