

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

TUESDAY, THE 5TH DAY OF MAY 2015/15TH VAISAKHA, 1937

Bail Appl..No. 2436 of 2015 ()

AGAINST THE ORDER IN CRL.MP 762/2015 of ADDL.DISTRICT & SESSIONS COURT
(ATROCITIES & SEXUAL VIOLENCE AGAINST WOMEN & CHILDREN)
CRIME NO. 327/2015 OF MULANTHURUTHY POLICE STATION, ERNAKULAM

PETITIONER/ACCUSED:

MIRZA, AGED 18 YEARS,
S/O. MUHAMMED HAFEEZ,
AMBALATHU VEETILPANDARATHU VEEDU, CHETTUVA ROAD
CHAVAKAD.

BY ADVS.SRI.BABU KARUKAPADATH
SMT.M.A.VAHEEDA BABU
SRI.K.A.NOUSHAD
SRI.P.U.VINOD KUMAR
SRI.KANDAMPULLY RAHUL
SRI.MITHUN BABY JOHN
SRI.J.RAMKUMAR

RESPONDENT/COMPLAINANT:

STATION HOUSE OFFICER,
MULANTHURUTHY POLICE STATION,
MULANTHURUTHY REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA

BY PUBLIC PROSECUTOR SRI. GITHESH

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON
05-05-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K. RAMAKRISHNAN, J.

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B.ANo.2436 of 2015
.....

Dated this the 5th day of May, 2015.

O R D E R

The accused in Crime No.327/2015 of Mulanthuruthy police station has filed this application for regular bail under section 439 of the Code of Criminal Procedure.

2. The case of the prosecution in nutshell was that on 27.3.2015, the petitioner called the victim girl, who is aged only 16 years, to his house at Chavakkad and on 28.3.2015 they went to Bangalore and stayed in a lodge from where the petitioner, who is aged only 18 years, attempted to commit sexual intercourse with her and thereby he had committed the offences punishable under sections 366 A and 376 of the Indian Penal Code and sections 5 and 6 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as the POCSO Act for short).

3. Heard the learned counsel for the petitioner, Smt. Vaheeda Babu and the learned Public Prosecutor, Sri. Githesh and perused the report of the investigating officer.

4. The counsel for the petitioner submitted that even going by the allegations, no offence under section 376 of the

Indian Penal Code is attracted. The petitioner is aged 18 years. They were in love and they left the house on their own will. No offence has been committed. He is in jail from 2.4.2015 onwards.

5. The application was opposed by the Public Prosecutor on the ground that investigation is not over.

6. The case was registered on the basis of the statement given by the mother of the victim girl originally for the offences under sections 366 A of the Indian Penal Code and sections 7 and 8 of the POCSO Act. Later it was revealed that offence under section 376 of the Indian Penal Code and sections 5 and 6 of the POCSO Act were committed and sections 7 and 8 of the POCSO Act were deleted and the above section was incorporated. The petitioner was arrested on 2.4.2015. He is in jail from that day onwards. I am not at this stage going into the question as to whether allegations are sufficient to attract the offence under section 376 of the Indian Penal Code or not. Investigation of the case is almost over. Considering the age of the petitioner and also the period of pretrial detention and stage of the investigation, this Court feels that bail can be granted to the petitioner with some stringent conditions. So

the application is allowed with the following conditions.

i. The petitioner shall be released on bail on executing a bond for Rs.50,000/- with two solvent sureties for the like sum each to the satisfaction of the Judicial First Class Magistrate Court concerned/the Special Court for trying cases of Atrocities and Sexual Violence against Women and Children, Ernakulam.

ii. The petitioner shall appear before the investigating officer the last Saturday of every month between 9 a.m and 10 a.m till the final report is filed.

iii. The petitioner shall appear before the investigating officer for the purpose of interrogation in connection with the above crime as and when required in writing to do so till the final report is filed.

iv. The petitioner shall not enter the jurisdiction of Mulanthuruthy police station except for the purpose of complying conditions 2 and 3 without getting prior permission from the Judicial First Magistrate Court concerned/the Special Court for trying cases of Atrocities and Sexual Violence against Women and Children, Ernakulam till the disposal of the case.

v. The petitioner shall surrender his passport, if any, before

the Special Court, Ernakulam within one week from the date of release or if he is not having any passport, file an affidavit to that effect before that court within that time.

vi. The petitioner shall not intimidate or influence or communicate with the victim girl in any form till the disposal of the case.

vii. The petitioner shall not leave State of Kerala without getting prior permission from the concerned Magistrate/the Special Court for trying cases of Atrocities and Sexual Violence against Women and Children, Ernakulam as the case may be till the disposal of the case.

With the above conditions, this application is allowed.

Sd/-
K. RAMAKRISHNAN, JUDGE.

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/true copy/

P.S to Judge

