

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.

FRIDAY, THE 25TH DAY OF AUGUST 2023 / 3RD BHADRA, 1945

BAIL APPL. NO. 7198 OF 2023

(CRIME NO.1322/2023 OF PARASSALA POLICE STATION)

PETITIONER/ACCUSED:

RAJAYYAN

AGED 70 YEARS

S/O PATHROSE , KIZAKKEKARAVEEDU, KUNNATHUKAL P.O,
THIRUVANANTHAPURAM DISTRICT., PIN - 695504

BY ADV S.NIKHIL SANKAR

RESPONDENT/STATE:

STATE OF KERALA

REPRESENTED BY PUBLIC PROSECUTOR,

HIGH COURT OF KERALA, PIN - 682031

OTHER PRESENT:

SMT.S.SEETHA-SR.PP

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON
25.08.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER

This is an application filed under Section 439 of the Code of Criminal Procedure seeking regular bail.

2. The petitioner is the sole accused in Crime No.1322/2023 of Parassala Police Station. The offences alleged against the petitioner are punishable under Sections 354, 354A(1)(ii) of the Indian Penal Code and Sections 8 read with Section 7, 10 read with Section 9(m), 9(n) of the POCSO Act.

3. The prosecution case is that on 28.07.2023, at about 11.30 p.m., the petitioner, who is aged 77 years, allegedly touched the victim aged 10 years above the left chest and kissed her on her cheeks at a family function held at a friend's residence and thereby committed the offences. The crime was registered in such circumstances. The petitioner was arrested in connection with the same on 29.07.2023. Since then, he has been under judicial detention. This application for regular bail is submitted in such circumstances.

4. Heard, Sri. Nikhil Shankar, the learned Counsel appearing for the petitioner and Smt. Seetha S, the learned Public Prosecutor appearing for the State.

5. I have carefully gone through the records. The statement of the victim was also made available by the learned Public Prosecutor for perusal. On going through the contents of the same, it could be seen

that the petitioner asked to the victim for a kiss and accordingly, the victim kissed him also and it is also alleged that he touched her as well. However, on going through the contents of the statement, there is some doubt as to whether the said acts were committed by the petitioner with any sexual intention or not. While considering this question, the fact that, the petitioner is a person aged 77 years, is very much relevant, as a possibility of a genuine fatherly affection cannot be ruled out. Anyhow, it is a matter to be investigated and proved, I am not intend to adjudicate on the said question. However, since there is some shadow doubt as to the intention of the petitioner, I am of the view that, a lenient view is required to be taken in this matter. Apart from the above, as the petitioner is a septuagenarian, I do not find any chance of absconding. In such circumstances, I find that the further incarceration of the petitioner is absolutely not necessary. Therefore, the petitioner can be released on bail by imposing appropriate conditions to ensure that the petitioner is not contacting or intimidating any witnesses. Accordingly, this application is allowed on the following conditions:-

- i) The petitioner shall be released on bail on 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 jurisdictional Magistrate.
- ii) The petitioner shall appear before the investigating officer as and when required by him.

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iii) The petitioner shall not commit any offence of similar nature while on bail.

iv) The petitioner shall not make any 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.

v) The petitioner shall not leave India without the permission of the trial Court.

In case of violation of any of the above conditions, the jurisdictional court shall be empowered to consider the application for cancellation of bail, if any, and pass appropriate orders in accordance with the law.

**Sd/-
ZIYAD RAHMAN A.A.
JUDGE**

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