

(2024) 04 KL CK 0075

In the High Court Of Kerala

Case No : Bail Application No.2546, 2873 Of 2024

Vipindas

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision : 08-04-2024

Acts Referred:

Constitution of India, 1950 — Article 21
Code of Criminal Procedure, 1973 — Section 439
Indian Penal Code, 1860 — Section 34, 370
Immoral Traffic and Prevention Act, 1956 — Section 5(1)(a), 6, 7

Citation : (2024) 04 KL CK 0075

Hon'ble Judges : C.S.Dias, J

Bench : Single Bench

Advocate : Franklin Arackal, I.J.Augustine, Neema T V

Final Decision : Allowed

Judgement

C.S.Dias, J

1. The applications are filed under Section 439 of the Code of Criminal Procedure, 1973, by the accused 1 to 4 and 5 to 8 in Crime No.373/2024 of the Ernakulam North Police Station, Ernakulam, registered against the accused (ten in number) for allegedly committing the offences punishable under Sections 370 r/w Section 34 of the Indian Penal Code (in short, 'IPC') and Sections 5(1)(a), 6 and 7 of the Immoral Traffic and Prevention Act, 1956. The petitioners were arrested on 02.03.2024.

2. B.A.No.2873/2024 is filed by the accused 1 to 4 and B.A.No.2546 of 2024 is filed by the accused 5 to 8. Since the cases arise out of the same crime, they are consolidated, jointly heard and are being disposed of by this common order.

3. The essence of the prosecution case is that: the accused, in furtherance of their common intention, conducted a brothel in a three storied building at Kaloore, Ernakulam by enticing and bringing women for sexual exploitation. They offered

the women to different customers for financial gain. Thus, the accused have committed the above offences.

4. Heard; Sri.Franklin Arackal A.R., learned counsel appearing for the petitioners and Smt.Neema T.V. and Smt. Seetha S., the learned Public Prosecutors.

5. The learned counsel for the petitioners submitted that the petitioners are totally innocent of the accusations leveled against them. They have been falsely implicated in the crime. The offences alleged against the petitioners will not be attracted. In any given case, the petitioners have been in judicial custody since 02.03.2024, which is 39 days, the investigation in the case is practically complete and recovery has been effected. Therefore, the petitioners' further detention is unnecessary. Hence, the petitioners may be released on bail.

6. The learned Public Prosecutors seriously opposed the application. They submitted that the investigation in the case is in progress. If the petitioners are released on bail, there is every likelihood of them interfering with the investigation and tampering with the evidence. Hence, the applications may be dismissed.

7. The prosecution allegation against the petitioners is that, they in furtherance of their common intention had conducted a brothel and had brought women for sexual exploitation and made financial gain.

8. In Sanjay Chandra v. CBI, [2012 1 SCC 40], the Honourable Supreme Court has categorically held that the fundamental postulate of criminal jurisprudence is the presumption of innocence until a person is found guilty. Any imprisonment prior to conviction is to be considered as punitive and it would be improper on the part of the Court to refuse bail solely on the ground of former conduct.

9. In Dataram Singh v. State of U.P., [(2018) 3 SCC 22] the Honourable Supreme Court observed that grant of bail is a rule and putting a person in jail is an exception. Even though the grant of bail is entirely the discretion of the court, it has to be evaluated based on the facts and circumstances of each case and the discretion has to be exercised in a judicious and compassionate manner.

10. In State of Kerala v. Raneef, [(2011) 1 SCC 784], the Honourable Supreme Court has declared that undertrial prisoners detained in jail for indefinite periods, without any sufficient reason or due to the delay in concluding the trial, will tantamount to infringement of their right to life guaranteed under Article 21 of the Constitution.

11. On an anxious consideration of the facts, rival submissions made across the Bar, and the materials placed on record, and especially on comprehending the fact that the petitioners have been in judicial custody for the last 39 days, that the investigation in the case is complete and the petitioners are persons without criminal antecedents, I am of the view that the petitioners' further detention is unnecessary. Hence, I am inclined to allow the bail application.

In the result, the application is allowed, by directing the petitioners to be released on bail on them executing a bond for Rs.50,000/- (Rupees Fifty Thousand only) with two solvent sureties each for the like sum, to the satisfaction of the court having jurisdiction, which shall be subject to the following conditions:

- i. The petitioners shall appear before the Investigating Officer on every Saturday between 9 a.m. and 11 a.m till the final report is laid. They shall also appear before the Investigating Officer as and when required;
- ii. The petitioners shall not directly or indirectly make any inducement, threat or procure to any person acquainted with the facts of the case so as to dissuade them from disclosing such facts to the court or to any Police Officer or tamper with the evidence in any manner, whatsoever;
- iii. The petitioners shall not commit any offence while they are on bail;
- iv. The petitioners shall surrender their passports, if any, before the court below at the time of execution of the bonds. If they have no passports, they shall file affidavits to the effect before the court below on the date of execution of the bonds;
- v. In case of violation of any of the conditions mentioned above, the jurisdictional court shall be empowered to consider the application for cancellation of bail, if any filed, and pass orders on the same, in accordance with law.
- vi. Applications for deletion/modification of the bail conditions shall be moved and entertained by the court below.
- vii. Needless to mention, it would be well within the powers of the Investigating Officer to investigate the matter and, if necessary, to effect recoveries on the information, if any, given by the petitioners even while the petitioners are on bail as laid down by the Hon'ble Supreme Court in *Sushila Aggarwal v. State (NCT of Delhi)* and another [2020 (1) KHC 663].