

BA Nos 5168 and 5425 of 2024

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. 5168 OF 2024
CRIME NO.452/2024 OF Thadiyittaparamba Police Station, Ernakulam

PETITIONER/S:



BY ADVS.
P.M.ARUN DAS
K.ARUN

RESPONDENT/S:

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

2 XXXXXXXXXXXX
XXXXXXXXXXXX XXXXXXXXXXXX

BY ADV BIBIN VARGHESE
Sr PP Sri C.S Hrithwik

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 07.08.2024 ALONG WITH
BA 5425/2024, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

BA Nos 5168 and 5425 of 2024

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. 5425 OF 2024

CRIME NO.451/2024 OF Thadiyittaparamba Police Station, Ernakulam
PETITIONER/S:

XXX

XXX

BY ADVS.

C.A.CHACKO

C.M.CHARISMA

BABU V.P.

VISHNU S. MULLAPPALLY

RESPONDENT/S:

1 STATE OF KERALA,

REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, PIN - 682031

2 XXXXXXXXXXXX

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BY ADV MEGHA K.XAVIER

OTHER PRESENT:

Sr PP Smt Pushpalatha M.K

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON
07.08.2024 ALONG WITH BA 5168/2024, THE COURT ON THE SAME DAY
PASSED THE FOLLOWING:

"C.R"

COMMON ORDER**Dated this the 07th day of August, 2024**

These applications highlight the plight of the so-called predators in the present crimes, who have become the actual victims of an orchestrated act of retribution by the so-called victim, and it demonstrates the perilous consequences that can arise due to the false accusations made by a victim.

2. The two cousin brothers of the victim, who endeavoured to intervene in her love affair and have been incarcerated for the past two months, seek to get themselves enlarged on bail.

3. B. A No.5425 of 2024 is filed by the accused in crime No.451 of 2024, which is registered against him by the Thadiyittaparamba Police Station, Ernakulam, for allegedly committing the offences punishable under Sections 354 and 376(2)(f) of the Indian Penal Code, 1860 ('IPC', in short,) and Sections 3(b) r/w 4(1), 5(n) r/w 6, 9(n) r/w 10 of the

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Protection of Children from Sexual Offences Act ('POCSO Act', for brevity).

4. B.A No.5168 of 2024 is filed by the accused in crime No.452 of 2024 of the same Police Station, which is registered against him for allegedly committing the offences punishable under Sections 376(2)(f), 376(3), 509 and 451 of the IPC and Sections 3(a) r/w 4(2), 5(l) r/w 6(1), 11(i) r/w 12 of the POCSO Act. As the victim is the same in the two crimes, the applications were consolidated, jointly heard and are being disposed of by this common order.

5. The prosecution allegation, in brief, in crime No.451 of 2024 is that; the accused (a 20-year-old boy) and the cousin brother of the victim (a 17-year-old girl), had, in the month of February 2023, entered her house and groped her breasts and inserted his finger into her genitals. Thus, he committed rape, aggravated sexual assault and outraged the modesty of the victim.

6. The crux of the prosecution case in crime No.452 of 2024 is that; the accused (a 19-year-old boy) and another

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cousin brother of the victim had, in the month of August 2017, while the victim was studying in the sixth standard, committed penetrative sexual assault on her. Subsequently, on 25.03.2023, the accused again trespassed into the victim's house and made her hold his genitals. Accordingly, he, too, committed rape, aggravated sexual assault and outraged the modesty of the victim.

7. When the applications came up for consideration on 29.07.2024, the learned counsel for the petitioners and the learned counsel for the victim submitted that the disputes between the parties have been settled. The victim, who is now a major, has filed an affidavit in B.A.No.5425/2024, inter-alia, stating that the allegations in the crime are false and that it was out of her anger that she got the crime registered. Likewise, the victim's father has filed a similar affidavit in B.A.No.5168/2024.

8. Considering the revelations made, this Court directed the victim to be present in Court. On her appearance, she and her parents were referred to the Family Counselling Centre,

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High Court of Kerala. The counsellor interacted with the victim and her parents and has reported that the victim stated that she had falsely lodged the complaints against her cousin's brothers.

