

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

THURSDAY, THE 4TH DAY OF APRIL 2024 / 15TH CHAITHRA, 1946

BAIL APPL. NO. 1634 OF 2024

CRIME NO.486/2024 OF ERNAKULAM CENTRAL POLICE STATION,
ERNAKULAM

PETITIONER/ACCUSED:

BIJU ANTONY ALOOR @ B.A. ALOOR,
AGED 53 YEARS
S/O. A.C. ANTONY, ALOOR ASSOCIATES, GROUND & FIRST
FLOOR, SIMON'S SQUARE, COMPARA JUNCTION, NEAR HIGH
COURT OF KERALA, ERNAKULAM, PIN - 682018

BY ADVS.

C.P.UDAYABHANU
NAVANEETH.N.NATH
RASSAL JANARDHANAN A.
ABHISHEK M. KUNNATHU
BOBAN PALAT
P.U.PRATHEESH KUMAR
P.R.AJAY
K.U.SWAPNIL

RESPONDENTS/COMPLAINANTS:

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

2 XXXXXXXXXXXX
XXXXXXXXXXXX XXXXXXXXXXXX

BY ADVS.

SRI. RENJITH GEORGE - SENIOR PUBLIC PROSECUTOR
B.PRAMOD
BIJU VIGNESWAR
ATHUL M.V.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON
04.04.2024, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

BAIL APPL. No.1634 OF 2024

A. BADHARUDEEN, J.

B. A. No. 1634 of 2024

Dated this the 4th day of April, 2024

ORDER

This is an application for anticipatory bail filed under Section 438 of the Code of Criminal Procedure, 1973 by the sole accused in Crime No.486/2024 of the Ernakulam Central Police Station, Ernakulam.

2. Heard the learned counsel for the petitioner, the learned counsel for the defacto complainant and the learned Public Prosecutor.

3. The prosecution case is that: the accused herein subjected the minor defacto complainant for sexual assault, when she along with her mother reached the office of the accused, who is a practicing lawyer, in connection with arrangement for availing a loan for the business transaction during the month of February 2024. On this premise, prosecution alleges commission of offences punishable under

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Sections 354A(1)(i) and 506 of the Indian Penal Code and Sections 8 and 7 of the Protection of Children from Sexual Offences Act.

4. It is submitted by the learned counsel for the petitioner that, petitioner is a practicing lawyer, and earlier, the mother of the present defacto complainant lodged a complaint before the Police which led to registration of Crime No.345/2024 of the Ernakulam Central Police Station alleging commission of offences punishable under Sections 406, 420, 354 and 506 of IPC. In the said case, this Court granted bail as per order in Bail Application No.1165/2024 dated 29.02.2024. Thereafter, the present complaint was filed after a period of one year, from the date of the alleged occurrence, with a view to implicate the petitioner in a non bailable offence. The learned counsel for the petitioner also submitted that the petitioner is innocent and he is ready to co-operate with the investigation.

5. The learned counsel for the defacto complainant

argued that, with reference to the counter affidavit filed by the defacto complainant in writing and submitted that, though complaint was lodged after one year, in fact the crime was registered when the minor divulged the occurrence, when she was referred by the Police to the Child Welfare Committee(CWC), since Police noticed her moody behaviour at the time when the Police met the defacto complainant, in connection with the earlier crime, and soon this crime was registered. Therefore, the delay is well explained. Such a case, grant of anticipatory bail will defeat the very purpose of the investigation.

6. The learned Public Prosecutor opposed the bail, highlighting the seriousness of offences alleged and pointing out necessity of custodial interrogation.

7. Going through the FIS lodged in the present crime, the minor girl disclosed some sort of sexual assault at the instance of the accused without mentioning a specific date. The statement of the defacto complainant is that the offence

was on a day during February 2023 and in the second page of the FIS the date is written as 13.02.2023 with over writing. The contention as to reference of the minor to CWC, after registration of the crime is not discernible from the prosecution records.

8. Even though as per the First Information Statement, the offences are made out *prima facie*, the long delay in lodging complaint and not disclosing any such instance at the time when the earlier FIR in Crime No.345/2024 was registered are mitigating factors in this prosecution case. However, I am not inclined to comment on the merits of the case, and I leave the same to the domain of the Investigating Officer, for effective investigation, as per law.

9. Having noticed the facts of this case in the above line, directing the petitioner to subject himself for interrogation, the petition can be allowed by imposing necessary conditions. One among conditions is that, the petitioner shall appear before the Investigating Officer on

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06.04.2024 and 08.04.2024 in between 10.00 am and 01.00 pm for recording his statement and for conducting his potency test facilitating effective investigation, without fail.

Therefore, the petitioner can be enlarged on bail on the following conditions:

- i. The petitioner shall appear before the Investigating Officer on 06.04.2024 and 08.04.2024 in between 10.00 am to 1.00 pm for two hours, for interrogation and medical test. In the event of his arrest, the Investigating Officer shall release the petitioner on bail, on executing bond for Rs.30,000/- (Rupees thirty thousand only) by himself and by two solvent sureties, each for the like sum to his satisfaction;
- ii. The petitioner shall co-operate with investigation and shall be made available for interrogation and for the purpose of

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investigation, as and when the Investigating Officer directs so;

- iii. The petitioner, shall not, intimidate the witnesses or interfere with the investigation in any manner;
- iv. The petitioner shall not commit any offence during currency of this bail and any such involvement is a reason to cancel the bail hereby granted.
- v. The petitioner also shall not disturb or deal with the defacto complainant or his mother during the currency of bail.

Sd/-

**A. BADHARUDEEN
JUDGE**

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