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IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

MONDAY, THE 11TH DAY OF MAY 2020 / 21ST VAISAKHA, 1942

BA NO. 2459 OF 2020

(In Cr.No.987/2020 of Pathanamthitta Police Station)

Petitioners/Accused

Sreeja Prasad Sreeja Bhavanam Vallikodu –
PO, Pathanamthitta – Dist, Pin. 689648

ADV.SRI.R.KRISHNA RAJ

Respondents/Complainant

1. State of Kerala Represented by Public
Prosecutor, High Court of Kerala, Ernakulam.
2. Sub Inspector of Police,
Pathanamthitta

By P.P. Sri.Ajith Murali & Santhosh Peter(Sr)

THIS BAIL APPLICATION HAVING BEEN FINALLY HEARD ON
11.05.2020, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

CR

P.V.KUNHIKRISHNAN, J

B.A.No.2459 of 2020

Dated this the 11th day of May, 2020

O R D E R

This Bail Application filed under Section 438 of Criminal Procedure Code was heard through Video Conference.

2. The petitioner is the accused in Crime No.987/2020 of Pathanamthitta Police Station. The above case is registered against the petitioner alleging offence punishable under Section 294(b) IPC, Section 67 of the Information Technology Act, 2000 and Section 120(o) of the Kerala Police Act.

3.The prosecution case in nutshell is that the petitioner is an anchor of an online news channel which is airing news in Youtube and Facebook, published a news item which is lascivious and appeals to the prurient interest and hence the act amounts to an offence under Section 67 of the Information Technology Act and other offences. Therefore, the petitioner committed the above offence.

4. The counsel for the petitioner submitted that, even if the entire allegations in the complaint submitted by the defacto complainant are accepted, no offence under Section 294(b) IPC and Section 67 of the Information Technology Act is attracted. He submitted that the only non bailable offence is under Section 67 of the Information Technology Act. He also submitted that, eventhough such a news item was transmitted through the online news channel, she is regretting about some of the statements mentioned in the news item.

5. The learned Public Prosecutor submitted that, the averments in the complaint prima facie make out an offence under Section 67 of the Information Technology Act. According to him, the petitioner committed a serious offence and therefore the extraordinary jurisdiction under Section 438 of Cr.P.C may not be exercised in this case.

6. I considered the contentions of the learned counsel for the petitioner and the learned Public Prosecutor. Since the learned counsel for the petitioner has got a contention that, even if the entire allegations in the complaint are accepted, no offence under Section 67 of the Information Technology Act will attract, I have to consider that point also. For deciding the case, it will be

better to extract Section 67 of the Information Technology Act.

“67. Punishment for publishing or transmitting obscene material in electronic form.- Whoever publishes or transmits or causes to be published or transmitted in the electronic form, any material which is lascivious or appeals to the prurient interest or if its effect is such as to tend or deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it, shall be punished on first conviction with imprisonment of either description for a term which may extend to three years and with fine which may extend to five lakh rupees and in the event of second or subsequent conviction with imprisonment of either description for a term which may extend to five years and also with fine which may extend to ten lakh rupees.”

7. A reading of Section 67 of the Information Act, 2000 it is clear that 'or' is used in between 'lascivious', 'appeal to the prurient interest' and 'if its effect is such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it.' Therefore, these are not ingredients to constitute the offence but these are distinct offences. A person committed any of this act, Section 67 of the Information Technology Act is attracted. For clarity, the following acts are amounts to an offence under Section 67 of the Information Technology Act.

8. Whoever publishes or transmits or causes to be published or transmitted in the electronic form any material which

is:-

- i) Lascivious.
- ii) Appeal to the prurient interest.
- iii) If its effect is such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it.

9. Therefore, if any of the above acts are committed by a person, an offence under Section 67 of the Information Technology Act is attracted. The petitioner produced the complete text of the disputed news item published in the online TV. It is a fact that, it is extremely unparliamentary and it cannot be extracted in a judicial order. But I am forced to extract the same for deciding this case. These are some of the statements in the complaint.

