

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

FRIDAY, THE 26TH DAY OF AUGUST 2022 / 4TH BHADRA, 1944

BAIL APPL. NO. 3273 OF 2022

CRIME NO.123/2022 OF Ottapalam Police Station, Palakkad

PETITIONER/ACCUSED:

ANOOP
AGED 23 YEARS, SON OF CHAMI,
VARIYATHPARAMBIL HOUSE,
CHUNANGAD (P.O), AMBALAPPARA,
PALAKKAD DISTRICT, PIN - 679511

BY ADVS.
SRI.NIREESH MATHEW
SMT.RASHMI
SMT.B.MEERA

RESPONDENTS/STATE:

- 1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM PIN - 682031
- *2 STATE OF KERALA,
REPRESENTED BY THE SECRETARY
DEPARTMENT OF EDUCATION,
THIRUVANANTHAPURAM
- *3 CENTRAL BOARD OF SECONDARY EDUCATION,
REPRESENTED BY ITS DIRECTOR GENERAL,
NEW DELHI
- *4 KERALA STATE LEGAL SERVICES AUTHORITY,
MEMBER SECRETARY,

HIGH COURT OF KERALA, ERNAKULAM,

*(ADDL. R2 TO R4 ARE SUO MOTU IMPEADED AS PER ORDER DATED 08/06/2022.

*5 DIL SE,
MANASSERY MURI,
MUDAMUELI P.O, KOCHI 682507

REP. BY ITS TRUSTEE DR.JANAKI SANKARAN,
RESIDING AT 50/465B,
MANIMALA CROSS ROAD,
EDAPPALLY, KOCHI 682 024

*(ADDL.R5 IS IMPEADED AS PER ORDER DATED 27/06/2022 IN CRL.M.A.NO.1/2022 IN B.A.NO.3273 OF 2022).

*6 PARVATI NAMBIAR,
AGED 21 YEARS, D/O RAMAKRISHNAN P.,
SOUPARNIKA, RARISHAN ROAD P.O,
ERANHIPALAM, PIN-673006

*(ADDL.R6 IS IMPEADED AS PER ORDER DATED 27/06/2022 IN CRL.M.A.NO.2/2022 IN B.A.NO.3273/2022.

BY ADVS.
SMT.M.K.PUSHPALATHA, PUBLIC PROSECUTOR
SRI.NIRMAL S.
SMT.A.PARVATHI MENON
SMT.K.V.RASHMI

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 25.07.2022, THE COURT ON 26.08.2022 DELIVERED THE FOLLOWING:

“C.R.”

BECHU KURIAN THOMAS, J.

B.A. No.3273 of 2022

Dated this the 26th day of August, 2022

ORDER

While considering an application for regular bail in a crime alleging rape of a minor, this Court expressed its anguish at the alarming rise in the number of sexual offences committed on school children. The distress escalated on noticing that, in many instances, the perpetrators themselves were students - either minors or those who had just crossed the threshold age of majority.

2. The present bail application relates to an incident of aggravated penetrative sexual assault by the petitioner on a victim aged 15 who became pregnant. The victim affirmed in her statement to the police that she was in a relationship with the petitioner and that they even intent on getting married. Although attempts were made by the relatives to terminate the pregnancy, the victim insisted on continuing with it. Petitioner's family expressed their inclination to accept the victim and the child. However, the fact remains that the girl

is the victim of a sexual crime, and the young boy is an alleged sexual offender. Unmindful of the consequences, they indulged in a sexual act which can result in a minimum imprisonment of 20 years for the accused.

3. The alarming rise in the number of sexual offences committed against school children requires introspection. Many a time, the perpetrators are youngsters. Young children indulge in such offending acts for manifold reasons varying from pre-planned crimes to natural inquisitiveness of adolescence and some arising out of amorous relationships. At times the sexual acts are committed with the belief that the consent of both partners is sufficient to absolve them from the crime. By the time they realize their assumptions to be mistaken notions, it is too late in the day, and the situation becomes destructive, leading to very inconvenient results and beyond any remedial measures.

