

IN THE COURT OF SESSIONS, ERNAKULAM DIVISION

Present :-
Sri. Mohanakrishnan. P., II Addl. Sessions Judge
(In charge of Sessions Judge)
Tuesday, 22nd day of December, 2020/1st Pousha, 1942

CrI. M.C. No.2413 of 2020
(Crime No.1638/2020 of Central Police Station, Ernakulam)

Petitioner/Accused

[REDACTED]

By Advs. M/s. Saiby Jose Kidangoor, Benny Antony Parel,
Sibha. S. & Parvathy Vijayan.

Respondents/Complainant

1. State of Kerala, represented by Public Prosecutor, Sessions Court, Ernakulam.
2. Station House Officer, Ernakulam Central Police Station.

By Public Prosecutor Sri. Manoj. G. Krishnan.

This petition filed u/s.438 of Cr.P.C., praying this Court to grant anticipatory bail to the petitioner.

This petition coming on for hearing on 21.12.2020 and the court on 22.12.2020, passed the following:-

ORDER

This is an application for anticipatory bail filed u/s 438 of Cr.P.C.
The petitioner is accused in crime 1638/2020 of Central police station, Ernakulam.



Ernakulam. The offences alleged against the petitioner are U/ss.342
370, 201, and 506 of IPC.

2. The prosecution case in brief is as follows:- The defacto complainant is the husband of deceased Rajakumari. Deceased Rajakumari was a native of Molakkaraipatty village, Thirunelveli District, Tamil Nadu state and she was working as a maid servant at the house of the petitioner. Petitioner had given an amount of Rs.10,000/- as salary advance to her . It is further alleged that, the petitioner was forcing her to clean the floor of the house again and again and to wash the already washed clothes again. When she sought permission to go back to her home in connection with the damage caused to her house due to heavy rains, the petitioner demanded her to give him back Rs.10,000/- which was received by her as salary advance and inspite of transferring the said amount to the account of the petitioner by the defacto complainant, the petitioner wrongfully confined the deceased Rajakumari at his residential flat No.6E-Link Horison, Marine Drive, Ernakulam. Subsequently, on 04/12/2020, after 9,40p.m., the deceased Rajkumari attempted to escape from the flat by tying her sarees to the balcony rails and during



that attempt she some how lost her balance and fell on the portico of the flat and sustained injuries and on 12/12/2020 succumbed to those injuries. It is also alleged that the petitioner gave a false information to the police that the deceased Rajakumari fell down while she was attempting to escape from the flat after stealing cash from his house and produced the purse of the deceased Rajakumari before the police after inserting some cash in it stating that it was given to him by the fire force officers at General Hospital, Emakulam as the one which was found in possession of the deceased Rajakumari. It is also alleged that the petitioner threatened the defacto complainant and obtained some signed papers from him.

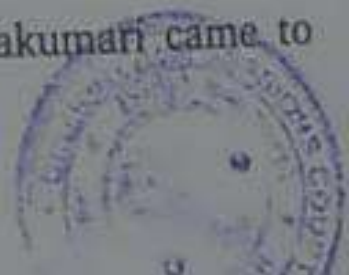
3. The learned counsel appearing for the petitioner vehemently submitted that the petitioner is innocent of the allegations levelled against him and ingredients of the non bailable offence alleged under section 370 of the IPC are not available in this case. He further contended that the petitioner is a practising advocate and would not flee from justice and he is ready to co-operate with the investigation and the custodial interrogation of the petitioner is not at all necessary in this case.



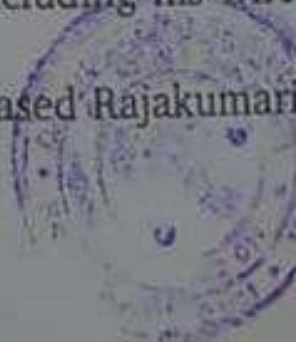
4. Learned Public Prosecutor opposed the bail application stating that the allegations levelled against the petitioner are very serious in nature and custodial interrogation of the petitioner is necessary for the purpose of investigation. He further contended that, prima facie, ingredients of offence under section 370 of IPC are available in this case. He further contended that the petitioner has criminal antecedents and earlier, a crime No.1226/2010 was registered against the petitioner u/Ss.323, 324, 327 r/w 34 of the IPC and Sec.23 of JJ Act and Sec.3 of Prevention of Child Labour (Prohibition and Regulation Act). He prayed for dismissal of the application.

