

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.HARIPRASAD

MONDAY, THE 14TH DAY OF DECEMBER 2015/23RD AGRAHAYANA, 1937

Bail Appl..No. 7720 of 2015

CRIME NO. 1369/2015 OF E T SOUTH POLICE STATION, KOCHI CITY.
.....

PETITIONER(S)/ACCUSED:

1. SUMESH KARUNAKARAN, AGED 50 YEARS,
S/O.N.K.KARUNAKARAN, RESIDING AT SOPANAM,
THATTEKKAD ROAD, NETTUR P.O., ERNAKULAM.
2. SANOOD KUMAR ALIAS, AGED 30 YEARS,
S/O.V.V.ALIAS, ANJANAVELIL,
TIRUVANIYOOR P.O.KOCHI - 682 308, ERNAKULAM.

BY SRI.S.SREEKUMAR (SENIOR ADVOCATE)
ADVS.SRI.M.R.HARIRAJ
SRI.P.MARTIN JOSE
SRI.P.A.KUMARAN
SMT.VINEETHA B.

RESPONDENT(S)/STATE & COMPLAINANT:

1. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.
2. THE SUB INSPECTOR OF POLICE,
ET SOUTH POLICE STATION, KOCHI CITY.

BY PUBLIC PROSECUTOR SMT.R.REMA

**THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION
ON 14-12-2015, ALONG WITH BA. 7766/2015, THE COURT ON
THE SAME DAY PASSED THE FOLLOWING:**

mbr/

A. HARIPRASAD, J.

Bail Appl. Nos.7720 & 7766 of 2015

Dated this the 14th day of December 2015

O R D E R

Bail applications filed under Sec.439 and 438 Cr.P.C. respectively.

2. Accused nos.1 and 2 in Crime No.1369 of 2015 of the Ernakulam Town South Police station are the petitioners in B.A. No.7720 of 2015 and the 3rd accused in the same crime is the petitioner in B.A. No.7766 of 2015.

3. Heard the learned Senior Counsel appearing for petitioners and the learned Public Prosecutor.

4. Prosecution case in short is that the 1st accused was having an illicit relationship with the 3rd accused. Accused nos.1 and 2, from June 2015 to 18.11.2015 on various dates sexually assaulted the minor daughter of the 3rd accused from the house of the 3rd accused itself. The offence was committed on the minor girl with the knowledge and consent of her mother, namely the 3rd accused.

5. Learned Senior Counsel for the petitioners

submitted that, going by the allegations raised by the prosecution, it cannot be said that the accused persons did any act with a sexual intend. The child has stated that pain was caused to her private parts and she was beaten up. Therefore, it is contended that the definition of sexual assault in Sec.7 of the Prevention of Children from Sexual Offences Act, 2012 cannot be attracted in this case.

6. Learned Public Prosecutor opposed the bail applications. It is submitted that statement of the victim recorded under Sec.164 Cr.P.C. clearly revealed the act committed by accused nos.1 and 2. It is also submitted that the 3rd accused is a party consenting to the said acts committed by accused nos.1 and 2. It is a common case that the 3rd accused is living estrange from her husband.

7. Learned Senior Counsel submitted that the girl's father who is living separately from the 3rd accused is responsible for this false case.

8. Considering the materials in the case diary, the fact that accused nos.1 and 2 are in custody from 20.11.2015 and also that statement of the victim under

Sec.164 Cr.P.C. has already been recorded, bail is granted to accused nos.1 and 2 with following conditions.

i. Accused nos.1 and 2 shall be released on bail on their executing a bond for Rs.50,000/- (Rupees fifty thousand only) each with two solvent sureties each for the like sum to the satisfaction of the learned Magistrate having jurisdiction.

ii. The sureties shall be the persons permanently residing in the State of Kerala and shall produce documents to establish their identity and solvency.

iii. The lower Court need not insist on solvency certificate. Other documents revealing the solvency of the sureties can also be relied on.

iv. Accused nos.1 and 2 shall appear before the Investigating Officer for interrogation on all Saturdays between 10.00 a.m. and 11.00 a.m. until final report is filed.

v. Accused nos.1 and 2 shall not intimidate or attempt to influence the witnesses, nor shall they tamper with the evidence.

vi. Accused nos.1 and 2 shall not involve in any other offence during the period of bail.

In case of violation of any of the above conditions, the learned Magistrate is empowered to cancel the bail in accordance with law without referring the matter to this Court.

9. As far the 3rd accused is concerned bail application is disposed of as follows.

The 3rd accused shall surrender before the Investigating Officer within a period of two weeks from today and submit herself for interrogation. After questioning, the Investigating Officer shall produce her before the learned Magistrate having jurisdiction on the date of surrender itself. Thereafter, the 3rd accused is

free to move for bail before the learned Magistrate and in that event, the learned Magistrate may consider the application on merits if possible on the date of surrender itself. If the 3rd accused does not surrender before the investigating officer as directed, the investigating officer is free to arrest her after the stipulated period.

Sd/-
A. HARIPRASAD
JUDGE

/ True Copy /

NS/14/12/2015

P.A. To Judge