2024:KER:59706

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MR.JUSTICE C.S.DIAS
WEDNESDAY, THE 7TH DAY OF AUGUST 2024 / 16TH SRAVANA, 1946
BAIL APPL. NO. 5440 OF 2024
CRIME NO.830/2024 OF Kunnamkulam Police Station, Thrissur
AGAINST THE ORDER/JUDGMENT DATED IN CRMP NO.4234 OF 2024 OF ASSISTANT SESSIONS COURT/I ADDITIONAL SUB COURT, THRISSUR

PETITIONER/S:

SHAFFI,
AGED 45 YEARS
S/O SULAIMAN,ADHOORVALAPPIL VEEDU,
PORKKULAM,THRISSUR DISTRICT, PIN - 680542

BY ADV M.R.SASITH

RESPONDENT/S:

STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,HIGH COURT OF KERALA, PIN – 682031

SR.PP.SRI.C.S.HRITHWIK

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 07.08.2024, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

2024:KER:59706

C.S.DIAS,J

Bail Application No.5440 of 2024

Dated this the 7th day of August, 2024

ORDER

The application is filed under Sec.439 of the Code of Criminal Procedure, 1973, by the sole accused in Crime No.830/2024 of the Kunnamkulam Police Station, Thrissur, which is registered against him, for allegedly committing the offences punishable under Sections 354(A)(1)(iii) and 509 of the Indian Penal Code (in short, 'IPC') and Section 10 r/w Section 9(l), 9(n), 9(p), 12 r/w Sections 11(i) and 11(iii) of the Protection of Children from Sexual Offences Act (in short, POCSO Act). The petitioner was arrested and remanded to judicial custody on 06.06.2024.

2. The crux of the prosecution case is that: on 27.05.2024, at around 2:00 hours, the accused, who is the father of the victim, a 17 year old girl, had placed his hands on her genitals and he exhibited his private parts and made her watch pornographic videos on his mobile

phone. Then, the accused insulted the victim in front of their neighbors saying that she is a bad girl. On an earlier occasion also, the accused had touched the victim on her private area. Thus, the accused has committed the above offences.

3. Heard; Sri.Sasith M.R., the learned counsel appearing for the petitioner and Sri.C.S.Hrithwik, the learned Public Prosecutor.

4. The learned counsel for the petitioner submitted that the petitioner is totally innocent of the accusations leveled against him. The petitioner has been falsely implicated in the crime, at the instance of his wife, who is on inimical terms towards him. The petitioner is a person without any criminal antecedents. In any given case, the petitioner has been in judicial custody for the last more than 62 days, the investigation in the case is complete and the final report has not been laid. Since all the offences alleged against the petitioner are punishable for a period upto ten years, the petitioner is entitled to be enlarged on statutory bail. Hence, the

application may be allowed.

5. The learned Public Prosecutor opposed the application. He submitted that the investigation is in progress. He also stated that if the petitioner is enlarged on bail, there is every likelihood of him intimidating the victim and the witnesses, and tampering with the evidence. Hence, the application may be dismissed. Nonetheless, he did not dispute the fact that the investigation in the case is complete and the final report has not been laid.

6. The prosecution case is that, the petitioner had outraged the modesty of the victim and committed sexual assault on her, who is none other than his daughter. The fact remains that the petitioner has been in judicial custody for the last 62 days, the investigation in the case is complete and the final report has not been laid.

7. Subsections (1) and (2) of Section 167 of the Code of Criminal Procedure, 1973 reads as follows:-

> *"167. Procedure when investigation cannot be completed in twenty-four hours.—(1) Whenever any*



person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by section 57, and there are grounds for believing that the accusation or information is well founded, the officer in charge of the police station or the police officer making the investigation, if he is not below the rank of sub-inspector, shall forthwith transmit to the nearest Judicial Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate. (2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time, authorise the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole; and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction: Provided that— 2 [(a) the Magistrate may authorise the detention of the accused person, otherwise than in custody of the police, beyond the period of fifteen days, if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this paragraph for a total period exceeding— (i) ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years; (ii) sixty days, where the investigation relates to any other offence, and, on the expiry of the said period of ninety days, or sixty days,

as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this sub-section shall be deemed to be so released under the provisions of Chapter XXXIII for the purposes of that Chapter;]"

8. A three-Judge Bench of the Honourable Supreme Court in ***Uday Mohanlal Acharya v. State of Maharashtra*** *[(2001) 5 SCC 453]*, reiterated the legal proposition in ***Sanjay Dutt v.State through C.B.I., Bombay*** (supra). In paragraph 13 (3) it was opined thus:

"13. x x x x x x (3) On the expiry of the said period of 90 days or 60 days, as the case may be, an indefeasible right accrues in favour of the accused for being released on bail on account of default by the investigating agency in the completion of the investigation within the period prescribed and the accused is entitled to be released on bail, if he is prepared to and furnishes the bail as directed by the Magistrate."
(emphasis added)

9. In the instant case, as the petitioner has been in judicial custody for the last 62 days, the investigation in the case is complete and the Investigating Officer has not laid the final report till date, prima facie, I am

satisfied that the petitioner is entitled to be released on statutory bail, since it is his indefeasible right under Section 167(2) of the Code. Hence, I allow the bail application.

In the result, the application is allowed, by directing the petitioner to be released on bail on him executing a bond for Rs.1,00,000/- (Rupees one lakh 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 petitioner shall appear before the Investigating Officer on every alternate Saturday between 9 a.m. and 11 a.m till the conclusion of the trial in Crime No. 830/2024.

(ii) The petitioner shall not directly or indirectly make any inducement or threat to the victim or her witnesses or to any person acquainted with the facts of the case, so as to dissuade him from disclosing such facts to the court or to any Police Officer, or tamper with the evidence in any manner, whatsoever;

(iii) The petitioner shall not commit any offence while he is on bail;

(iv) The petitioner shall surrender his passport, if any, before the court below at the time of execution of the bond. If he has no passport, he shall file an affidavit to the effect before the court below on the date of execution of the bond;

(v) The petitioner shall not enter the Police Station limits where the victim and the witnesses are residing till the conclusion of the trial in Crime No.830/2024, other than for the purpose of reporting before the Investigating Officer;

(vi) 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.

(vii) Applications for deletion/modification of the bail conditions shall be moved and entertained by the court below.

(viii) 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 petitioner even while the petitioner is 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]*.

(ix) The observations made in this order are only for the purpose of considering the application and the same shall not be construed as an expression on the merits of the case to be decided by competent Courts.

Sd/-

C.S.DIAS, JUDGE

rkc/07.08.2024

APPENDIX OF BAIL APPL. 5440/2024

PETITIONER ANNEXURES

Annexure -A1	**THE TRUE COPY OF ORDER DATED 24.06.2024 IN CRL.M.P.NO.4234/2024 IN CRIME NO. 830/2024 OF KUNNAMKULAM POLICE STATION, THRISSUR .**