4. With the enactment of statutes like the Protection of Children from Sexual Offences Act, 2012 (for short 'the POCSO Act'), and the amendments to the Indian Penal Code 1860, laws relating to sexual offences have undergone drastic changes, and the young seem to be unaware of the enormity of the consequences of sexual acts. The crimes committed by the adolescent or the youths expose them to consequences that can snuff out their 'life', which could otherwise be resplendent. Taking cue from the adage "an ounce of prevention is worth a pound of cure", this

Court felt it essential to invoke its jurisdiction under Article 226 of the Constitution for issuing directions, despite the application being one for anticipatory bail under section 438 of the Code of Criminal Procedure, 1973 (for short 'the Cr.P.C).

5. On 08.06.2022, this Court suo moto impleaded the State of Kerala, the Central Board of Secondary Education (for short 'the CBSE') and the Kerala State Legal Services Authority (for short 'the KELSA') and declared its intention to invoke the jurisdiction under Article 226 to issue directions for paving the way for better awareness of the statutes relating to sexual offences in the schools in Kerala.

6. After this Court proposed to issue directions, two persons came forward requesting to implead in the proceedings. An NGO called 'Dil Se', whose trustee is Dr.Janaki Sankaran and a law student, Ms. Parvathy Nambiar, thus requested permission to put forward their suggestions. Having regard to the objective behind the proposal of this Court, their impleading petitions were allowed.

7. I heard Adv. Parvathy Menon, on behalf of KELSA, Adv. Nirmal S., on behalf of the CBSE, Smt.M.K.Pushpalatha, learned Public Prosecutor/Government Pleader, Sri. Nireesh Mathew, on behalf of the petitioner in the bail application, Adv. Reshmi K.V., on behalf of the NGO 'Dil Se', and Ms. Parvathy Nambiar, the student from Hidyatullah National Law University, as party-in-person,

8. Adv. Parvathy Menon submitted that KELSA has already issued a booklet of relevant laws, which includes lessons on POCSO, which are supplied to students of various schools and that they are conducting quiz competitions for students above 11 years. It was also pointed out that under the aegis of KELSA, a committee has been constituted for formulating guidelines and suggestions for providing awareness among adolescents and children. On behalf of KELSA, it was submitted that they are willing to undertake regular awareness classes for the school students of Kerala as they have felt the need to impart awareness amongst the children on various aspects of POCSO and other statutes. Smt. Parvathy Menon also submitted that the concepts of 'good touch' and 'bad touch' needs better elucidation to enable the children to distinguish between the two. Further, children ought to be warned of online abuse, online bullying, online grooming and other modes adopted by the perpetrators of sexual crimes and develop a healthy cyber culture, which is essential in the present-day context. Suffice to say, KELSA, from their experience, submitted that, it was imperative to create proper awareness amongst the children and that the present system is insufficient and deficient.

9. Adv. Reshmi K.V., the learned counsel appearing on behalf of 'Dil Se', submitted that they are willing to undertake regular classes for the students.

10. Ms. Parvathy Nambiar, a promising youngster in the legal arena,

submitted that her research and survey revealed ignorance of law as a major reason for the rise in the number of cases under the POCSO Act. She also pointed out that lack of awareness and proper orientation amongst the teachers are also hurdles in effective communication with the students.

11. Adv. Nirmal S., submitted that the CBSE had identified the need for imparting awareness on the provisions of POCSO and other similar statutes and had even issued a Circular in 2014 as well as in 2017, making it mandatory for every school to initiate steps to instil awareness on POCSO Act. As per the circular, failure to conduct sessions on Act is a ground for disaffiliation of the school itself. They had also made it mandatory to form a School Management Committee, which could play a vital role in guiding the school.

12. Smt.M.K.Pushpalatha, the learned Public Prosecutor/Government Pleader, submitted that a Circular was issued by the Government on 18.03.2015 stating that the schools must conduct awareness classes and should also discuss at the PTA meetings the provisions of POCSO Act and provide drop boxes and therefore the Government has already initiated appropriate steps.

13. Though none of the Counsel argued on the legality of the proposal of the Court, it is essential to dwell, in brief, on the power of this Court to issue directions under Article 226, even while considering an

application for bail.

