

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE GOPINATH P.

MONDAY, THE 4<sup>TH</sup> DAY OF APRIL 2022 / 14<sup>TH</sup> CHAITHRA, 1944

BAIL APPL. NO. 636 OF 2022

CRIME NO.297/2017 OF NEDUMBASSERY POLICE STATION, Ernakulam  
AGAINST THE ORDER/JUDGMENT IN SC 118/2018 OF SPECIAL C SPE/CBI-I&3  
ADDITIONAL DISTRICT COURT / I ADDITIONAL MOTOR ACCIDENT CLAIMS  
TRIBUNAL ,EKM

PETITIONER/ACCUSED NO.4:

VIJEESH.V.P  
AGED 31 YEARS  
S/O.RAMAKRISHNAN, MANGALASSERY HOUSE, CHUNDAGAPOYYI,  
PONNAYAM P.O., KATHIROOR, THALASSERY, KANNUR-670 642.  
BY ADVS.  
A.MOHAMMED  
T.R.S.KUMAR  
MITHUN C THOMAS

RESPONDENT/COMPLAINANT:

STATE OF KERALA  
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,  
ERNAKULAM-682 031.

BY ADVS.  
DIRECTOR GENERAL OF PROSECUTION  
SHRI.P.NARAYANAN, ADDL.PUBLIC PROSECUTOR  
SRI.T.R.RENJITH (SR.P.P.)

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON  
04.04.2022, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:

**ORDER**

This is an application for regular bail

2. Petitioner is the 4th accused in SC No.118/2018 of the Additional Special Sessions Court (SPE-CBI)-III, Ernakulam corresponding to Crime No.297/2017 of Nedumbassery Police Station, Ernakulam District alleging commission of offences punishable under Section 342, 366, 376, 506(i), 120B & 212 r/w 34 of the Indian Penal Code and Section 66 E, 67 (A) of Information Technology Act, 2008.

3. The allegation, in brief, is that the petitioner along with the other accused in the case had committed the kidnapping of a famous film actress, wrongfully confined her and had taken her nude pictures and videos of her being sexually assaulted by one of the other accused and thereby they committed the offences alleged against them.

4. The learned counsel appearing for the petitioner would submit that the petitioner has been in custody for the last 5 years and his continued detention is absolutely not necessary. It is submitted that though the trial of the case was almost complete, the prosecution has now initiated a further investigation and the trial is not likely to be completed in the near future. It is submitted that the continued incarceration of the petitioner as an undertrial prisoner is a violation of his rights under article 21 of the Constitution of India. It is submitted that the 2<sup>nd</sup> accused in the case has been directed to be released on bail by the Supreme Court through an order dated 09-03-2022. Reference is also made to Annexures A-1 to A-3 through which Bail was granted to Accused Nos. 3, 5 and 6. It is submitted that the role

ascribed to the petitioner is no different and he is also entitled to be released on bail.

5. The learned Public Prosecutor vehemently opposes the grant of bail. The circumstances of the case are pointed from the record. It is submitted that further investigation is to be completed by 15<sup>th</sup> April in terms of orders issued by this Court. It is submitted that the prosecution is anxious to see that the trial of the case is completed at the earliest. It is submitted that the release of the petitioner on bail at this point in time would not be conducive to the prosecution.

6. Having heard the learned counsel for the petitioner and the learned Public Prosecutor also, I am of the opinion that the petitioner can also be granted Bail. I note from Annexures A-1 to A-3 the specific allegations raised against the petitioner. The role ascribed to the petitioner is evident from paragraphs 4 and 5 of Annexure A-2 order granting bail to the 5<sup>th</sup> accused in the case. I quote:-

*“4. According to the prosecution, on 17.2.2017, the survivor, after finishing her work at Thrissur, was on her way to Enrakulam in a car driven by the 2<sup>nd</sup> accused, her designated driver. In pursuance of the devious plan hatched by the accused, the 1<sup>st</sup> accused along with his henchmen laid wait in a tempo traveler and when they saw the vehicle in which the actor was travelling, they stealthily followed the car, waiting for the right time to strike. When the vehicle reached Athani, the 1<sup>st</sup> accused dashed his vehicle on the back side of the vehicle in which the actor was travelling. As previously planned, the 2<sup>nd</sup> accused stopped the car as if to inspect the same. At this point of time, the accused Nos.3 and 4 entered the victim's car and wrongfully confined her. Her mobile phone was snatched from her possession and the car proceeded to Ernakulam as if nothing had happened.*

