

B.A.602/2021

1

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MRS. JUSTICE SHIRCY V.

FRIDAY, THE 22ND DAY OF JANUARY 2021 / 2ND MAGHA, 1942

Bail Appl..No.602 OF 2021

CRIME NO.2338/2020 OF Kadakkavoor Police Station ,
Thiruvananthapuram

PETITIONER/S:

XXXXXXXXXX
XXXXXXXXXX
XXXXX

BY ADV. SRI.K.R.RAJKUMAR

RESPONDENT:

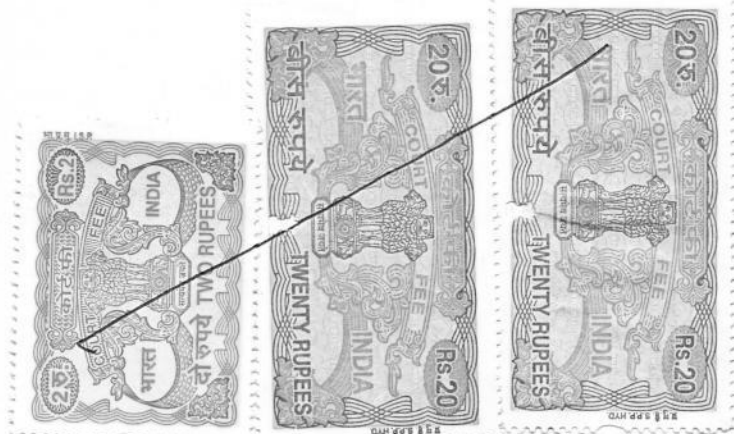
STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA
682031

R1 BY PUBLIC PROSECUTOR
R1 BY DIRECTOR GENERAL OF PROSECUTION

OTHER PRESENT:

SUMAN CHAKRAVARTHY - SR.P.P

THIS BAIL APPLICATION HAVING BEEN FINALLY HEARD ON
19.01.2021, THE COURT ON 22.01.2021 PASSED THE FOLLOWING:



ORDER

Dated this the 22nd day of January 2021

The petitioner is the mother of four minor children. She has been booked by Kadakkavoor police for having committed offences punishable under Section 8 read with Section 7, Section 12 read with 11(i)(ii) and Section 10 read with Section 9(1), (m), (n) of Protection of Children from Sexual Offences Act (for short 'POCSO Act').

2. The case as put forth by the prosecution briefly stated, is as under:

The victim is the 2nd child of the petitioner born on 26.3.2007. On several occasions from the age of 10 years till 10.12.2019 the victim/child was sexually abused by her for her sexual satisfaction at her

B.A.602/2021

3

residence by disrobing him and touching on his private parts. She also disrobed herself and exhibited her nude body before him and compelled him to kiss on her naked body and thus committed sexual assault on him. Thereby, she committed the aforesaid offences.

3. The petitioner is undergoing incarceration since the date of her arrest on 28.12.2020. This application is filed seeking her release on bail under Section 439 of the Code of Criminal Procedure.

4. Heard Adv. K.R. Rajkumar, the learned counsel for the petitioner and Adv. Suman Chakravarthy, the learned Senior Public Prosecutor and also perused the Case Diary ('CD' for short).

5. The learned counsel for the petitioner has submitted that as the husband of the petitioner is living with another lady

B.A.602/2021

4

having two children, she was compelled to leave her matrimonial home and from the month of September, 2019 she was living separate with her minor children at her paternal home. She then filed a case for maintenance of herself and her children and another case for permanent custody of her minor children before the Family Court, Attingal against her husband. Immediately after the filing of the cases, he had forcefully taken her three children from her house and used the 2nd child as a tool to foist this false case against her with ulterior motives. It is vehemently submitted by the learned counsel that the petitioner is a poor lady working in a private firm for livelihood as she has been abandoned by her husband because of his relationship with the another lady. She has not committed any of the offences as alleged but in order to defeat her legitimate claim for

B.A.602/2021

5

maintenance and custody of children, this case has been initiated raising such a cruel allegation against her by misusing her own minor son. But her continued detention is not necessary to proceed with the investigation of the case. Hence, she seeks for her release on bail.

6. On the other hand, the learned Senior Public Prosecutor strenuously opposed the application and submitted that very grave and serious offences have been committed by this petitioner and strong evidence are there to prosecute her. The learned Senior Public Prosecutor further submits that as the investigation of the case is only in the preliminary stage, if she is granted bail, there is every possibility to influence the witnesses and an effective investigation may become difficult.

