

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

MONDAY, THE 21ST DAY OF NOVEMBER 2022 / 30TH KARTHIKA, 1944

BAIL APPL. NO. 8649 OF 2022

CRIME NO.1149 OF 2022 OF ALAPPUZHA NORTH POLICE STATION

PETITIONER/ ACCUSED :

XXXXXXXXXX
XXXXXXXXXX XXXXXXXXXXXX

BY ADV R.UMASANKAR

RESPONDENT/ STATE :

STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, COCHIN,
PIN - 682 031

BY SMT.M.K.PUSHPALATHA, PUBLIC PROSECUTOR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON
21.11.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

BECHU KURIAN THOMAS, J.

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B.A.No.8649 of 2022

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Dated this the 21st day of November, 2022

ORDER

This is an application seeking pre-arrest bail filed under Section 438 of the Code of Criminal Procedure, 1973.

2. Petitioner is the accused in Crime No. 824/2022 of Alappuzha South Police Station, alleging offences punishable under Sections 342, 323, 506 and 376(2)(n) of the Indian Penal Code, 1860 apart from Section 67(A) of the Information Technology Act, 2000. Later, the crime was transferred to Alappuzha North Police Station and renumbered as Crime No.1149 of 2022.

3. According to the prosecution, the accused had, after promising to help the victim financially, in the month of March 2021 forced her to indulge in sexual relationship with him and also compelled her to perform oral sex and took her nude photographs on his mobile phone and thereafter threatening to send the said photographs to her husband, repeated the sexual acts at several places and also continued to forcibly compelled her to indulge in sexual relationship on various occasions and also obtained under compulsion, gold from her and thereby committed the offences alleged.

4. Adv.R.Umasankar, appearing for the petitioner contended that the entire prosecution allegations are false and that the incident as alleged had not occurred. It was further submitted that even if the prosecution allegations are assumed to be true, the same would only reveal a consensual relationship. The learned counsel also submitted that both the petitioner and the victim are aged 40 years and that the allegations are impossible of belief. It was also pointed out that the allegations reveal several instances of sexual relationship at different places including various resorts and therefore even going by the prosecution allegations, the victim has made the allegations only as an afterthought. It was further submitted that the petitioner is willing to abide by any condition that may be imposed.

5. Smt.M.K.Pushpalatha, the learned Public Prosecutor opposed the grant of bail and contended that the allegations are serious and that custodial interrogation is essential.

6. I have considered the rival contentions and have also perused the statement of the victim. Even though the allegations are serious in nature, considering the entire circumstances, I am of the view that limited custody of the petitioner would suffice the investigation.

8. Accordingly, this application is allowed on the following conditions :-

- (a) Petitioner shall appear before the Investigating Officer from 24.11.2022 to 26.11.2022 from 9.00 a.m. to 6.00 p.m.

and shall subject himself to interrogation.

- (b) If after interrogation, the Investigating Officer proposes to arrest the petitioner, then, he shall be released on bail on him executing a bond for Rs.50,000/- (Rupees fifty thousand only) with two solvent sureties each for the like sum before the Investigating Officer.
- (c) Petitioner shall appear before the Investigating Officer as and when required and shall also co-operate with the investigation.
- (d) Petitioner shall not intimidate or attempt to influence the witnesses; nor shall he tamper with the evidence or contact the victim or her family members.
- (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

RKM