
(2022) 06 KL CK 0083
In the High Court Of Kerala
Case No : Bail Application No. 4081 Of 2022

Joshy K.J

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision : 08-06-2022

Acts Referred:

Code of Criminal Procedure, 1973 — Section 439
Indian Penal Code, 1860 — Section 354B, 376, 506(ii)
Protection of Children from Sexual Offences Act, 2012 — Section 3(b), 4, 7, 8, 19(1)

Citation : (2022) 06 KL CK 0083

Hon'ble Judges : Bechu Kurian Thomas, J

Bench : Single Bench

Advocate : Francis Assisi, T.D.Robin, Ajeesh S.Brite, M.K Pushpalatha

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 1st accused in Crime No.292/2021 of Crime Branch, Ernakulam alleging offences under Sections 376, 354(B), 506(ii) of the Indian Penal Code, 1860 and Sections 3(b), 4, 7, 8 & 19(1) of Protection of Children from Sexual Offences Act, 2012.

3. Prosecution allegation is that on 20.07.2019, with intent to sexually abuse the victim, petitioner took the victim to a treatment room in the 1st floor of the building, rented by the 2nd accused, and laid her on a treatment bed and under the guise of teaching the methods of treatment, placed objects of sexual arousal on the genitals of the victim after disrobing her trousers and undergarments and thereby committed the offence, as alleged.

4. Sri.T.D.Robin, the learned counsel for the petitioner contended that petitioner was arrested on 24.10.2021 and has been in custody since then. According to

the learned counsel, petitioner has been in custody without being enlarged on bail, merely because the case against the 2nd accused assumed notoriety. As a result, petitioner has been in custody for the last more than 225 days. The learned counsel further pointed out that the trial of the case is about to begin on 15.06.2022 and that the petitioner will not be able to build an effective defence without proper consideration with the counsel.

5. Smt.M.K.Pushpalatha, the learned Public Prosecutor vehemently opposed the grant of bail and submitted that if the petitioner is enlarged on bail, he may not appear to face the trial and further, there is every possibility of him intimidating and interfering with the victim as well as the witnesses, causing prejudice to the prosecution. It was also submitted that the petitioner is highly influential and that the trial of the case is about to start since summons have been issued to CW1 to give evidence on 16.06.2022.

6. I have considered the rival contentions.

7. On an appreciation of the circumstances arising, I notice that the petitioner was only a driver of the 2nd accused. Petitioner had admittedly been in custody from 24.10.2021 onwards. The allegation against the

petitioner is no doubt serious in nature and though the contention of inability of effective consultation with the defence counsel is not a valid ground to claim enlargement on bail, I am of the opinion that the continued detention of the petitioner is not required. The alleged possibility of influencing the victim can be protected by imposing sufficient safeguards.

8. Taking into reckoning the various circumstances, I am inclined to allow this application for bail on the following conditions :-

(a) The petitioner shall be released on bail on his executing a bond for Rs.1,00,000/- (Rupees One lakh only) with two solvent sureties each for the like sum to the satisfaction of the court having jurisdiction.

(b) The petitioner shall co-operate with the trial of the case.

(c) The petitioner shall not intimidate, threaten or attempt to influence the witnesses; nor shall he attempt to tamper with the evidence.

(d) The petitioner shall not contact or even attempt to contact the defacto complainant or her family members by any method whatsoever.

(e) The petitioner shall report before the Investigating Officer on every Saturday between 9.00 a.m. and 12.00 p.m.

(f) Though there is a confusion on the date of commencement of trial, (whether it is 15.06.2022 or 16.06.2022), the petitioner shall appear before the trial court on all days of the trial without fail.

(g) The petitioner shall not commit any similar offence while he is on bail.

(h) The petitioner shall not leave the Country without the permission of the jurisdictional Court.

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.

The bail application is allowed as above.