



2023/KER/81534

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE GOPINATH P.

WEDNESDAY, THE 20<sup>TH</sup> DAY OF DECEMBER 2023 / 29TH AGRAHAYANA, 1945

BAIL APPL. NO. 11198 OF 2023

CRIME NO.158/2023 OF Chandera Police Station, Kasargod

AGAINST THE ORDER/JUDGMENT SC 310/2023 OF FAST TRACK SPECIAL  
COURT, HOSDURG

PETITIONER/ACCUSED:

XXX AGED 50 YEARS XXX, PIN -  
BY ADVS. JAWAHAR JOSE SAFEER BAWA A.S. SRUTHY N BHAT  
P.VIJAYA BHANU (SR.) (K/421/1984) NIKITA J.  
MENDEZ (K/2364/2022)

RESPONDENTS/STATE & DEFACTO COMPLAINANT:

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

SRI NOUSHAD K.A. (SR PP)  
SRI.P.VIJAYABHANU SR. ADV

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON  
20.12.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



## **ORDER**

Petitioner is the accused in Crime No.158 of 2023 of Chandra Police Station, Kasaragod District, alleging commission of offences under Section 354-A(1)(i) of the IPC and Section 9(m) (n) and (l) r/w Section 10 of the Protection of Children from Sexual Offences Act, 2012.

2. The allegation against the petitioner is that the petitioner had, on several occasions, from the month of June 2020, sexually abused his minor daughter aged 14 years, by touching and kissing her on her private parts, both at the residence as also in a hotel at Nedumbassery where they stayed to see off the elder brother of the victim to London. It is alleged that owing to the violent nature of the petitioner/accused, the victim had not disclosed the incident to anyone out of fear. It is alleged that after the petitioner did not allow the victim to go on a school



trip to Wayanad, the victim revealed the incident to her aunt (one Mrs.      i).

3. The learned Senior counsel appearing for the petitioner on the instructions of Adv.Jawahar Jose would submit that the allegations raised against the petitioner are clearly false. It is submitted that the allegations have been raised, primarily on account of the fact that the petitioner and his wife had objected to the victim following a Korean pop band known as BTS which according to the petitioner and his wife was un-islamic. It is submitted that the minor victim had started following the said band on the instigation of her aunt, the aforesaid Mrs.      . It is submitted that under the influence of aforesaid aunt and being aggrieved by the fact that the petitioner had not permitted the victim to go on a school trip to Wayanad, (though the younger daughter of the petitioner was permitted to go), the victim had raised absolutely false allegations against the petitioner. The learned counsel



has also relied on a series of photographs allegedly taken during various periods after the first allegation of sexual abuse, in the month June 2020, which would show the extremely wrong relationship between the petitioner and the minor victim. It is submitted that the aforesaid aunt of the minor victim had obtained her custody by initiating proceedings before the Family Court, Kasaragod and the victim is now with her aunt who is staying at Kozhikode. It is submitted that the petitioner has been in custody from 06.12.2023 in execution of a warrant issued by the Fast Track Special Court, Hosdurg, in S.C.No.310 of 2023. It is submitted that investigation has been completed and final report has been filed. The continued detention of the petitioner is not necessary.

4. The learned Public Prosecutor vehemently opposes the grant of bail. He submits that the allegations against the petitioner are extremely serious. It is submitted that though investigation has



been completed and final report has been filed, the petitioner cannot be granted bail as the victim is none other than the daughter of the petitioner. It is submitted that there is absolutely nothing that is revealed during investigation which would suggest that the contentions now taken on behalf of the petitioner are true and that a false complaint was given owing to the instigation of the aunt of the victim. It is admitted that the aunt of the victim had obtained the custody of the child/victim. It is submitted that this is a fit case where custodial trial must be ordered.

5. The learned Senior counsel appearing for the petitioner in reply would submit that another fact which indicates that the allegations against the petitioner are false is that the wife of the petitioner/mother of the victim and the younger sister of the victim are living with the petitioner and are supporting him in every manner. It is submitted that if the brother of the victim who is now studying abroad,



is questioned by the police, the truth of the matter will be revealed.

Having heard the learned Senior counsel for the petitioner, the learned Public Prosecutor and the totality of the facts and circumstances of the case, I am of the opinion that the petitioner can be granted bail subject to conditions. It is no doubt true that the allegations are serious. However, certain circumstances mentioned above, leads me to conclude that there is a possibility that the allegations may be false. While it may not be proper for this Court to make any conclusion regarding the matter. While considering the bail application of the petitioner, the same can be taken note of for considering whether the petitioner can be granted bail. Since investigation has been completed and final report has been filed, continued detention of the petitioner is not necessary for the purpose of investigation. The only apprehension can be that since the victim is none other



than the daughter of the petitioner, there is every chance of the victim being influenced or intimidated, if the petitioner is granted bail. However, in this connection, I must note that even according to the prosecution, the custody of the minor victim is now with her aunt, following orders issued by the Family court. Therefore, necessary conditions can be imposed to ensure that the petitioner does not come into contact with the victim in any manner and the petitioner can be granted bail subject to conditions.

In the result this bail application is allowed. It is directed that the petitioner shall be released on bail, subject to the following conditions:-

- (i) The petitioner shall execute a bond for a sum of Rs.50,000/- (Rupees fifty thousand only) with two solvent sureties each for the like sum to the satisfaction of the Jurisdictional Court;
- (ii) The petitioner shall report before the Investigating officer in Crime No.158 of 2023 of Chandera Police



Station, Kasaragod District, on every Saturday at 11.00 am until further orders;

(iii) The petitioner shall not attempt to influence or intimidate any witness in Crime No.158 of 2023 of Chandra Police Station, Kasaragod District;

(iv) The petitioner shall not involve in similar offences while on bail.

(v) The petitioner shall not enter the local limits of Chandra Police Station, Kasaragod District, except for the purpose of compliance with condition No.ii imposed in this order or for appearance before any Court, until further orders.

(vi) The petitioner shall surrender his passport before the jurisdictional court. If the petitioner does not have a passport, he shall execute affidavit to that effect and file the same before the said court within seven days of release on bail.

If any of the aforesaid conditions are violated, the Investigating officer in Crime No.158 of





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2023 of Chandra Police Station, Kasaragod District,  
may file an application before the jurisdictional Court  
for cancellation of bail.

**Sd/-  
GOPINATH P.  
JUDGE**

SSK/20/12