

IN THE COURT OF SESSION, KOZHIKODE DIVISION
Present:- Sri.S.Krishna Kumar, Sessions Judge

Friday, the 12th day of August, 2022

CRIMINAL MISCELLANEOUS CASE No.1303/2022
(Cr.No.501/2022 of Koyilandy Police Station)

Between:-

Civic Chandran @ C.V.Kuttan, S/o.Late
Velappan, aged 73 years, Chinnangath
house, West Hill.P.O, Kozhikode 673005.

} Petitioner/ Accused No.1.

And:-

State of Kerla Rep. By SHO of Police,
Koyilandy Police Station.

} Respondent/Complainant

This petition filed u/s. 438 Cr.P.C. praying to release the petitioners on bail, in the event of arrest.

This petition coming on this day for orders before me upon perusing the petition and upon hearing the arguments of **Adv.P.V.Hari & Adv.Sushama.M**, advocates for the petitioner and the **Public Prosecutor** for the State and the court passed the following:-

ORDER

This is an application for bail submitted by the accused in crime
No.501/2022 of Koyilandy Police Station under Section 438 Cr.P.C.

2. The prosecution allegation in brief is that on 08.02.2020 at about 5.00 P.M., there was a camp convened by the accused and others at Nandi beach. When the participants were returning, the accused caught the hands of the defacto complainant and forcefully took her to a lonely place. He asked the defacto complainant to lie on his lap. Thereafter, he pressed her breast and tried to outrage her modesty.

3. The Koyilandy police registered the case for offences under Sections 354A(2), 341 and 354 of IPC.

4. Heard the counsel for the accused and Public Prosecutor.

5. The learned counsel for the accused would contend that it is a false case cooked up by some enemies against the accused to seek vengeance against him. According to him the case was registered only on 29.07.2022. The alleged occurrence is on 08.02.2020. Why there was so much of delay happened in filing the complaint is to be explained by the prosecution.

6. Here it is to be noted that the defacto complainant is a educated lady who is fully aware of the consequences of sexual assault. Why she was reluctant to file the complaint has to be explained by her. But absolutely no explanation is forthcoming. It is to be noted that this case was registered after registering crime 483/2022 by the same police station. In that the bail was granted to the accused.

7. The learned counsel would further contend that the accused is aged 74 years and his elder daughter is a Deputy Collector. His younger daughter is an Assistant Professor in TKM Engineering College. So it is quite unfortunate to see that the lady having an age of 30 had filed a complaint against the accused who has got good reputation in the society.

8. The learned Public Prosecutor vehemently opposed the bail application by stating that it is the habit of the accused to molest the lady poets and this case is the second crime registered against the accused and more persons are ready to file complaint against the accused. The counsel for the accused had submitted certain photographs which was published by the defacto complainant in social media. According to him the defacto complainant had gone to the place of occurrence along with her boy friend Rahul Manappattil. He is a Teacher in private college. As per the invitation of one V.T Jayadevan they had gone to 'Kadal Veedu' which is owned by one Noorudheen. There were so many persons at the time of the alleged incident and nobody had pointed out such a complaint against the accused.

9. It is a settled proposition of law that when there is a long delay in lodging the FIR it must be properly explained. The offences alleged against the accused are under Sections 341, 354 and 354A(2). After amendment Section 354A to E were incorporated. Section 354 generally deals with an assault or criminal force to woman with intent to outrage her modesty. Here, the wordings of 354 makes it very clear that there must be an intention to the accused for outraging the modesty. Section 354 A is sexual harassment. The Section reads :-

"Sexual harassment and punishment for sexual harassment

(1) A man committing any of the following acts—

- (i) physical contact and advances involving unwelcome and explicit sexual overtures; or
- (ii) a demand or request for sexual favours; or
- (iii) showing pornography against the will of a woman; or
- (iv) making sexually coloured remarks, shall be guilty of the offence of sexual harassment.

(2) Any man who commits the offence specified in clause (i) or clause (ii) or clause (iii) of sub-section (1) shall be punished with rigorous imprisonment for a term which may extend to three years, or with fine, or with both.

(3) Any man who commits the offence specified in clause (iv) of sub-section (1) shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both."

10. In order to attract this Section there must be a physical contact and advances involving unwelcome and explicit sexual overtures. There must be a demand or request for sexual favours. There must be a sexually coloured remarks. The photographs produced along with the bail application by the accused would reveal that the defacto complainant herself is exposing to dresses which are having some sexual provocative one. So Section 354A will not prima facie stand against the accused. Even

admitting that there was a physical contact it is impossible to believe that a man having aged 74 and physically disabled can forcefully put the defacto complainant in his lap and sexually press her breast. So it is a fit case wherein the accused can be granted bail.

In the result, the bail application is allowed. The accused shall be released on bail on executing a bond for Rs.50,000/- with two solvent sureties for the like sum in case of arrest by the SHO, Koyilandy Police Station.

(Dictated to the Confidential Assistant., transcribed by her, corrected and pronounced by me in open court, this the 12th day of August, 2022).

sd/-
Sessions Judge

(True copy)

Junior Superintendent

tpj

Copy to:-

1. The JFCM Court-Koyilandy.
2. The SHO of Koyilandy Police Station.
3. The Public Prosecutor