B.A.602/2021

6

7. It is not in dispute that the petitioner had filed a petition on 25.11.2019 against her husband as O.P. No. 1768 of 2019 before the Family Court, Attingal seeking permanent custody of her four minor children. She has also filed M.C. No. 495 of 2019 before the very same court claiming maintenance under Section 125 of the Code of Criminal Procedure for herself as well for her minor children. The maintenance case was filed on 23.11.2019. The CD file would reveal that till 10.12.2019 the child (victim) was residing with this petitioner at her residence from the date of her separation from her husband. On 10.12.2019 the husband of the petitioner had forcefully taken away her three children (except the 3rd son) including the victim to Sharjah though the case was pending before the Family Court for custody. It is revealed from the records that

B.A.602/2021

7

she left her matrimonial home when her husband brought another lady with her two children to his house. But the husband had given a statement to the Investigating Officer to the effect that the petitioner voluntarily left his house and then there was no one to look after his minor children, and so, he brought the lady to take care of his children. However, the CD reveals that the husband of the petitioner had taken her three children including the victim accompanied by the lady and her two children to Sharjah on 10.12.2019 where he was engaged with some business.

8. The CD further reveals that when they reached Sharjah, this victim was admitted in a Madrassa to study Holy Quran and he was not admitted in any regular school to continue with his studies though he was in 5th standard when he was shifted from Kerala. There the

B.A.602/2021

8

victim was found gloomy and depressed and on inquiry the child had disclosed to his father and to the lady that he was sexually abused by the petitioner and it continued for a pretty long time starting from the age of 10 years till the date he was removed by his father to Sharjah. So, they returned to Kerala in the month of September 2020 and lodged the complaint and thus the case was registered against this petitioner.

9. It is most significant to note that the complaint was filed before the Police Inspector, Kadakkavoor only on 10.11.2020, though they reached in Kerala in the month of September 2020. Immediately, the Police Inspector had sent the child to the Child Welfare Committee ('CWC' for short) so as to have counseling as well to record his statement. Then, Sri. Kiran C. Thongamam, a Social Worker

B.A.602/2021

9

attached to CWC and Smt.Chitralkha, District Child Protection Officer conducted counseling of the child and submitted a report before the Chairperson of CWC on 13.11.2020 and the Chairperson of CWC had forwarded the report to Kadakkavoor Police Station and thus the crime was registered against this petitioner on 18.12.2020. After registration of the crime, medical examination of the child was conducted and his Statement under Section 164 of Cr.P.C. was recorded and now the investigation is going on.

10. Though this Court is considering only the bail plea of the petitioner, a thoughtful consideration of the whole aspects of the matter involved is required as quite a shocking, unusual and unbelievable allegations are levelled against the petitioner by her son who is aged only 13 years. In fact on a perusal of

B.A.602/2021

10

the CD file, I could see so many discrepancies in the investigation so far conducted by the police. Of-course the stage to appreciate the evidence with a view to find fault and inconsistencies would arise only when the prosecution leads evidence by examining the witnesses in court. But when glaring defects or unexplained circumstances are seen on record, I think that the need to look closely into the allegations arise in the interest of justice even at this stage and more over the petitioner is facing a charge on most heinous or wild allegations. The first and the foremost point to be noted is that the father of the victim who came from Sharjah along with the lady and the child reached Kerala in the month of September, 2020. The minor child had divulged the incidents transpired while residing along with the petitioner, when they noticed him

B.A.602/2021

11

gloomy and depressed while he was in Sharjah, is the prosecution version. So they have taken the child to a doctor but as counseling facilities were not available in Sharjah, they took the child to Kerala and lodged the complaint. Though they reached Kerala in the month of September, 2020 itself, the complaint was lodged before the Kadakkavoor Police only on 10.11.2020. It appears that the investigating agency has not probed into the reason for the delay in approaching the police though they say that very serious offences were committed by the petitioner against her own minor child. The father has a case that the child had counseling when they reached here at Kerala. However, the details of the same have not been probed into by the Investigating agency though they are duty bound to do so. Moreover, the Inspector of Police on receipt of the complaint, had

B.A.602/2021

12

straight away sent the child to the CWC for counseling even though an unbelievable or shocking allegation was raised against the mother. The members attached to the CWC had the counseling immediately on production of the child before the Chairperson of the Committee and submitted the report on 13.11.2020 itself. Though the prosecution has a case that counseling was given to the child for about 10 days, it appears from the CD file that no such counseling was given to the child. He might have been in a Home attached to the CWC for 10 days but the report forwarded by the Chairperson of the CWC is only on the basis of the report submitted by the social worker and the Child Protection Officer, dated 13.11.2020 (on the 3rd day of production of the child before the CWC). Before them the child has stated that the petitioner has disrobed him and touched on his

private parts and also compelled him to kiss on her naked body on various occasions. But a perusal of the CD file would reveal that he has improved his version subsequently before the Judicial First Class Magistrate who recorded his 164 statement as he has stated that his mother/petitioner used to make video calls quite often in the night and after that she used to touch on his private parts and also lie down on his body. (FSL Report of the mobile phone seized is not available).

