

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MRS. JUSTICE SHIRCY V.

FRIDAY, THE 19TH DAY OF MARCH 2021 / 28TH PHALGUNA, 1942

Bail Appl..No.8663 OF 2020

CRIME NO.1720/2020 OF Pala Police Station , Kottayam

PETITIONER/ACCUSED

JAIMON
AGED 18 YEARS
S.O VARKEY A. J,
KACHERIPARAMBIL HOUSE,
VALLICHIRA P.O.,
PALA, -686574

BY ADVS.
SRI.S.RAJEEV
SRI.V.VINAY
SRI.K.ANAND (A-1921)
SRI.K.K.DHEERENDRAKRISHNAN
SHRI.ABHILASH JOSEPH

RESPONDENT:

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

ADDL. BIJU JOHN
R2 S/O. JOHN, THOTTUPURATH HOUSE,
VALLICHIRA P.O, PALA, MEENACHIL TALUK,
KOTTAYAM DISTRICT.

(SOUGHT TO BE IMPLEADED)

R2 BY ADV. MATHEW JOHN (K)
R2 BY ADV. SRI.MATHEW DEVASSI
R2 BY ADV. SRI.ABY J AUGUSTINE
SR.PP C.N PRABAKARAN

THIS BAIL APPLICATION HAVING BEEN FINALLY HEARD ON
19.03.2021, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER

The petitioner who is the sole accused in Crime No.1450 of 2020 of Pala Police Station registered for the offences punishable under Sections 67 and 67-A of the Information Technology Act (for short 'IT Act'), apprehending arrest has filed this application.

2. The petitioner is a neighbour of the defacto complainant. He is having close acquaintance with the family of the defacto complainant which consists of his wife and three children. The petitioner used to visit the family of the defacto complainant quite often to play shuttle with his children. While so, he had taken the photographs of the wife of the defacto complainant in his mobile phone. Later, he morphed the photographs, created false profile in her name and published and transmitted the morphed sexually explicit photos through social media and collected money from various persons. Thus he committed the aforesaid offences, is the version of the prosecution.

3. According to the learned counsel for the petitioner he is a college student pursuing his studies. He is totally innocent of the

allegations levelled against him. With the very same allegations the defacto complainant has submitted a complaint before the police and Crime No.1450/2020 was registered and when he moved bail application, the investigating agency reported that the offence alleged was only bailable offence. The same was recorded and bail application was closed. Thereafter he has been implicated in non bailable offences under the influence of the defacto complainant who is in inimical terms with the parents of petitioner. In fact his mobile phone was seized by the investigating agency and major portion of the investigation is over is the submission of the learned counsel.

4. The learned Public Prosecutor vehemently opposed the application and submitted that the offences alleged against this petitioner are grave and serious in nature and the investigation is only in progress.

5. Heard the learned counsel for the petitioner and the learned public prosecutor. Also heard the learned counsel for the defacto complainant who vehemently opposed the application. According to him, the petitioner misused the freedom he enjoyed as a friend of his children and exploited the situation by indulging in a heinous crime for the sake of money. Perused the CD file .

6. IT Act is a special enactment. Section 67 of IT Act stipulates punishment for publishing, transmitting obscene materials in

electronic form. When Section 67 is read with 67-A it appears as a complete code relating to certain major offences covered under the IT Act . It is prima facie discernible from the CD file submitted by the prosecution that the photographs of the wife of the defacto complainant has been morphed and transmitted in social media. The details of chat collected so far by the investigating agency from his mobile phone would reveal that he had collected money for forwarding such morphed obscene photos of the lady. As transmission of obscenity was in electronic form, definitely the investigating agency require more time to collect materials required for the prosecution. Forensic analysis of the device is a must and the investigating agency has to collect digital evidence. There can not be any manner of doubt whatsoever that the gravity of the offences alleged against this petitioner are grave and serious in nature. More over, the prosecution has also an allegation that by circulating the morphed sexually explicit photographs and pictures, the petitioner had collected money by using google pay. So definitely, time is required for the investigating agency. The seizure of the mobile phone of the petitioner alone is not sufficient to proceed with the investigation. The offences alleged against this petitioner is an affront to a decent society. Granting of bail that too pre-arrest bail to such a person would only convey a wrong message to the wrongdoers. These kind of offences are fast increasing in our

society. So to curb such kind of offences, granting of pre-arrest considering the age factor of the petitioner will give only an adverse result. Hence, I am not inclined to grant pre-arrest bail to this petitioner though he is a college student aged only 18 years.

Dismissed.

Sd/-

SHIRCY V

JUDGE

smm