

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

MONDAY, THE 15TH DAY OF NOVEMBER 2021 / 24TH KARTHIKA, 1943

BAIL APPL. NO. 4752 OF 2021

CRIME NO.297/2017 OF NEDUMBASSERY POLICE STATION, Ernakulam

**AGAINST THE ORDER/JUDGMENT IN CRMP 1916/2020 OF ADDITIONAL SPECIAL
SESSIONS COURT (SPE/CBI CASES)-III, ERNAKULAM, ERNAKULAM**

PETITIONER/ACCUSED 3:

MANIKANDAN

AGED 31 YEARS

S/O.BABU, MANAPPATTIPARAMBIL HOUSE, MARY FIRST ROAD,
AKG NAGAR, THAMMANAM, POONITHURA, ERNAKULAM DISTRICT,
PIN - 682 038.

BY ADVS.

M.A.VINOD

K.L.SREEKALA

RESPONDENT/S:

STATE OF KERALA

REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

GP: ADV.A S DHEERAJ

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON
15.11.2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER

The petitioner is arrayed as the third accused in Crime No.297 of 2017 of Nedumbassery Police Station for offences punishable under sections 342, 366, 376, 506(i), 120B and 212 r/w section 34 of Indian Penal Code and sections 66E, 67(a) of IT Act, 2008.

2. The allegation of the prosecution is that, the petitioner herein along with five other accused, hatched a criminal conspiracy to kidnap a famous film actress, wrongfully confine her and to record her nude photograph. In furtherance of that conspiracy, on 17.02.2017, when the victim was proceeding in her vehicle along the National Highway, after stage managing a fake accident, the petitioner herein, along with few others, forcefully entered the vehicle, confined her and took her to Cochin. On the way, the first accused entered the vehicle and he sexually abused her. It was videographed by him in a mobile. It appears that, the petitioner herein had taken the control of the victim's vehicle from the first accused, at the time of molestation of the victim. Crime was registered, pursuant to complaint of the victim.

3. The petitioner herein was arrested on 21.02.2017 and is in custody since then. He moved the learned Magistrate Court as well as this court on several occasions, seeking bail. All his bail applications were consistently dismissed by the courts.

4. The learned counsel for the petitioner vehemently contended that the petitioner has been in custody since 21.02.2017. The trial of the case has already commenced and substantial part of recording of evidence is over. All the crucial witnesses were examined and cross examined by the counsel for the petitioner herein. The cross examination of various witnesses by the learned counsel for the accused No.7, which was deferred by orders of the Court, is now progressing. It was further contended that the petitioner has undergone a substantial period of detention, which is more than one half of the maximum punishment, that can be granted under law, if found guilty. Most of the other accused are on bail. It was contended that, very serious allegations are raised against the first accused and the allegation against the petitioner was comparatively less serious, than alleged against the first accused. He contended that, in the light of present situation, bail may be granted.

5. The learned public prosecutor who vehemently opposed the application, submitted that the trial is progressing and if the accused is released at this stage, it may prejudice the trial. It was also pointed out that the bail application filed by the second accused was recently withdrawn and consequently dismissed.

6. The petitioner has produced Annexure A to F, which are the orders passed by this Court as well as by the Sessions Court consistently dismissing his earlier applications. The above records show that the petitioner has been seeking bail by filing bail applications one after

another. While rejecting those bail applications, this Court has taken note of the seriousness of the allegation, the role allegedly played by the petitioner and the fact that trial of the case has commenced. This Court also took note of the fact that the trial of the case is half way and since the time limit has been fixed by the Honourable Supreme Court, there is a chance of trial being completed within a short span of time. The last few applications for bail were dismissed on this belief. However, the time limit fixed by the Supreme Court was extended twice thereafter.

