



2023:KER:59901

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE GOPINATH P.

FRIDAY, THE 6TH DAY OF OCTOBER 2023 / 14TH ASWINA, 1945

BAIL APPL. NO. 7060 OF 2023

AGAINST THE ORDER/JUDGMENT CRMC 465/2023 OF FAST TRACK SPECIAL

COURT, PATTAMBI

PETITIONER/S:

XXXXXXXXXXXX
XXXXXXXXXXXX XXXXXXXXXXXX

BY ADVS.
T.K.SANDEEP
VEENA HARIKUMAR
SWETHA R.

RESPONDENT/S:

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

OTHER PRESENT:

SRI. NOUSHAD K A (SR PP)

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON
06.10.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**ORDER**

The petitioner is the 2nd accused in Crime No.100/2023 of Koppam Police Station, Palakkad District which was been registered alleging commission of offences punishable under Sections 376 (2) (n), 376 (3) of the Indian Penal Code and Section 4 read with 3 (a), 6 read with 5 (l) (m) and (p), 11 (i) (ii) & (iv) read with 12 and 16 read with 17 of the Protection of Children from Sexual Offences Act, 2012 (the POCSO Act) and Section 75 of the Juvenile Justice Act.

2. The prosecution allegation is that the 1st accused who is the step father of the minor victim and the 2nd accused, the petitioner herein is her mother. It is alleged that during the period from 2018 to 2023 the 1st accused who is the step father of the minor victim girl, with the knowledge and consent of the 2nd accused, had indulged in talks having sexual flavours. It is alleged that the minor victim was forced to send her nude pictures to the mobile phone of her step father. It is alleged that in the month of October 2018 the 1st accused committed penetrative sexual assault and rape on the minor victim and thereafter continued such activity at a rented house at Koppam. It is also alleged that the minor victim was also subjected to rape at Hotel Casteilo at Coimbatore with the consent and connivance of the 2nd accused.

3. The learned counsel appearing for the petitioner would submit that the petitioner / 2nd accused has been in custody from March 2023. It is submitted that even if the allegations against the 1st accused are taken to be true, there is no material whatsoever to suggest that the petitioner had any role in the matter. It is submitted that considering the fact that the petitioner has another child (a son), the



petitioner may be directed to be released on bail. It is submitted that since investigation has been completed and a final report has been filed, further detention of the petitioner is not necessary for the purpose of any investigation.

4. The learned Public Prosecutor vehemently opposes the grant of bail. The first information statement and statement recorded under Section 164 Cr.P.C from the minor victim are placed to show that there are clear allegations against the petitioner which would indicate that the offences were committed by the 1st accused with active support and the connivance of the 2nd accused. It is also submitted according to the statement of the victim, such offence has been committed even in the presence of the petitioner / 2nd accused. There is even an allegation that on one occasion, the petitioner / 2nd accused actually removed the clothes of the minor victim at the behest of the 1st accused. It is submitted that in such circumstances considering the heinousness of the offence, the petitioner is not entitled to bail. It is also pointed out that if the petitioner is granted bail there is every chance on the minor victim being influenced or intimidated to give evidence in favour of the accused in this case.

5. Having heard the learned counsel appearing for the petitioner and the learned Public Prosecutor, I am of the view that the petitioner is clearly not entitled to anticipatory bail. The allegation against the petitioner are very serious and if true they are an insult to motherhood. The apprehension expressed by the learned Public Prosecutor appears to be real. The petitioner being the biological mother of the minor victim may be in a position to influence or intimidate the victim if she is granted bail. The statement of the victim that she was subject to rape even in the



presence of the petitioner / 2nd accused is another reason which compels me to hold that the petitioner is not entitled to bail. Considering the nature of the allegations, I am of the view that this is a fit case where custodial trial must be resorted to. Bail application is accordingly dismissed.

The registry shall communicate a copy of this order to the Fast Track Special Court, Pattambi where S.C. No.536/2023 is pending trial.

Sd/-
GOPINATH P.
JUDGE

AMG



APPENDIX OF BAIL APPL. 7060/2023

PETITIONER ANNEXURES

Annexure I A TRUE COPY OF THE ORDER IN CRL.M.C 465/2023 IN S.C
536/2023 FAST TRACK SPECIAL JUDGE PATTAMBI DATED
08.08.2023

Annexure II A TRUE COPY OF THE ORDER IN B.A 3904/2023 BEFORE
HONBLE HIGH COURT OF KERALA DATED 26.05.2023