

News

Justice Kauser Edappagath of the Kerala High Court ruled that any settlement reached by a parent of a young victim with the goal of avoiding criminal prosecution cannot be legally sanctioned in a POCSO case against the father of a minor.



Kerala High Court and the POCSO Act

The Kerala High Court has ruled in Shiju v. State of Kerala & Ors. that a settlement reached between a man and the kid's mother cannot be used as an excuse to withdraw a case under the Protection of Children from Sexual Offenses Act (POCSO Act) against a man accused of assaulting his own young child.

According to Justice Kauser Edappagath, a parent of a young victim cannot legally endorse a settlement they enter into with the goal of ending criminal prosecution. According to the Court, the State's obligation to prosecute crimes against minors is unaffected by such agreements or concessions.

"A case against the father for sexual harassment or abuse of their minor daughter cannot be legally settled or compromised by the mother. The State's obligation to prosecute crimes against children cannot be overridden by any compromise or out-of-court settlement made by the parents of a young victim with the intention of suppressing criminal prosecution. The Court stated in its ruling that courts have an obligation to protect the rights of juvenile victims of sexual assault in the exercise of their parens patriae jurisdiction, even in cases when parents neglect to do so.

Kauser Edappagath, Justice

Even in cases where parents fail to protect the rights of underage victims of sexual assault, courts are obligated to do so.

High Court of Kerala

The order was issued in response to a bail application submitted by a man who was charged with touching his 17-year-old daughter's breasts and thighs with the intent to sexually assault her and making sexually suggestive remarks to her.

He was charged with crimes covered by Sections 10, 9(l), 9(n), 12, and 11(i) of the POCSO Act. He has been detained since his arrest on April 17.

He filed for the current bail after the High Court denied his initial request.

The accused contended once more that he was wrongfully charged and that there was no documentation linking him to the alleged offense.

Additionally, he informed the court that the child's mother and him had subsequently reached a settlement. Additionally, the mother did not object to the accused being freed on bond. According to the Court, the case's claims revealed a serious, premeditated crime. The applicant is facing a serious accusation that, on its face, reveals a planned criminal act. The victim described how the applicant brutally sexually assaulted her in her statement, the Court stated.

The mother's decision to settle the matter without considering the wellbeing of her own daughter was also seen negatively by the court. It now turns out that the victim's mother, who had first filed the complaint alleging sexual assault, has decided to settle the case in complete disregard of her daughter's interests and welfare—a circumstance that the court described as "the fence itself devouring the crop." The fence itself eating the crop is a fitting description of the scenario.

High Court of Kerala

It also mentioned that although the mother said there was no problem with the bail being granted, she did not deny that the incident had taken place.

The accused's bail application was denied by the court **since sexual offences are not compoundable. In connection with an offense of incestuous sexual assault, the law prohibits parents or guardians of a young victim from compromising, withdrawing, or expressing no opposition to the continuation of criminal proceedings or the granting of bail.** Therefore, the Court determined that the compromise could not be approved.

Jerry Mathew, an advocate, defended the accused.

Aneeda Beegum, a senior public prosecutor, represented the state.