

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT**

**THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS**

**WEDNESDAY, THE 14<sup>TH</sup> DAY OF DECEMBER 2022 / 23RD AGRAHAYANA, 1944**

**BAIL APPL. NO. 8896 OF 2022**

**PETITIONER/S:**

XXXXXXXXXX  
XXXXXXXXXX XXXXXXXXXXXX  
BY ADV S.NIKHIL SANKAR

**RESPONDENT/S:**

- 1 STATE OF KERALA  
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, PIN  
- 682031
- 2 XXXXXXXXXXXX  
XXXXXXXXXX XXXXXXXXXXXX  
BY ADV PUBLIC PROSECUTOR

**OTHER PRESENT:**

PP SRI.NOUSHAD K.A

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 14.12.2022,  
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**BECHU KURIAN THOMAS, J.**

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**B.A.No.8896 of 2022**

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*Dated this the 14<sup>th</sup> day of December, 2022*

**ORDER**

This is an application seeking regular bail filed under Section 439 of the Code of Criminal Procedure, 1973.

2. Petitioner is the accused in Crime No.944/2022 of Vattappara Police Station, Thiruvananthapuram District. The offences alleged against the petitioner are under Sections 376,376(2)(n)(f),376(3) &354(c) of the Indian Penal Code, 1860 apart from Section 3(a) r/w Section 4(2),Section 5(l)(n)(p) r/w Section 6(1), Section 7 r/w Section 8, Section 9(1)(n) r/w Section 10, Section 11(ii) r/w Section 12 of the Protection of Children from Sexual Offences Act, 2012 and Section 67 E(b) of the of the Information Technology Act, 2000.

3. According to the prosecution, in March 2022, the accused committed penetrative sexual assault on the victim aged 15 years and thereby committed the offences alleged.

4. Sri.Nikhil Sankar, learned Counsel for the petitioner contended that the prosecution allegations are incapable of belief, since the petitioner is suffering from a peculiar deformity called 'Ambiguous Genetalia', due to which he is incapable of performing a sexual act. It was also submitted that petitioner was arrested on 08.10.2022, and the investigation having been completed, further detention would not serve any purpose. Learned Counsel submitted that petitioner is willing to abide

by any conditions that may be imposed upon him.

5. Sri.K.A. Noushad, learned Public Prosecutor opposed the grant of bail and contended that the allegation of a peculiar deformity on the petitioner is incorrect, since the medical report suggests that petitioner is capable of performing a sexual act. It was further submitted that if the petitioner is released on bail, there is every chance that he may intimidate/influence the witnesses.

6. I have considered the rival contentions.

7. Petitioner is alleged to have committed the offence of rape. Even though petitioner alleges that he suffers from a deformity rendering him incapable of performing a sexual offence, learned Public Prosecutor had handed over the medical report, obtained during investigation, in which it is stated that petitioner is capable of performing a sexual act. Even though the allegations against the petitioner are serious in nature, considering the fact that the investigation has already been completed and final report already filed, I am of the view that, the continued detention is not essential and the petitioner can be released on bail under strict conditions.

In the result, this application is allowed on the following conditions:-

(a) Petitioner shall be released on bail on him executing 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.

(b) Petitioner shall co-operate with the trial of the case.

- (c) Petitioner shall not enter into the jurisdictional limits of Vattappara Police Station, Thiruvananthapuram District, till the conclusion of trial.
- (d) Petitioner shall not intimidate or attempt to influence the witnesses; nor shall he attempt to tamper with the evidence.
- (e) Petitioner shall not commit any similar offences while he is on bail.
- (f) Petitioner shall not leave India without the permission of the Court having jurisdiction.

In case of violation of any of the above conditions, the jurisdictional Court shall be empowered to consider the application for cancellation, if any, and pass appropriate orders in accordance with the law, notwithstanding the bail having been granted by this Court.

**BECHU KURIAN THOMAS  
JUDGE**

jm/