11. When he was produced before the doctor for medical examination, it appears that he has improved his version further to a certain extent. However, on medical examination, nothing abnormal was found on the body of the minor child. In fact, the argument advanced by the learned Senior Public Prosecutor that the child had given a consistent version before the

B.A.602/2021

14

police, the CWC, the Judicial First class Magistrate and the Doctor appears to be not perfectly correct.

12. It is significant to note that the petitioner filed complaints before the Jumaath Committee as early as on 28.4.2019 regarding the harassment suffered by her from the hands of her husband. She had also filed complaint against her husband regarding his cruel treatment towards her as well his failure to provide maintenance to herself and her children and also about his illegal connection with a lady before the Dy.S.P., Attingal on 8.10.2019. That was immediately after she left her matrimonial home with her minor children. But no action was seen taken on her complaint. Thereafter, she had approached the Family Court to have custody of her four minor children. She also moved the very same court claiming

B.A.602/2021

15

maintenance for herself and for four minor children as he was not providing anything though he was having sufficient income from his business. So, it appears that from the month of April, 2019 onwards she was approaching various authorities including the Dy.S.P., Attingal for redressal of her grievance. But unfortunately the investigating agency has not verified all those facts or made any serious inquiry regarding the same. It appears from the CD that the husband and wife are at loggerheads with each other and the husband had removed her minor children from her custody without her consent or knowledge even when the petition filed by her for custody was pending before the Family Court and he took all of them (except the third child) to Sharjah. When the relationship of the petitioner and her husband was not cordial and they were at loggerheads

B.A.602/2021

16

and cases and complaints initiated by the petitioner that too for custody of the children and for maintenance were pending, the investigating agency should not have jumped into the conclusion to register this case against the petitioner, especially when such an unusual complaint was raised against a mother. The investigating agency failed to verify the veracity of the version given by the child and failed to ascertain whether the complaint lodged against the petitioner was a genuine one or not. A preliminary inquiry to ascertain the truth or otherwise of the allegation ought to have been conducted by the investigating agency. The delay in lodging a complaint, though the father of the child himself has stated that they came down to Kerala to have counseling of the victim/child and to initiate proceedings against this petitioner, their failure to proceed immediately

B.A.602/2021

17

after reaching Kerala have not been properly explained and the investigating agency has not given any serious attention to those aspects. So also, whether the child was tutored or brainwashed by the father or the lady who was residing with his father without divorcing the petitioner, was not probed into by the investigating agency. Of course, the investigation is at the initial stage. So, the investigating agency has to go deep into all those aspects to unearth the truth and ascertain the genuineness of the statement of the minor child against the petitioner.

13. As mentioned above, it is also to be noted that the minor child was a school going student when he was shifted to Sharjah. But, the father has not made any arrangements to continue his formal education. Certainly, he was admitted in a Madrassa to study Holy Quran.

B.A.602/2021

18

But he was not admitted in a regular school to continue his studies. Whether the child had any depression because of that, was also not verified by the CWC or the investigating agency. Instead of that an FIR was registered on 18.12.2020 on the basis of the report submitted by the CWC after conducting counseling just for two days. Prima facie, it is not revealed from the CD file that CWC have given proper counseling for 10 days as asserted by them as the report of the Chairperson of the CWC was on the basis of the report dated 13.11.2020 submitted after the counseling only for 2 days by the committee members.

14. It is significant to note that the prosecution has alleged that the petitioner had even administered some drug to the child and that was with specific criminal intention. The CD file reveals that an empty medicine strip

B.A.602/2021

19

was taken by the social worker from the pocket of the dress worn by the younger brother of the victim who was residing with the petitioner while he visited her house to prepare the social investigation report. Such a report was prepared by him on 11.01.2021. He has stated that he had recovered an empty medicine strip of ten tablets of **Methylprednisolone** from the pocket of the younger brother of the victim aged only 10 years. The prosecution is relying on this empty strip at this stage so as to advance an argument that the victim was provided with some drug by the petitioner. But the victim in his further statement had stated that when he had some skin allergy, a medicine was prescribed by a doctor. The younger brother of the victim has also stated to the social worker that it was given by his mother for allergy. It prima facie appears that the empty strip was of

steroid usually prescribed for allergy and various other diseases. It is the common knowledge that to have a steroid tablet one require a physician's prescription as it is prescribed for appropriate medical conditions. But the investigating agency has not probed into the details. So there is nothing to suggest at this stage that the petitioner had given drugs to the victim so as to commit any illegal/inhuman act on him, by the seizure of this empty strip from the younger brother of the victim. More over, the victim was with his father for the last one year.

