

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

WEDNESDAY, THE 8TH DAY OF MARCH 2023 / 17TH PHALGUNA, 1944

BAIL APPL. NO. 1883 OF 2023

(Crime No.35/2023 of Kothamangalam Police Station)

PETITIONER/ACCUSED:

XXX
AGED 34 YEARS
XXX, PIN - 686691

BY ADVS.
NAVANEETH.N.NATH
SANEL CHERIAN
K.S.STEJO

RESPONDENT:

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

BY ADV PUBLIC PROSECUTOR

SRI.V.S.SREEJITH. P.P.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON
08.03.2023, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

ORDER

This application is filed u/s 439 of the Code of Criminal Procedure seeking regular bail.

2. The applicant is the sole accused in Crime No.35/2023 of Kothamangalam Police Station. The offences alleged are punishable under Sections 354, 354A of Indian Penal Code, Sections 9(I)(n) read with 10, 6 read with 5(I)(n) of the Protection of Children from Sexual Offences Act.

3. The prosecution case, in short, is that, on 02.05.2017, 05.05.2017 and 07.05.2017, the applicant sexually assaulted the victim who was then a minor and thereby committed the offences.

4. I have heard Sri. Navaneeth N. Nath, the learned counsel for the applicant and Sri. V.S Sreejith, the learned Public Prosecutor. Perused the case diary.

5. The learned counsel for the applicant submitted that the applicant is innocent and has been falsely implicated in the present case. The counsel further submitted that no materials are on record to connect the applicant with the alleged crime; hence,

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he is entitled to get bail. On the other hand, the learned Public Prosecutor submitted that the alleged incident occurred as a part of the intentional criminal acts of the applicant, and he is not entitled to bail at this stage.

6. The applicant was remanded to judicial custody on 03.02.2023. The victim is the sister-in-law of the applicant. The marriage of the applicant with the sister of the victim was solemnized on 24.03.2016. According to the victim, while her sister was hospitalized in connection with the delivery, the applicant sexually assaulted her at her house on three occasions. The victim gave a complaint to the police for the first time on 29.12.2022, that is about more than five years after the alleged incident. A crime was registered against the applicant on the complaint of the victim as Crime No. 2139/2022 on 22.12.2022. The offence alleged in the said crime was under Sections 324 and 354 of Indian Penal Code. Annexure-A3 is the FIS given by the victim in the said crime. I went through Annexure-A3. There is absolutely no allegation of rape alleged to have been taken place in the year 2017. It appears that on the next day, a crime was registered against the victim on the complaint of the applicant for

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the offence punishable under Section 326 of Indian Penal Code as Crime No. 2148/2022. The copy of the FIR is Annexure-A4. It was thereafter, on 29.12.2022, the applicant gave a statement to the police in Crime No.2139/2022 raising the present allegations. All these sequence of events give rise to doubt as to the fabrication of the prosecution case. It is true that, the petitioner is a habitual offender and he is involved in another ten cases. However, considering the fact that the prosecution version is doubtful and the applicant has been in custody for the last more than 35 days, I am inclined to grant bail to the applicant. Hence, the applicant is entitled to be released on bail.

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

(i) The applicant shall be released on bail on executing a bond for Rs.1,00,000/- (Rupees One lakh only) with two solvent sureties for the like sum each to the satisfaction of the jurisdictional Magistrate/Court.

(ii) The applicant shall fully co-operate with the investigation.

(iii) The applicant shall appear before the investigating

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officer between 10.00 a.m and 11.00 a.m. every Saturday until further orders. He shall also appear before the investigating officer as and when required.

(iv) The applicant shall not commit any offence of a like nature while on bail.

(v) The applicant shall not attempt to contact any of the prosecution witnesses, directly or through any other person, or in any other way try to tamper with the evidence or influence any witnesses or other persons related to the investigation.

(vi) The applicant shall not leave the State of Kerala without the permission of the trial Court.

(vii) The application, if any, for deletion/modification of the bail conditions or cancellation of bail on the grounds of violating the bail conditions shall be filed at the jurisdictional court.

Sd/-

DR. KAUSER EDAPPAGATH

JUDGE

rpk

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APPENDIX OF B.A NO. 1883 OF 2023

PETITIONER ANNEXURES

- ANNEXURE A1 TRUE PHOTOCOPY OF THE FIR IN CRIME NO
35/2023 OF KOTHAMANGALAM POLICE STATION.
- ANNEXURE A2 TRUE PHOTOCOPY OF THE ORDER DATED 15.02.2023
PASSED BY THE COURT OF THE SPECIAL JUDGE
MUVATTUPUZHA INN CMP NO 155/2023 IN CRIME NO
35/2023 OF KOTHAMANGALAM POLICE STATION.
- ANNEXURE A3 TRUE PHOTOCOPY OF THE FIR IN CRIME NO
2139/2022 OF KOTHAMANGALAM POLICE STATION.
- ANNEXURE A3 TRUE PHOTOCOPY OF THE FIR IN CRIME NO
2148/2022 OF KOTHAMANGALAM POLICE STATION.