"സമൂഹത്തിൽ സധൈര്യം ഇടപെടുന്ന സ്ത്രീകളെ അവഹേളിച്ച് സ്വയംഭോഗ സായുജ്യത്തിന്റെ നിർവൃതി തേടുകയും സ്വന്തം മക്കളെയും ഭാര്യമാരെയും വരെ അറബിക്ക് കൂട്ടികൊടുത്ത് ചരിത്രമുള്ള ഇവിടത്തെ സുഡാപ്പി കുഞ്ഞുങ്ങളോടും സ്വന്തം അമ്മപെങ്ങളുമാരെയും താലികെട്ടിയ ഭാര്യയെ വരെയും സുഡാപ്പികൾക്ക് വ്യപിചാരിക്കാൻ നൽകുന്ന അന്തം കമ്മികളോടുമാണ് ഞങ്ങളുക്ക് പറയാനുള്ളത് .

X x x x x

അമ്മയെ ഭോഗിച്ച് പോലും ആത്മരതി അണയുന്ന ചെറുകുട്ടികൾ , നിന്നെയൊന്നും തറവാട്ടിൽ നിന്നല്ല ഞങ്ങൾക്ക് ചെലവിന് നൽകുന്നത് .

സ്വന്തം വീട്ടിലുള്ളവരെ കൂട്ടികൊടുത്തു കിട്ടുന്ന പണം കൊണ്ട് വാങ്ങിയ മൊബൈലിൽ അശ്ലീല കമന്റുകൾ കുത്തിക്കുറിച്ചു നാട്ടിൽ മാന്യമായി ജീവിക്കുന്ന സ്ത്രീകളെ

അപമാനിച്ചാൽ ഏത് വരെയും ഞങ്ങൾ പോകും . മടിക്കൂത്ത് അഴിക്കുന്ന നിങ്ങളുടെ അമ്മ -പെങ്ങളാറെ പോലെയും ഭാര്യമാരെ പോലെയും ആണ് ഞങ്ങൾ എന്ന് കരുതരുത്"

10. I am in difficulty to translate these sentences to English because I will not get the exact words for the same. But the sum and substance of the contents is like this:

(a) We want to say to the people who give their wife and children for the sexual satisfaction of Arabies.

(b) Those who are enjoying sex with their mothers- we are not living at their expense.

(c) Don't think that, we are people like your mother and sister who are ready to undress.....

11. These are the contents in brief in the complaint mentioned. Of course not a word by word translation. According to the learned counsel for the petitioner, these statements will not attract Section 67 of the Information Technology Act. This is a matter to be investigated by the police. It is true that in **Sreekumar V. State of Kerala (2019(2) KLT 642)**, this Court observed that in order to attract Section 67 of the Information Technology Act, words used should be capable of arousing sexual thoughts in the minds of hearers and should involve lascivious elements arousing sexual thoughts or feelings or words must have

the effect of depraving persons, and defiling morals by sex appeal or lustful desires etc.

12. I do not want to make any observation whether the above news item will come within the four corners of Section 67 of the Information Technology Act. Some of the words as I said earlier has no corresponding words in English. Some of the words are abusive and unprintable in a judicial order. But these are matters to be investigated by the police.

13. The learned counsel for the petitioner submitted that she is regretting about some of the statements made in the news item. She stated that, she gave such a statement because, abusive and sexual languages are used by different people in the social media against her and because of that reason and because of that tension, such a statement was given in the online news channel.

14. The maximum punishment that can be imposed under Section 67 of the Information Technology Act is three years. The Hon'ble Supreme Court and the Full Bench of this Court observed that in cases in which maximum punishment is less than seven years, during the Covid-19 period and lockdown period, the bail application is to be considered liberally. I also consider that the petitioner is only an anchor of the online news channel. I also take

note of the fact that, she is a lady and there is no criminal antecedents against the petitioner. In such circumstances, I feel that this bail application can be allowed.

