

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MRS. JUSTICE M.R.ANITHA

FRIDAY, THE 10TH DAY OF SEPTEMBER 2021 / 19TH BHADRA, 1943

BAIL APPL. NO. 5579 OF 2021

PETITIONER:

XXX

X

BY ADV S.NIKHIL SANKAR

RESPONDENTS :

STATE OF KERALA

REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,

ERNAKULAM REPRESENTING STATION HOUSE OFFICER, KATTAKADA

POLICE STATION, THIRUVANANTHAPURAM DISTRICT.

OTHER PRESENT :

PP. C.N PRABHAKARAN

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON
10.09.2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

BAIL APPL. NO. 5579 OF 2021

2

ORDER

Dated 10th September, 2021

The petitioner is the sole accused in Crime No:2334/2021 of Kattakkada Police Station, Thiruvananthapuram District alleging commission of offences punishable under Sections 294(b), 323, 451 of I.P.C and Section 75 of the Juvenile Justice(Care and Protection of Children) Act,2015. The prosecution allegation is that the petitioner, who is the grand father of the minor child assaulted the defacto complianant and his son aged 2 years on 11-07-2021 at 13.15 hours and thereby accused committed the offences afore mentioned.

(2) According to the learned counsel for the petitioner, no offence as alleged actually happened and the mother of the petitioner has actually bequeathed the entire properties in favour of the defacto complainant and thereafter they didn't look after the mother, and the

BAIL APPL. NO. 5579 OF 2021

3

petitioner questioned the same. He also produced Annexure A1 which is the OP ticket issued from the Primary Health Centre, Kattakada to show that his mother has undergone treatment with the alleged history of assault by the defacto complainant and her husband. Annexure A1 would show that the mother has been examined by the doctor at 2.30 pm on 11-07-2021. According to him in order to escape from that liability this case has been registered against him.

(3) The learned Public Prosecutor, on the other hand, vehemently objects in considering the petition and according to him the Wound Certificate of the minor child has been produced which clearly show the assault at the hands of the petitioner upon the minor child. Hence the learned Public Prosecutor seriously objects in considering the petition. Section 75 of the Juvenile Justice (Care and Protection of Children) read thus:

75. Punishment for cruelty to child:- *Whoever, having the actual charge of, or control over, a child, assaults, abandons, abuses, exposes or wilfully neglects the*

BAIL APPL. NO. 5579 OF 2021

4

child or causes or procures the child to be assaulted, abandoned, abused, exposed or neglected in a manner likely to cause such child unnecessary mental or physical suffering, shall be punishable with imprisonment for a term which may extend to three years or with fine or one lakh rupees or with both:

Provided that in case it is found that such abandonment of the child by the biological parents is due to circumstances beyond their control, it shall be presumed that such abandonment is not wilful and the penal provisions of this Section shall not apply in such cases:

Provided further that if such offence is committed by any person employed by or managing an organisation, which is entrusted with the care and protection of the child, he shall be punished with rigorous imprisonment which may extend up to five years, and fine which may extend up to five lakhs rupees:

Provided also that on account of the aforesaid cruelty, if the child is physically incapacitated or develops a mental illness or is rendered mentally unfit to perform regular tasks or has risk to life or limb, such person shall be punishable with rigorous imprisonment, not less than three years but which may be extended up to ten years and shall also be liable to fine of five lakhs rupees.

(4) Prima facie, it is doubtful whether petitioner is in charge or control of the minor child so as to attract the offence under Section 75 of the JJ Act which

BAIL APPL. NO. 5579 OF 2021

5

is the only non bailable offence alleged against the petitioner. FIS itself would show that petitioner is living away from them in a rented house. Annexure A1 also would show that on the same day mother of the petitioner has been examined by the doctor with the alleged history of assault by the defacto complainant and her husband. Petitioner is the father of the defacto complainant and grand father of the victim boy. So in view of the facts and circumstances I am of the view that pre-arrest bail can be granted to the petitioner on stringent conditions:

(i) The petitioner shall be released on bail on executing bond for a sum of Rs.30,000/- (Rupees thirty thousand only) with two solvent sureties each, for the like sum each in the event of arrest by the police in connection with the abover crime.

(ii) The petitioner shall appear before the investigating officer for interrogation as and when required by him in writing. They shall co-operate with the investigation of the case.

(iii) The petitioner shall not directly or indirectly, make any inducement, threat or promise to any person dissuade him from disclosing such facts to the

BAIL APPL. NO. 5579 OF 2021

6

court or to any police officer or tamper with the evidence.

(iv) The petitioner shall not commit any offence while on bail. In case of violation of any of the above conditions, the learned Magistrate is empowered to cancel the bail in accordance with the law.

This bail application is allowed as above.

SD/-

M. R. ANITHA

JUDGE

VKD