

(2008) 08 KL CK 0003
In the High Court Of Kerala
Case No : Bail Appn. No. 5057 of 2008

Santosh Madhavan alias Amrutha Chaithanya	APPELLANT
Vs	
Circle Inspector of Police Central Police Station and Another	RESPONDENT

Date of Decision : 18-08-2008

Acts Referred:

Penal Code, 1860 (IPC) — Section 34, 342, 366A, 376

Citation : (2008) CriLJ 4254

Hon'ble Judges : K. Hema, J

Bench : Single Bench

Advocate : S. Gopakumaran Nair and Pradeesh Chacko, for the Appellant; P.G. Thampi, Director General of Prosecution and C.K. Suresh, Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

K. Hema, J.—This is the second application for bail filed by petitioner.

2. The alleged offences are under Sections 342, 366-A, 376 and 34 of Indian Penal Code. The petitioner is the first accused in the crime. The 2nd accused is his driver. According to prosecution, second accused allegedly procured the victim aged about 14 years and brought her to petitioner's residential flat, knowing that she would be subjected to sexual intercourse by petitioner. From there, petitioner allegedly committed rape on her. This was repeated on other days also. She gave a statement to the police after the accused was arrested and a crime was registered against the accused.

3. The petitioner was taken into custody on 13-5-2008 by the police, and he was remanded to judicial custody. Learned Counsel for the petitioner submitted that the petitioner has undergone detention for a period of more than 90 days now and investigation is, admittedly, over and charge sheet is also filed. Therefore, petitioner's detention is not required for the purpose of investigation. It is also submitted that except in the four rape cases registered against him, he is on bail

in all other cases.

4. The petitioner undertakes that he will not influence any witness or victim; he is prepared to abide by any condition if he is released on bail; he is prepared to take a house near the police station and be on police surveillance, and if so ordered, he is even prepared to stay outside Kerala State, it is submitted. He is prepared even to remain in his house without any contact with the outside world, in the company of wife alone. For that purpose, he is willing to discontinue use of telephone also. He will not tamper with evidence or intimidate or influence witnesses, as alleged by the prosecution, it is submitted.

5. This petition is opposed. Learned Director General of Prosecution submitted that petitioner is involved in three more rape cases and also various other type of crimes and he is highly influential. He was posing himself as a "God man" and under that pretext, he was exploiting financially poor girls, including minors sexually. If the petitioner is released on bail, it is likely that victims and witnesses will be influenced by the petitioner and hence he may not be released on bail till the trial is over. According to him, it is not advisable to release him on bail, even on conditions.

6. Heard both sides and perused the case diary. For taking a decision in this case, it is necessary to look into the facts, as revealed from the case diary. The case diary shows that the victim was aged only 14 years at the time of offence. She belongs to a financially poor family, and when she failed in the VIII standard, she found no way to pursue her studies because of the poor financial state of her family. It was at this juncture that she knew about the institution run by petitioner in the name, "House of Kids", which accommodated financially poor children and helped them to continue studies. She thus, joined as an inmate of "House of Kids" to pursue her studies and she was afforded all facilities, including food, clothes, books, boarding and educational expenses.

7. During the stay, petitioner could create a false impression in the mind of people who were associated with him, (including the parents of the children who admitted the children in "House of Kids") that petitioner had divine powers and that he is engaged in charitable work. They, accordingly, treated him with utmost respect and he was referred to as "swamy" (meaning, sanyasi) and he soon took over the position of the guardian of the children who were boarded in the "House of Kids". The parents and the children were brought under his beck and call.

8. So, whenever second accused approached them stating that "swamy" wanted to meet the children, the parents readily permitted the children to accompany him to petitioner's residential flat. They seldom knew that the young girls were procured for venting the lust of the petitioner, who disguised himself to be a holy man. The petitioner thus, exploited the faith and confidence which the people reposed in him.

9. At the petitioner's residence, the child was raped and the sexual union was videographed by petitioner. (The video cassette was seized during investigation,

pursuant to a disclosure statement given by petitioner from his bank). The victim was threatened that he would expose her if she ever dared to divulge the incident to any body. The same episode was repeated five to six times. Once when second accused came to take the child to petitioner, her mother wanted to accompany her but, she was cleverly avoided by second accused.

10. The complaint was lodged much later, after about two years of the incident. According to the victim who lodged the complaint, she was afraid of the petitioner, since he is quite rich and influential and hence did not dare to make any complaint against him. But, when she heard about petitioner's arrest, she gained courage to give the complaint. The fact that petitioner is influential cannot be disputed.

11. It was disclosed at the time of arguments that other series of crimes were also registered against petitioner and those are under investigation also. All these crimes were brought to light only after a complaint was filed by a non-resident Indian lady in 2003, alleging that she was cheated to the tune of Rs. 40 lakhs by petitioner. Though attempts were made ever since 2003, for a span of long five years, he could not be arrested till May 2008. The petitioner was freely moving around in and outside this city of Kochi and he was also involved in real-estate business involving crores of rupees and he was available at various places. Still, petitioner who was a "wanted criminal" for whom intensive search was made by Interpol could not lay its hands on petitioner for five years. Evidently, all these must have been possible only because of petitioner's strong influence.

