
(2022) 07 KL CK 0129
In the High Court Of Kerala
Case No : Bail Application No. 4803 Of 2022

Monson

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision : 14-07-2022

Acts Referred:

Code of Criminal Procedure, 1973 — Section 439

Indian Penal Code, 1860 — Section 312, 376, 376(2)(n), 376(2)(k), 420, 506(i)

Citation : (2022) 07 KL CK 0129

Hon'ble Judges : Bechu Kurian Thomas, J

Bench : Single Bench

Advocate : Renjith B.Marar, Lakshmi.N.Kaimal, Arun Poomulli, Aiswarya Thankachan, Meera Joppan, Grashious Kuriakose

Final Decision : Dismissed

Judgement

Bechu Kurian Thomas, J

1. This is an application for regular bail filed under Section 439 of the Code of Criminal Procedure, 1973.

2. Petitioner is the sole accused in Crime No.296/CB/EKM/II/21 of Crime Branch Central Unit-II, Ernakulam. The offences alleged against the petitioner are under sections 312, 420, 376(2)(n), 376(2)(k), and 506(i) of the Indian Penal Code, 1860.

3. The gravamen of the prosecution case is that accused raped the survivor during the period from 01.04.2018 till 30.06.2019 repeatedly, while she was working as a staff of the accused and forced her to undergo miscarriage and thereby committed the offences alleged against him.

4. Sri.Renjith B.Marar, learned counsel for the petitioner contended that the petitioner has been in custody since 06.11.2021. According to the learned counsel, even if the entire allegations are assumed to be correct, still, an offence under section 376 is not made out. According to the learned counsel, the

survivor being admittedly a married woman with children had only engaged in a consensual sexual relationship and therefore the offence of rape cannot survive as against the petitioner. In any event, the learned counsel contended that, the continued detention of the petitioner is not required and that the petitioner is willing to abide by any condition that may be imposed by this Court.

5. Sri. Grashious Kuriakose, learned Additional Director General of Prosecution opposed the bail and submitted that considering the peculiar nature of the case and the enormous influence that the petitioner could wield over the gullible witnesses, the petitioner ought not to be granted bail. It was stated that the petitioner had manipulated the survivor into falling prey to his lust by offering her a post as Human Resources Manager in a proposed Medical University to be started by him and as a prelude appointed her as a nurse of his treatment centre. Thereafter, petitioner called the survivor to his bedroom for a massage and raped her under the threat of an NDPS case to be registered against her using his influence. Later, under the guise of a video of the above rape, he continued to rape her and when the survivor became pregnant, forced her to abort the pregnancy. It was also submitted that with the high influence that the petitioner wields over officials and persons in power, there is every chance that he may intimidate the witnesses which shall prejudice an effective trial.

6. I have considered the rival contentions.

7. The petitioner is admittedly involved in various crimes including three cases of rape. The trial of one case under section 376 IPC coupled with the offence under the POCSO Act for having raped a minor, has already commenced. The witnesses, in this case, include the employees of the petitioner. Due to the clout of influence wielded by the petitioner, there is every possibility that he may interfere with the witnesses and therefore, I find force in the contention of the learned Additional Director General of Prosecution that the prosecution case could be prejudiced if the petitioner is released on bail.

8. The Supreme Court had observed in *State of U.P., through CBI v. Amarmani Tripathi*, [(2005) 8 SCC 21] that "it is well settled that the matters to be considered in an application for bail are (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) nature and gravity of the charge; (iii) severity of the punishment in the event of conviction; (iv) danger of accused absconding or fleeing if released on bail; (v) character, behaviour, means, position and standing of the accused; (vi) likelihood of the offence being repeated; (vii) reasonable apprehension of the witnesses being tampered with; and (viii) danger of justice being thwarted by grant of bail."

9. It has also been held in a recent decision in *Ms Y v. State of Rajasthan and Anr*, Order in Criminal Appeal No.649 of 2022 @ SLP (Crl.) No. 7893 of 2021 dated 19th April 2022 that "the grant of bail requires the consideration of various factors which ultimately depends upon the specific facts and circumstances of the case before the Court. There is no strait jacket formula which can ever be

prescribed as to what the relevant factors could be. However, certain important factors that are always considered, inter alia, relate to prima facie involvement of the accused, nature and gravity of the charge, severity of the punishment, and the character, position and standing of the accused.”

10. Having due regard to the gravity of the offences alleged against the petitioner and the circumstances that are peculiar to the accused, which include the clout of influence and the dominating position held by the petitioner over the survivor and the witnesses, apart from the possibility of evidence being tampered with, I find that this is not a fit case where the petitioner can be released on bail.

11. Even the criminal antecedents of the petitioner also stare against him while considering the grant of bail. Several cases are alleged to have been committed by the petitioner and therefore such antecedents cannot be ignored while considering the grant of bail to the petitioner.

On an appreciation of the above factors, I find no merit in this bail application and hence the same is dismissed.