14. Article 226 is couched in a comprehensive phraseology conferring an ex facie wide power upon the High Courts to reach injustice wherever it is found. The Constitution designedly used a wide language, and its exercise is not subject to any limitation other than territorial and other self-imposed restrictions. In the decision in **Lt.Col.Khajoor Singh v. Union of India and Another** (AIR 1961 SC 532), the Supreme Court held that the power of the High Court under Article 226 of the Constitution is of the widest amplitude and it is not confined only to issuing of writs in the nature of habeas corpus etc., for it can also issue directions or orders against any person or authority, including in appropriate cases, any Government.

15. Apart from the above, the High Court, as a court of plenary jurisdiction, has the inherent power to do complete justice. The power under Article 226 can also be utilised to effectuate the law and to ensure that several authorities and organs of the State act in accordance with the law. Reference to the decision in **Union of India and Another v. Kirloskar Pneumatic Co. Ltd.** [(1996) 4 SCC 453] is relevant in this context. The inherent power vested in this Court can therefore be exercised in cases where the Court is satisfied with the necessity to exercise such power. Considering the lack of appropriate measures to impart awareness on sexual crimes in the schools in Kerala, this Court is

of the opinion that certain directions are required to be issued. Hence this Court is of the view that an instance has arisen to invoke its extraordinary jurisdiction under Article 226 of the Constitution of India.

16. The POCSO Act was enacted with the specific purpose of curbing the evil of child sexual abuse. Every step in the judicial process under the Act is envisaged to be child friendly. The underlying feature of the Act is designed not merely for the post-crime stage of reporting and punishing the offender but also to curb the occurrence of sexual offences against children. If the purpose of the Act has to be achieved, the statute itself must act as a deterrent which can be achieved to a large extent by awareness.

17. Article 39 (f) of the Constitution of India provides that the State shall, in particular, direct its policy towards securing that the children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment. The observations of the Supreme Court in **Alakh Alok Srivastava v. Union of India and Others** [(2018) 17 SCC 291] and in **Eera through Dr.Manjula Krippendorf v. State (NCT of Delhi) and Another** [(2017) 15 SCC 133] are relevant in this context.

18. If the purpose of the POCSO Act and the amendments brought to the IPC are to be achieved, children must be made aware of the

different aspects of sexual crimes and the modes to identify and avert such instances. The Right of Children to Free and Compulsory Education Act, 2009, apart from Article 21A of the Constitution of India, mandates that the State and its instrumentalities are bound to provide opportunities for the children to be educated.

19. The procedure to impart awareness on sexual crimes, presently in vogue, has not yielded the desired results as it falls woefully short of the requirements. Even the terms “good touch” and “bad touch”, which are informed as being taught in some schools, are noticed to be too wide and ambiguous. These wide terms may require better categorisation like “safe touch”, “unsafe touch”, “unwanted touch”, etc., not only to identify abuses but also to avoid false or wrong accusations. The attempt of this Court in this proceeding is to instil in the mind of the Government as well as the school authorities the need to evolve a more functional and authoritative procedure to create awareness of not just the provisions of POCSO Act but also to evolve a methodology to impart, in a systematic manner, the ill-effects of sexual offences. This must include methods for identifying instances of sexual offences, means to prevent the commission of such crimes and other allied issues. One of the prime objectives is to impel the school authorities to educate the children and empower them by imparting awareness as a mandatory process.

20. The CBSE has as rightly pointed out by the learned Standing

Counsel, issued specific guidelines which are certainly beneficial if properly implemented. Despite the State Government having issued a Circular in 2015, the same is insufficient. All these steps taken, as mentioned earlier, have not achieved their desired results.