*5. The applicant herein and the 6<sup>th</sup> accused laid wait near the Appolo Junction, Kalamassery. When the car reached Kalamassery, the applicant approached the vehicle and gave an update to the 1<sup>st</sup> accused. The 4<sup>th</sup> accused then got down from the victim's car at Kalamassery and entered the tempo traveler. The 6<sup>th</sup> accused took his place and confined her. It is further alleged that when the car reached Palarivattom, the 6<sup>th</sup> accused got out of the car and the applicant entered and sat beside the*

*victim and confined her. The 4<sup>th</sup> accused also entered into the victim's car which was being driven by the 2<sup>nd</sup> accused all through. Later, the 1<sup>st</sup> accused took charge of the car and the 2<sup>nd</sup> accused got out. The applicant and the 3<sup>rd</sup> accused are alleged to have sat on either sides of the victim and confined her. The accused Nos.2, 4 and 6 followed the victim in the tempo traveler which was driven by the 6<sup>th</sup> accused. Thereafter, the 1<sup>st</sup> accused went and sat on the back seat of the vehicle and the applicant was asked to drive the vehicle. The victim was allegedly confined by accused Nos.1 and 3 in the back seat. When the vehicle reached in front of the hotel Kamadenu at Chitethathukara, the applicant was asked to purchase a bottle of water by the 1<sup>st</sup> accused. As instructed by the 1<sup>st</sup> accused, the applicant is alleged to have taken a mobile phone from the tempo traveler and the same was handed over to the 1<sup>st</sup> accused. Thereafter, the accused Nos.2, 4, 5 and 6 followed the victim's car in the tempo traveler. The 1<sup>st</sup> accused, who was inside the car, criminally intimidated the victim and she was asked to accede to record her obscene videos. She was undressed by using force and she was made to do oral sex. This was recorded on the mobile phone. During the commission of the offensive act, the car was being driven by the 3<sup>rd</sup> accused. Later, when the car reached Padamugal, the 2<sup>nd</sup> accused got out from the tempo traveler and took the driver seat of the victim's car. The victim was later dropped in the house of another actor at 11 p.m. The accused, after commission of the offence, destroyed material evidence and abscond.*

I note that the role ascribed to the petitioner is not substantially different from the role ascribed to accused 3, 5 & 6 who have been granted bail considering their long period of incarceration. I also note that the Supreme Court has granted bail to the 2nd accused on 9.3.2022, again, considering the long period of incarceration. The petitioner herein has been in custody from 23.2.2017 which means that he has been in custody for more than 5 years. I am therefore inclined to grant bail to the petitioner. This application will stand allowed.

7. The applicant shall be released on bail on his executing a bond for Rs.1,00,000/- (Rupees one lakh only) with two solvent sureties each for the like sum to the satisfaction of the court having jurisdiction. The above orders shall be subject to the following conditions:-

1) The applicant shall continue to appear before the Investigating Officer on the first Monday of every month between 9 a.m. and 11 a.m. until the said condition is modified by the trial Court at the appropriate stage.

2) He shall not intimidate or attempt to influence the witnesses; nor shall he tamper with the evidence. He shall not contact the victim or her family members in any manner.

3) He shall not enter the limits of Ernakulam and Thrissur revenue districts for a period of six months, except for complying with the conditions of this order or for appearance in Court. If for any extraordinary reason that applicant requires to enter the limits, previous permission has to be obtained from the jurisdictional Court.

4) He shall not commit any similar offence while on bail.

5) He shall not leave India without the permission of the Court and if having passport, shall deposit the same before the Trial Court within a week; If release of the passport is required at a later period, the applicant shall be at liberty to move appropriate application before 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.

sd/-

**GOPINATH P.  
JUDGE**