15. It is true that while considering a bail application, it is not necessary to go deep into the details of the investigation and have a meticulous evaluation of the materials so far collected by the investigating agency. Usually, it will not be done. But this case appears to be ✓

quite a strange, shocking and an unusual one where a mother is put in the dock with very wild and ferocious allegations.

16. No doubt, the allegation raised against the petitioner is shocking to the collective conscience of the society as well as to judicial conscience. Therefore, this court is compelled to give the following directions to the investigating agency in the interest of administration of justice. The investigating agency has to probe into all the aspects mentioned below and find out convincing answers to the following aspects:

(i) The reason for the delay in lodging the complaint against the petitioner though the child came to Kerala along with his father in the month of September, 2020.

(ii) Whether the victim was given any kind of counseling after his return to Kerala

and before lodging the complaint to the Police, Kadakkavoor and if so, the details of the same.

(iii) Whether any action was taken by the Dy.S.P., Attingal in the complaint lodged by the petitioner against her husband, on 8.10.2019.

(iv) Whether the husband of the petitioner had appeared before the Family Court to contest the cases filed against him by the petitioner and whether the registration of this crime is to defeat the legitimate claim of the petitioner for maintenance as well for custody of her minor children, especially when the martial relationship of the husband and wife has strained and they are at loggerheads.

(v) The investigating agency has to verify whether the children removed from the custody of the petitioner and shifted to Sharjah are allowed to continue their formal education in regular schools. The investigating agency

has also to verify whether the children of the lady who accompanied the husband of the petitioner are admitted in a regular school to continue with their formal education.

(vi) The investigating agency has to verify whether the petitioner had consulted any Doctor for allergy or for any other diseases, for herself or for her children and Methylprednisolone tablet was prescribed by any Doctor.

(vii) The investigating agency has to verify whether records are available with CWC to show that counseling was imparted to the child during his stay in the Home attached to CWC apart from the two days mentioned in the report attached along with the FIR.

(viii) Since the gravity of the offences alleged against this petitioner are grave and serious in nature and quite unheard of, the

State Police Chief is directed to constitute a special team headed by an IPS Officer, preferably a lady, to delve deep into the allegations and proceed with the investigation and complete it at the earliest.

(ix) The investigating agency is also directed to conduct a medical test of the child including Emotional Quotient (EQ) and Intelligence Quotient (IQ), by constituting a Medical Board in consultation with the Superintendent of the Medical college, Thiruvanthapuram. The Board shall consists of experienced doctors including a Pediatrician, Psychologist (having experience in child psychology), Psychiatrist and a Neurologist. One member shall be a lady doctor.

(x) The victim can be removed from the custody of his father to a home under the CWC for his safe accommodation, care and protection

till the investigation is completed, if the investigating team finds it absolutely necessary.

Compliance report shall be filed before this Court through the Registrar General by the State Police Chief.

17. This Court also finds it necessary to direct the State Police Chief to give instructions to all Station House Officers in the State to conduct a preliminary inquiry before embarking upon registration of a crime when such unusual, unbelievable, inhuman and wild allegations are raised, that too against a mother.

18. Doubtless that the sanctity of **Motherhood** was totally ignored in this case. A mother carries her child for nine lunar months in her womb and so the relationship of a mother and child are connected even before

his/her birth. The unconditional love, affection and warmth of a mother towards her child cannot be compared or equated with any love in the world. No mother 'worthy of the name' will resort to such a disgraceful act.

19. If the child involved in the case was brainwashed or tutored by any one to make such wild allegations against his mother, they have also to be booked and proceeded with, in accordance with law.

20. In view of the foregoing discussions, I find that further detention of the petitioner in judicial custody is not required to proceed with the investigation and so, her request to release her on bail can be considered favorably.

Therefore, this bail application is allowed subject to the following conditions:

(i) The petitioner shall be released on bail on her executing a bond for a sum of Rs.1,00,000/- (Rupees one lakh only) with two solvent sureties for the like sum each to the satisfaction of the court having jurisdiction.

(ii) She shall appear before the Investigating Officer for interrogation as and when required by him, in writing. She shall co-operate with the investigation.

(iii) She shall not directly or indirectly, make any inducement, threat or promise 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.

(iv) She shall not commit any offence while on bail.

B.A.602/2021

28

In case of violation of any of the above conditions, the learned Additional Sessions Judge concerned is empowered to cancel the bail in accordance with law.

Forward a copy of this order to the State Police Chief.

Sd/-

SHIRCY V.

JUDGE

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