9. After reading the report, I also personally interacted with the victim and her parents. The victim openly told me that she was in love with her classmate, which was objected to by the petitioners, who in turn informed her mother about the affair. Immediately, the victim's mother stopped her schooling. It is out of this anger and to wreak vengeance on the petitioners, that she lodged the two complaints. But she did not expect that her cousin brothers would be arrested and the matter would become serious. She stated that the petitioners are innocent and have not committed the offences alleged against them. She has no grievance against the petitioners. The victim's parents also stated that they were unaware of the complaints filed by the victim. It was only when the Police went to their residence, they learnt that their daughter had filed the complaints.

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10. The above sequence of events exemplifies the potential of a victim to exploit the provisions of the POCSO Act, and how an innocent person can be implicated in a crime. Given the gravity and seriousness of the allegations made against the petitioners, they were arrested and remanded to judicial custody. Both of them have been incarcerated since 30.05.2024 for their attempt to protect their sister. In a sudden turn of events, the victim has resiled from her earlier statements and now asserts that her impetus to file the complaints was only to wreak vengeance on her brothers. The above incidents raise a serious question as to who will now be held responsible for the false complaints, especially in view of Sub-Section (2) of Section 22 of the POCSO Act, which insulates a minor victim from punishment for filing a false complaint or giving false information. What wrong have the petitioners done, and who is to compensate them for their wrongful confinement, mental agony, trauma and pain they have endured? These are all matters that warrant a thorough examination and resolution.

11. The Protection of Children From Sexual Offences Act, 2019 is a comprehensive piece of legislation designed to safeguard children against offences of sexual assault, sexual harassment and pornography. It encompasses measures safeguarding the interest and well-being of a child at every stage of the judicial process. The Act incorporates child-friendly procedures for reporting incidents, recording of evidence, investigation and trial of offences and establishment of Special Courts for speedy trial of such offences. The objective of the Act is to enforce the right of all children to safety, security and protection from sexual abuse and exploitation.

12. Undoubtedly, the POCSO Act is a revolutionary legislation that is enacted to secure the safety, security, and protection of children. The stringent punishments prescribed for offences committed under the Act have served as a deterrent and have notably reduced the number of offences against children. However, in recent times, there have been instances of misuse of the legislation, as evidenced in the cases on hand. Such misuse not only undermines the intention of the

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legislation but also poses a serious threat to the integrity of the justice delivery system.

13. Almost on identical lines, when Section 498 A of the IPC was rampantly misused, in **Arnesh Kumar v. State of Bihar and another** [2014 (3) KHC 69] the Honourable Supreme Court had stepped in and laid exhaustive guidelines for the arrest of an accused. It is gainful to refer to the relevant excerpts of the judgment, which reads thus:

"6. There is a phenomenal increase in matrimonial disputes in recent years. The institution of marriage is greatly revered in this country. S.498A of the IPC was introduced with avowed object to combat the menace of harassment to a woman at the hands of her husband and his relatives. The fact that S.498A is a cognizable and non - bailable offence has lent it a dubious place of pride amongst the provisions that are used as weapons rather than shield by disgruntled wives. The simplest way to harass is to get the husband and his relatives arrested under this provision. In a quite number of cases, bed - ridden grand - fathers and grand - mothers of the husbands, their sisters living abroad for decades are arrested.....

7. Arrest brings humiliation, curtails freedom and cast scars forever. Law makers know it so also the police. There is a battle between the law makers and the police and it seems that police has not learnt its lesson; the lesson implicit and embodied in the CrPC. It has not come out of its colonial image despite six decades of independence, it is largely considered as a tool of harassment, oppression and surely not considered a friend of public. The need for caution in exercising the drastic power of arrest has been emphasized time and again by Courts but has not yielded desired result. Power to arrest greatly contributes to its arrogance so also the failure of the Magistracy to check it. Not only this, the power of arrest is one of the lucrative sources of police corruption. The attitude to arrest first and then proceed with the rest is despicable. It has become a handy tool to the Police Officers who lack sensitivity or act with oblique motive".

14. Likewise, a Division Bench of this Court in **Suhara and Others v. Muhammed Jaleel** [2019 (2) KHC 596] held that there is a growing tendency in recent years to foist false crimes against the biological father alleging sexual abuse of his child by misusing the provisions of the POCSO Act, particularly in custody matters pending resolution before the Family Courts.