15. Moreover, considering the need to follow social distancing norms inside prisons so as to avert the spread of the novel Corona Virus Pandemic, the Hon'ble Supreme Court in **Re: Contagion of COVID-19 Virus In Prisons case (Suo Motu Writ Petition(C) No.1 of 2020)** and a Full Bench of this Court in **W.P(C)No.9400 of 2020** issued various salutary directions for minimizing the number of inmates inside prisons.

16. Moreover, it is a well accepted principle that the bail is the rule and the jail is the exception. The Hon'ble Supreme Court in **Chidambaram. P v Directorate of Enforcement (2019 (16) SCALE 870)**, after considering all the earlier judgments, observed that, the basic jurisprudence relating to bail remains the same inasmuch as the grant of bail is the rule and refusal is the exception so as to ensure that the accused has the opportunity of securing fair trial.

17. Considering the dictum laid down in the above decision and considering the facts and circumstances of this case, this Bail Application is allowed with the following directions:

1. The petitioner shall appear before the Investigating Officer within ten days from today and shall undergo interrogation.

2. After interrogation, if the Investigating Officer propose to arrest the petitioner, he shall be released on bail executing a bond for a sum of Rs,.50,000/-(Rupees Fifty Thousand only) with two solvent sureties each for the like sum to the satisfaction of the officer concerned.

3. The petitioner shall appear before the Investigating Officer as and when required. The petitioner shall co-operate with the investigation and shall not threaten or attempt to influence the witnesses or tamper with the evidence.

4. The petitioner shall strictly abide by the various guidelines issued by the State Government and Central Government with respect to keeping of social distancing in the wake of declared lock-down.

5. The petitioner shall not commit similar offences.

6. If any of the above conditions are violated by the petitioner, the jurisdictional Court can cancel the bail in accordance to law, even though the bail is granted by this Court.

18. Before concluding I have to extract one of the

paragraphs in **Sreekumar's** case (supra), which is mentioned above. Paragraph 11 of the above judgment is extracted hereunder:

“11. But before parting with this case, this Court is constrained to take note of certain disturbing trends in our society and community whereby incidents of intolerance and disrespect for the views of others and the respect and harmony for “others” is decreasing day by day which has very dangerous portents for the future of our civil society and democratic polity at large. It appears that the petitioner does not even have any personal acquaintance with the lady defacto complainant or her husband. Instances of this has exponentially increased due to the exclusive and addictive use of social media in our current times which may perhaps be a passing phenomena and this Court would only hope and expect that there will certainly be light at the end of the tunnel and that instances of such intolerance will give way to respect of the views of “others” so that one should realise that the “other” is nothing but part of “oneself” and that we are all one in this long adventurous journey of comprehensive realisation of “ourselves” in the true sense.”

19. Even after this judgment, the social media fight is continuing. The verbal fight in social media is increasing. If one person post a defamatory or lascivious comment in the social media, instead of approaching the police, the others will respond to the same with more vulgar words. There is no end to it. This is a situation where the rule of law will fail. The parallel societies who are not concerned about the rule of law will emerge. This is a grave situation. In the light of the decision in **Sreekumar's** case (supra), some of the abusive and unparliamentary comments may not come within the four corners of Section 67 of the Information

Technology Act. In such situation, the State has to wake up and legislate appropriate enactments to curtail the social media war. It is the duty of the State to maintain the public order. Moreover, as per the existing penal law itself, such culprits can be booked, for which state police should be vigilant. Therefore the registry of this Court will forward a copy of this order to the Director General of Police and the Chief Secretary of the Government of Kerala for taking appropriate action in accordance to law.

With these observations the bail application is allowed.

**P.V.KUNHIKRISHNAN
JUDGE**

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