5. Heard both sides and perused the case diary.

6. Initially, the above said crime was registered u/Ss.342 and 338 of the IPC. Subsequently, Sec.338 was deleted and Sec.201, Sec.370 and Sec.506 of the IPC were incorporated. The only non bailable offence alleged in this case is under section 370 of the IPC. On going through section 370 of IPC, it is evident that, in order to constitute an offence of trafficking, the harbouring of a person must be for the purpose of exploitation. According to prosecution, deceased Rajakumari came to



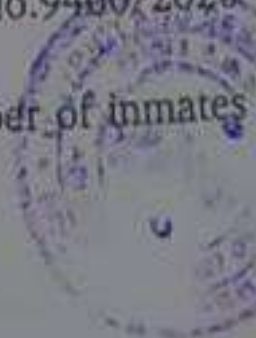
the flat of the petitioner on 28/11/2020 and the alleged incident of attempt to escape from the flat happened on 04/12/2020. On going through the F.I. Statement given by the defacto complainant, it is evident that the deceased Rajakumari started working as a maid servant at the house of the petitioner on her own volition for the purpose of eking out a livelihood for her family. Further more, the very fact that Rs.10,000/- was given as security advance by the petitioner to the above said deceased Rajakumari immediately after starting her job itself would prima facie show that there was no intention on the part of the petitioner to exploit the deceased Rajakumari by not paying her salary. F.I. Statement given by the defacto complainant does not disclose that the deceased Rajakumari told him that she was subjected to any sort of exploitation by the petitioner. It is true that, in the subsequent statement of the defacto complainant, he has made a statement to the effect that the deceased Rajakumari was asked to clean the floor again and again and wash the clothes again and again. But, in my view, that cannot be considered as an exploitation as contemplated under section 370 of IPC. Even according to the prosecution, the family of petitioner including his wife and children were residing in the flat in which the deceased Rajakumari



was staying at the time occurrence. The statement given by the brother of the deceased Rajakumari to the police would show that she had earlier worked at the house of the petitioner and the deceased her self contacted the petitioner and asked him if she can come for work there and then she went to the petitioner's house on 28/11/2020. If the petitioner was exploiting the deceased as contented by the prosecution, it is highly improbable for the deceased to go again to the petitioner's house for house work. So, prima facie, from the available material on record, it is doubtful whether an offence under section 370 of the IPC is made out against the petitioner. It is true that, the allegations made in the F.I.Statement would constitute wrongful confinement of deceased Rajakumari which is punishable under section 342 of the IPC by the petitioner. But it is a bailable offence. The offences under sections 201 and 506 of the IPC alleged against the petitioner are also bailable ones. On going through the FIS, it is evident that the defacto complainant told the deceased Rajakumari that he will commit suicide if she does not return to home. Prima facie, the immediate cause for the attempt made by the deceased Rajakumari to escape from the flat of petitioner appears to be the suicide threat made by the defacto complainant. As far as the



criminal antecedents of the petitioner is concerned, it is true that a crime No.1226/2010 of Central Police Station, Ernakulam was registered against the petitioner as contended by the Public Prosecutor. But, admittedly, the petitioner was acquitted in the said case. Copy of the affidavits filed by the defacto complainant and her parents before the Hon'ble High Court in connection with the said case which have been produced before me would show that the petitioner was innocent in that case. The petitioner is a practicing advocate and he is not likely to attempt to flee from justice. Considering the nature of allegations levelled against the petitioner, I am of the view that custodial interrogation of the petitioner is not necessary. Moreover, it is well accepted principle that the bail is the rule and that jail is the exception. The Hon'ble Supreme Court in Chidabaram P. Vs. Directorate of Enforcement (2019 KHC 7201) held so. More over, considering the need to follow social distancing norms inside the prisons so as to avert the spread of novel corona virus pandemic, the Hon'ble Supreme Court in Re-Contagion of Covid-19 Virus in Prisons case (2020(2) KHC 592) and the Full Bench of Hon'ble High Court of Kerala in WP(c) No.9400/2020 issued various salutary directions for minimising the number of inmates



inside the prison. Hence, pre-arrest bail can be granted to the petitioner subject to the following conditions.

In the result, the application is allowed on the following conditions.

1. The petitioner shall be released on bail in the event of his arrest in connection with the above crime on executing a bond for Rs. 50,000/- with two solvent sureties for the like sum each to the satisfaction of the Arresting Officer/Investigating Officer as the case may be.
2. The petitioner shall appear before the investigating officer on every Saturday between 9.00 a.m and 10.00 a.m. till the final report is filed.
3. The petitioner shall appear before the investigating officer for the purpose of interrogation as and when required by him, till the final report is filed.
4. The petitioner shall not intimidate or influence the witnesses or interfere with the investigation.



5. The petitioner shall not leave Ernakulam District without getting prior permission of the court concerned till the final report is filed.
6. It is made clear that all the observations made by this court in the above order are only for the purpose of disposing of this bail application and has nothing to do with the merits of the prosecution case which may be established at the time of trial by the prosecution.

Dictated to the confidential Asst., transcribed and typed by her, corrected and pronounced by me in open court on this the 22nd day of December, 2020.

sd/-
Mohanakrishnan. P.
II Additional Sessions Judge
(In charge of Sessions Judge)

ctl/
comp. by: *cd*