15. This Court, in **xxx v. State of Kerala** [2023 (2) KHC 339], has also observed as follows:

"19. In the aforesaid decision, this Court highlighted the growing tendency of foisting false cases against the biological father alleging sexual abuse misusing the provisions of the POCSO Act. This Court alerted the Family Courts by emphasizing the necessity to adopt a conscious approach while dealing with the allegation of offences under the POCSO Act in cases where the custody of the child is under serious litigation. The courts, while dealing with the applications for bail, involving the offences of the POCSO Act, allegedly committed by the accused against their children, should take a very cautious approach, particularly when the custody of the child is under serious litigation between the parents. In such cases, when the materials placed before the court evoke a reasonable suspicion as to the veracity of the allegations, the courts should not hesitate to invoke the powers under section 438 of the Cr.P.C. What is at stake is someone's personal liberty, integrity, dignity and sometimes, the life itself. The power under section 438 is an important tool for the court to protect

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the personal liberty of the persons, which is one of the fundamental rights guaranteed under the Constitution of India.”

16. Again, in **xxx v. State of Kerala and Another**

[2024 SCC Online Ker 3595], this Court held thus:

“15. xxx xxx xxx xxx Similarly, in matrimonial disputes in between husband and wife, their minor child/children would be meddled and weaponized to wreak vengeance at the teeth of the POCSO Act to avoid claim for custody by the father”.

17. Recently, on **xxx Vs. State of Kerala** [2024 KHC

Online 692], this Court went on to pass the following strictures:

“16. I am of the considered opinion that the POCSO Courts which try cases like this in which an accusation of sexual abuse is made against the father of the minor child, especially when there is a custody dispute, the court should look into the facts again and again before deciding the cases. All cases will be decided by all courts with great caution. But these types of cases should be dealt with very seriously because if the allegations are correct, that is serious; but if the allegations are false, a man is crucified without any substance and he will be defamed in the society because of such allegations. Therefore it is the duty of the court to see that there is no false allegation against parents especially when there is a dispute regarding the custody. Moreover, Section 22 of the POCSO Act provides punishment for false complaint or false information. In appropriate cases, the court should inform the police for investigation, if a prima facie case under Section 22 of the POCSO Act is made out. This is a fit case in which the Investigating Officer in Crime No.668/2015 has to consider whether any offence under Section 22 of the POCSO Act is committed by the 2nd respondent. Section 22 of the POCSO Act says that any person who makes false complaint or provides false information against any person in respect of an offence under Sections 3, 5, 7 and 9 solely with the intention to humiliate, extort, threaten or defame shall be punished with imprisonment for a term which may extend to six months or with fine or with both. This is a matter to be looked into by the

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investigating officer in this crime. All the POCSO Courts should take appropriate steps in this regard if it is found that there is any false complaint or false information submitted by the complainants. If the POCSO Court found after trial that there is substance in the case of the accused that it is a false accusation, the POCSO Court should direct the Police authorities to register a case under Section 22 of the POCSO Act and proceed in accordance with the law.”

18. All the above precedents clearly illustrate that this Court has consistently cautioned against the potential misuse of the otherwise benevolent provisions of the POCSO Act. The present cases serve as a reminder to all stakeholders involved in the judicial process, to exercise due caution, prudence and diligence prior to arresting an accused, especially, blood relatives and family members of a minor victim, who in a moment of an emotional turmoil, may make unfounded allegations against her own family members without fully realising the implications, gravity and seriousness of the action. In such sensitive cases, it is imperative that all stakeholders, including the Courts and the Police, approach the matter with sensitivity, care and caution before resorting to extreme steps in the matter. I leave it to the best wisdom of the State to determine and implement appropriate safeguards, checks,

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barriers and guidelines in cases of this nature, drawing upon the principles laid down in the landmark decision in Arnesh Kumar (supra).

19. In the peculiar facts and circumstances of the case, and on considering the unequivocal statement of the victim, that the petitioners are innocent in the crimes, I am convinced and satisfied that the petitioners have made out valid grounds to enlarge them on bail.

In the result, the applications are 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 as and when directed.
- (ii) The petitioners shall not directly or indirectly make any inducement or threat to the witnesses or to any person acquainted with the facts of the case, so as to

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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) 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.

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

In the facts and circumstances of the cases, I direct the Investigating Officer, in consultation with the District Probation Officer, to take the petitioners to an Expert for counselling, at the State's cost, and file a report before this Court. The Investigating Officer shall also report to this Court, as to whether the victim was paid any interim compensation. The

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Registry is directed to forward a copy of this order to the State Police Chief.

Post the applications for the compliance report of the Investigating Officer on 04.09.2024.

sd/-
C.S.DIAS, JUDGE

JJ