7. In the light of the above facts, report was called from the trial judge who is the special Judge (SPE/CBI)-III, Ernakulam wherein the matter is pending. The learned Special Judge by her communication dated 01.09.2021 had informed that, in the case, altogether 360 witnesses were cited by the prosecution, among them 180 witnesses were examined. Exts.P1 to P218 and Mos.1 to 124 were identified on the side of the prosecution. Exts.D1 to D48 were marked on the side of the defence and court Exhibits C1 to C4 were also marked. Prosecution has filed an additional witness list showing more than 26 more witnesses to be examined. Summons were issued to the witnesses excluding investigating officers and examination was expected to be completed on 08.10.2021 as per the present schedule. The Honourable Supreme Court has extended the time for the conclusion of the trial till 16.02.2022. Hence, it was also stated that the Supreme Court by its order in M.A.No.1228 of 2021 had fixed the time limit for conclusion of trial as 18.08.2021 and the Court was

expeditiously proceeding with examination of the witnesses.

8. The learned Counsel for the accused vehemently pointed out that, the role of the petitioner stands on a slightly different pedestal from that of the prime accused. It was also stated that, at the most, he can only be attributed with the offence of aiding the first accused in the commission of crime. Whether it was a premeditated act with the involvement of the first accused and whether the petitioner was aware of the real intention of the first accused are matters of evidence which has to be evaluated after trial. It was also contended that, whether the petitioner had entered into a conspiracy with the first accused to commit the crime as alleged by the prosecution or whether, he was trapped into a crime by the first accused, is also a matter which needs considerable evidence, evaluation and appreciation of evidence. The precise contention of the petitioner herein was that, the petitioner stands on a different footing from that of the prime accused. He has also not done any criminal act on the victim, it was further contended.

9. It was also pointed out by the learned counsel that, on few earlier occasions, Supreme Court has fixed the time limit and since it could not be completed within the time limit, due to the lengthy cross examination of various witnesses, trial was not likely to be completed even within the expected time. Even in cases involving offences under UAPA, bail was granted having regard to the period undergone in **Angela Harish v. State of Maharashtra [(2021)3 SCC 723]** and **Sagar Tatyaram**

Gorkhe and Another v. State of Maharashtra [(2021)3 SCC 725], it was contended.

10. The report of the learned Sessions Judge shows that, 180 more witnesses are remaining to be examined from the initial witness list submitted by the prosecution. Additional witness list of 26 more witnesses are also given. The investigation officer is also to be examined.

11. Considering that, out of 360 witnesses, 180 witnesses have been examined and additional 29 witnesses are to be examined, the possibility of the trial taking more time cannot be completely ruled out. The petitioner is in jail since 22.02.2017, for nearly 4½ years. On a close evaluation of the allegation of the prosecution, the role played by the petitioner herein stands on a slightly lesser footing than that of the main act committed by the prime accused, who definitely stand on a different pedestal. Petitioner has no criminal antecedents. Having evaluated the entire facts and considering the nature of allegation against the petitioner, he definitely needs a different consideration from that of the first accused. I find that the further continuation of the petitioner in jail may not be just. Having considered this, I am inclined to grant bail to the petitioner on the stringent conditions as follows:

(i) The petitioner shall execute a bond for a sum of Rs. One Lakh with two sureties for the like sum each. Atleast one of the surety shall be a close relative of the petitioner, preferably one among his parents or siblings.

(ii) The petitioner shall surrender his passport, if

not already surrendered and shall not leave the Ernakulam District until trial is over. In case of extreme emergency, the trial court will be free to pass appropriate orders for his temporary absence from the District.

(iii) He shall appear and continue to appear before the court below and participate in the trial either personally or through his counsel.

(iv) He shall not in any manner threaten, coerce or influence the witnesses or shall not in any manner interfere in the progress of the trial and shall completely cooperate with the trial.

(v) If any of the above conditions is violated, the bail is liable to be cancelled in accordance with law.

sd/-

SUNIL THOMAS

JUDGE

Sbna/