

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

THURSDAY, THE 15TH DAY OF SEPTEMBER 2022 / 24TH BHADRA, 1944

BAIL APPL. NO. 6883 OF 2022

AGAINST THE ORDER/JUDGMENT CRMC 1823/2022 OF DISTRICT COURT &
SESSIONS COURT, ERNAKULAM [IN CRIME NO.779/2022 OF KALAMASSERY
POLICE STATION, ERNAKULAM]

PETITIONER/ACCUSED:

1 NAVAS. T.N
 AGED 46 YEARS
 S/O. NOOHUKUNJU,
 THAMARASSERY HOUSE,
 KUNNUPURAM KARA, EDAPPALLY NORTH
 ERNAKULAM, PIN-682024.

2 XXX
 ACHU NIVAS
 HMT COLONY P.O
 KALAMASSERY

BY ADVS.
C.P.UDAYABHANU
D.FEROZE
NAVANEETH.N.NATH
C.J.JIYAS
T.S.KRISHNENDU
PREETI S.
K.A.ABIDALI

RESPONDENTS:

1 STATE OF KERALA
 REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF
 KERALA, ERNAKULAM, PIN - 682031

2 SUB INSPECTOR OF POLICE
 KALAMASSERY POLICE STATION,
 ERNAKULAM, PIN - 682034

BY ADV.M.K PUSHPALATHA - PUBLIC PROSECUTOR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON
15.09.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

BECHU KURIAN THOMAS, J.

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B.A.No. 6883 of 2022

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Dated this the 15th day of September, 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 sole accused in Crime No.779/2022 of the Kalamassery Police Station, Ernakulam, alleging offences under Sections 376(2)(n), 354, 354A(l)(ii), 354C, 323, 506(ii) and 384 of the Indian Penal Code, 1860 apart from Section 66E of the Information Technology Act, 2000.

3. The prosecution case is that the accused, who was friendly with the victim, committed rape on her, in the month of March, 2021 and after taking videograph of the act, blackmailed her into forcible physical relationship till June, 2021 on several occasions and thereby committed the offences alleged.

4. Shri.C.P.Udayabhanu, the learned counsel for the

petitioner contended that the entire prosecution allegations are false and that the documents produced by the petitioner would clearly indicate that the relationship if any was, at the most, a consensual relationship. It was further submitted that an agreement was also entered into between the petitioner and the victim as early as on 07.07.2021, which is after the date of offence and one of the conditions in the agreement clearly stipulated that the victim shall not raise any allegations of physical or mental harassment. It was further submitted that the reason for entering into such an agreement was because the victim was caught red-handed for misappropriating an amount of Rs.5,00,000/-(Rupees five lakhs only) which was returned by her. It was further submitted that in any event, petitioner is willing to abide by any conditions that may be imposed.

5. Smt.M.K.Pushpalatha, the learned Public Prosecutor opposed the grant of bail and contended that there are serious allegations against the petitioner, which require custodial interrogation and that grant of anticipatory bail to the petitioner

will prejudice the investigation.

6. Shri.D.Feroz, the learned counsel for the victim submitted that the case of the petitioner is totally false and that he had subjected the victim to rape on many occasions after exploiting the close relationship between them. It was further submitted that the victim had never been an employee of the petitioner as alleged and that she herself had license to conduct a homeo retail and wholesale shop. It was further submitted that petitioner had manipulated the entire documents including her mobile phone, wherein he had planted certain bugs/devices to manipulate the messages and also to extract the videographs and other photos of the petitioner from the phone.

7. I have considered the rival contentions. The offences alleged against the petitioner are serious in nature. Even though an agreement has been allegedly entered into between the petitioner and the victim in July, 2021, the clauses included therein raises suspicion in the mind of this Court.

8. Considering the nature of allegations, I am of the view

that this is a case where custodial interrogation is necessary. Even though, petitioner has produced certain WhatsApp messages, it is not clearly discernible as to whether the messages were those sent by the victim from her mobile.

9. On a consideration of the entirety of the circumstances, I am of the view that the custodial interrogation cannot be avoided and hence petitioner is not entitled to be released on anticipatory bail.

Accordingly, this bail application is dismissed.

BECHU KURIAN THOMAS
JUDGE

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