12. It is true that petitioner is in custody for the past more than 90 days. It is equally true that his further detention may not be required in this case for purpose of investigation since it is already over. His liberty is certainly a matter of grave concern for this Court because it can be denied only in accordance with law. But, the need to ensure a fair trial in a case is also an equal responsibility of the criminal justice system. In the light of the strong influence which he may be able to exert on the victims and the witnesses, it is doubtful whether it may be possible to have a fair trial if petitioner is released on bail.

13. To have a fair trial is an assurance which the criminal justice system gives not only to the accused, but to the victim also. A fair trial does not mean a trial which is fair to one side alone. It must take care of the interest of both sides, the victim as well as the accused. It has certainly, a promise to fulfil to the victims who also look forward to have a fair trial and delivery of justice, after such a trial. If a powerful and influential person is set at large and the freedom given to him is likely to be a threat to a fair trial in any manner, I am view that the court may curtail such freedom till the trial is over, by refusing bail. According to me, this may be essential for a fruitful delivery of Justice after a trial which is fair and untainted by external interference.

14. It is not some thing new or unknown to this system that witnesses change their version during trial and on many occasions, it is alleged that this happened

because of the strong influence of the accused on the victims or the threat on them. We have before us, the best example in Best Bakery case and the like. There are many others in the series. There were at least a few sex racket cases in this State itself, where voice was raised by public that either the victim was influenced or threatened or done away with, directly or indirectly by the accused.

15. The allegation raised in such cases is that victim was forced to change version under threat or influence of the accused and ultimately the result is, the accused escape. But, the victim of rape continues to suffer the shame or the scorn of the society and the scar remain permanent in her whole life. Added to this, the credibility of the victim and the woman as a whole, eventually remains a big question mark before this system and the society. This can be prevented if the court intervenes at the appropriate context. The curtailment of liberty of the accused (who are strong and influential, and are likely to influence or threaten the victim or witnesses and thereby, be a threat to a fair trial), in my view, may curb the evil to a certain extent and ensure a fair trial.

16. To be a victim of rape is not a happy event for any child or woman. Thereafter, to be under pressure of the rich and the influential is also not still happier. Once she gets into the trap of the accused, after the crime is committed, the ridicule which she may be subjected to, during trial and thereafter, is yet another painful event. A victim may change her stand from time to time, being a puppet in the hands of the influential, and the court may ultimately label her as an incredible witness or a liar or as one who is not worthy of any credence. This certificate is issued to a victim of rape by the court, which takes great effort in justice delivery and in many cases who is hit is a vulnerable minor child. She becomes a victim of not only the rape, but to the subsequent influence or threat at the hands of those who have already harmed her. The court shall not allow itself to be a convenient tool in the hands of such people. The court has a duty to ensure fair trial by all means and at all cost, even if that be at the cost of the accused's liberty.

17. For all these reasons, I find that it may not be proper to release petitioner on bail because it may end up in drastic results. It may give petitioner an opportunity to win over the victim or witnesses and, the vulnerable position in which they are placed, the poor financial condition, gender or social set up etc. are likely to be exploited. It is the duty of the court to prevent any such possible influence or threat on the victims or the witnesses who will be forced to change their version. In my view, it may not be an excess if the court refuses bail to the accused to prevent another injustice. If the accused has to remain in jail till trial is over, and thereby if the right of the victim can be protected and a fair trial be ensured, which is the concern of the criminal justice system, I am of view that it must be done in the larger public interest. Otherwise, if the accused is released on bail and the victim is forced to give evidence contrary to truth and against her will, what is the point in conducting a "farce" of a criminal trial in Court?

18. It is true that several conditions were suggested by learned Counsel for petitioner which may, according to him, take care of the apprehension of the victim. But, in my view, there is a vast difference when the accused is in jail/judicial custody and he is out of it. It has to be borne in mind that the victim did not dare to speak anything against petitioner until he was taken into custody. It may be possible that a victim may ignore any threat or influence indirectly exerted on her, if the accused remains in jail. True, learned Director General of Prosecution conceded that the victim did not mention that there was any threat or influence from petitioner after the registration of the crime, at the time of subsequent questioning. But, it is not clear whether the victim was questioned by the investigating officer to ascertain whether there was any such threat or not. The absence of influence or threat is a negative fact which a person may not voluntarily disclose, unless he or she is specifically asked about it.

19. After considering various facts and circumstances, I find that release of petitioner on bail will not be conducive in the larger public interest and to ensure a fair trial.

20. Hence, the prayer for bail is to be rejected and I do so.

21. However, learned Magistrate concerned is directed to take all steps as expeditiously as possible to ensure the committal of the case.

22. The Sessions Court shall also ensure speedy disposal of the case without any delay.

23. Petition is dismissed.