21. Adhering to the objectives of statutes relating to sexual offences and abstaining from sexual crimes is a necessity in a civilized society. As children grow up to be future citizens of the country, this civic sense, if imbibed by them during their school years, will hold them in good stead throughout their life. This civic sense can enlighten the mind of the child in his formative years. No doubt, an enlightened mind dispels darkness. The observations of the Supreme Court in **M.C.Mehta v. State of T.N. and Others** [(1996) 6 SCC 756] that the "*Child is the father of man, to enable fathering of a valiant and vibrant man, the child must be groomed well in the formative years of his life. He must receive education, acquire knowledge of man and materials and blossom in such an atmosphere that on reaching age, he is found to be a man with a mission, a man who matters so far as the society is concerned*" is apt in this context.

22. Issuing circulars which remain hidden to many will not serve any purpose nor achieve the desired results. Awareness of statutory provisions relating to sexual offences and other allied matters is to be made part of the curriculum, to be taught at regular intervals as a measure of

prevention-based orientation. Continuous or repeated awareness sessions about the pernicious effects of sexual offences alone may achieve the desired objective of a drastic reduction in the commission of such crimes. It is the need of society that a child is provided with an atmosphere to grow and blossom. However, a deviation or an abrasion at a young age has a tendency to snuff out his or her future. The awareness of the consequences of sexual offences and their ramifications, if imparted timely in the proper manner, can pave the way to prevent the commission of such offences.

23. In **State of Tamil Nadu and Others v. K. Shyam Sunder and Others** [(2011) 8 SCC 737], the Supreme Court observed that the right of a child under Article 21A should not be restricted only to free and compulsory education but should be extended to have the right to quality education without any discrimination on the ground of economic, social and cultural background.

24. Education is intended to empower and liberate. Empowering each child to prevent or report abuses and liberating each child from conservative and narrow-minded thoughts are also part of education. The voice of the victim of sexual abuse should not be suppressed, and it is only through education that the victim can be empowered to speak out. Similarly, it is education on the punishments for sexual abuse that can prevent or deter possible abusers from indulging in such heinous acts.

Thus the concept of quality education can have meaning only if orientation on sexual offences and the means to prevent them are imparted at the school level itself. A prevention-oriented programme on sexual abuse is therefore a facet of the right to education contemplated under Article 21A of the Constitution of India.

25. In this context, it is relevant to refer to the system prevailing in many States in the United States of America. In the year 2011, in the State of Illinois, legislation was passed that mandates all schools to implement a prevention-oriented child sexual abuse programme. The programme involves the teaching of students from pre-kindergarten to the twelfth grades age-appropriate techniques to identify and recognise child sexual abuse. The programme also includes the requirement to teach the school personnel, including the teachers, all about child sexual abuse and also the parents and guardians about the warning signs of child sexual abuse, needed assistance or resource information to support sexually abused children and their families. The legislation is called 'Erins Law' named after Erin Merryn - a child abuse survivor.

26. The "Erin's Law' has now been passed as legislation in 37 States and is pending consideration in 13 other States in the United States of America. The fact that most States are incorporating programmes to prevent sexual abuse as part of a mandatory requirement indicates the success of such programmes. Erin's Law can be used as a guideline by

the State of Kerala and the CBSE while including the programme as part of the curriculum.

27. These are matters on which the Government, the CBSE and other educational institutions must deliberate upon and evolve appropriate methodology.

28. In view of the above, in the exercise of the powers of this Court under Article 226 of the Constitution of India, the following directions are issued;

(i) The State of Kerala and the CBSE shall issue necessary and appropriate orders making it mandatory for every School under its control and within the territory of Kerala to include a prevention-oriented programme on sexual abuse as a mandatory part of the curriculum.

(ii) A Committee of Experts shall be formed by the State of Kerala and the CBSE within an outer time limit of two months from today to identify the mode and methodology for imparting an age-appropriate prevention-oriented programme on sexual abuse.

(iii) The Committee of Experts shall submit its recommendations within an outer period of six months from its formation, and appropriate orders shall thereafter be issued by the State of Kerala and the CBSE in tune with the recommendation so as to implement the programme from the academic year 2023-24.

(iv) The Secretary/ Secretary General of the respondents and all

other Officers concerned under the respective respondents shall be bound to comply with the above directions.

The order dated 08.06.2022 granting bail to the petitioner is made absolute and this bail application is disposed of.

**BECHU KURIAN THOMAS
JUDGE**

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