

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

MONDAY, THE 25<sup>TH</sup> DAY OF JULY 2022 / 3RD SRAVANA, 1944

BAIL APPL. NO. 5271 OF 2022

CRIME NO.442/2022 OF MEENANGADI POLICE STATION, WAYANAD

PETITIONER/ACCUSED:

XXXXX

BY ADV M.R.JAYALATHA

RESPONDENTS/STATE/DEFACTO COMPLAINANT:

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

\*2 YYY

\*(ADDL.R2 IS IMPEADED AS PER ORDER DATED  
20/07/2022 IN CRL.M.A. NO.2/2022).

BY ADVS.

SRI.GRASHIOUS KURIAKOSE, ADDL.DIRECTOR GENERAL OF  
PROSECUTION

SMT.A.PARVATHY MENON

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION  
ON 20.07.2022, THE COURT ON 25.07.2022 PASSED THE  
FOLLOWING:

**BECHU KURIAN THOMAS, J.**

-----  
**B.A. No.5271 of 2022**  
-----

Dated this the 25<sup>th</sup> day of July, 2022

**ORDER**

This is an application for pre-arrest bail filed under Section 438 of the Code of Criminal Procedure, 1973.

2. Petitioner is the accused in Crime No.442 of 2022 of Meenangadi Police Station alleging offences under section 7 r/w section 8, section 9 r/w section 10 and section 11(i) r/w section 12 of the Protection of Children from Sexual Offences Act, 2012.

3. The niece of the petitioner has alleged sexual assault committed by him on 14.12.2021. According to the prosecution, petitioner misbehaved with his sister's daughter, aged only 12 years, by asking her to sit on his lap and thereafter hugging and kissing her on the cheeks and trying to kiss her on the lips. Thereafter, petitioner is alleged to have attempted to disrobe the victim and made lewd comments and thereby committed the offences alleged.

4. Smt.M.R.Jayalatha, learned counsel appearing on behalf of the petitioner, argued that the allegation against the petitioner

is the result of whimsical, imaginative and motivated reasons, which are highly fanciful and improbable. The learned counsel submitted that the petitioner is a practising lawyer who is facing property-related disputes with his sister and that the child is being used as a pawn to compel the petitioner to yield to her demands for partition of the family property, especially since the mother of the defacto complainant is undergoing financial insecurity. The learned Counsel also contended that since the property was under a mortgage/attachment, petitioner could not abide by the demands of his sister. The learned counsel also pointed out that the incident as alleged had never occurred, and the petitioner is totally innocent of the allegations. The alleged incident is stated to have occurred inside the house of the petitioner when the mother of the victim and her stepfather, the grandmother and aunt and other relatives of the of the victim were present in the house. Learned counsel relied upon the decision in **Joy v. State of Kerala** (2019 (1) KLT 935) and **Jaseer Aboobacker v. State of Kerala** (2018 (3) KLT 945).

5. Smt.A.Parvathy Menon, learned counsel appearing on behalf of the victim, on the other hand, contended that the victim had been subjected to a sexual assault by her mother's

own sibling, which came to her knowledge only when the child was subjected to counselling for her change in behaviour. From an excellent student and an amazing performer, when there was a slump in her grades as well as performances, the child was subjected to counselling. During the second session, it was revealed that she was subjected to sexual assault. It was further pointed out that considering the nature and gravity of the offences alleged, petitioner does not deserve any leniency and that the grant of pre-arrest bail would send a wrong signal to society. On behalf of the victim it was submitted that the petitioner is not known to be a practising lawyer. The learned counsel relied upon the decision in **X v. State of Kerala and Others** (2020 KHC 894) and **Geetha v. State of Kerala and Another** (2020 (3) KHC 238).

6. Sri.Grashious Kuriakose, the learned Additional Director General of Prosecution, submitted that though the allegations raised against the petitioner are serious in nature, considering the investigation carried out and having due regard to the decisions of the Supreme Court in **Shri.Gurbaksh Singh Sibbia and Others v. State of Punjab** [(1980) 2 SCC 565] and **Sushila Aggarwal and others v. State (NCT of Delhi) and**

**Another** [(2020) 5 SCC 1] limited custody of the petitioner would suffice the investigation. It was also pointed out that the complainant against the defacto complainant and her second husband filed by the mother of the defacto complainant was, after investigation, found to be false.

7. I have perused the case diary and considered the rival contentions.

8. In matters where sexual offences are alleged, that too against minor victims, it is necessary for the court to be sensitive to their plight. The necessity for Courts to be sensitive to victims of sexual violence need not be reiterated, as observed by this Court in **X v. State of Kerala and Others** 2021 (1) KLT 201. Though the court ought to be sensitive, that does not mean that the allegations ought to be accepted as the gospel truth in every case. The court must always be cautious of false allegations for the purpose of achieving ulterior objectives. Tutoring a witness at the hands of the parents, especially when the victim is a child, cannot be ignored even while considering an application for regular bail or pre-arrest bail. Since the liberty of the individual is at stake, the court has to be wary of depriving innocent persons of their liberty. It is in this context, that the decisions in

**Gurbaksh Singh's** case and **Sushila Aggarwal's** case (supra) have struck a balance between the interests of investigation into the alleged crime as well as the personal liberty by providing for the concept of limited custody of an accused.

9. With the above principle in mind, when the facts of the case are noticed, it is revealed that the petitioner is the maternal uncle of the victim to whose house the victim went in December, 2021. On 14.12.2021, the victim is alleged to have been asked to sit on the lap of the petitioner, who thereafter is alleged to have hugged and kissed the victim on her cheeks. Though on the one side, there is a possibility of such hugs and kisses being manifestations of affection by an uncle, one cannot ignore the possibility of such show of 'affections' being coloured by sexual overtones. However, those are all matters for investigation.

10. Though the defacto complainant had disputed the claim of the petitioner that he is a practising lawyer the victim has mentioned in her statement that petitioner is an Advocate. The defacto complainant's mother is petitioners own sister. There are no criminal antecedents against the petitioner. Even from the statement of the victim there were others in the house on the date of incident and the victim and the defacto complainant

continued to stay in the same house with the petitioner for few more days. From the nature of allegations, there is apparently no requirement for any recovery to be effected. The allegation of demand for partition of family property as the defacto complainant is in financial need cannot be ignored wholly. The WhatsApp chats produced indicate to an extent certain disputes based on gold and financial insecurity.

11. Considering the circumstances mentioned above, I am of the view that the interest of justice requires the petitioner to be subjected to interrogation with limited custody for four days.

12. Accordingly, I allow this application subject to the following conditions:

(a) Petitioner shall appear before the Investigating Officer from 9 am to 6 pm on 29.07.2022, 30.07.2022, 01.08.2022 and 02.08.2022 and shall subject himself to interrogation.

(b) If after interrogation, the Investigating Officer proposes to arrest the petitioner, then he shall be released on bail on him executing a bond for Rs.50,000/- (Rupees fifty thousand only) with two solvent sureties each for the like sum before the Investigating Officer.

(c) Petitioner shall appear before the Investigating Officer as and when required and shall also co-operate with the

investigation.

(d) Petitioner shall not intimidate or attempt to influence the witnesses; nor shall he tamper with the evidence or interact the victim or her family members;

(e) Petitioner shall not commit any similar offences while he is on bail.

(f) Petitioner shall not leave India without the permission of the Court having jurisdiction.

In case of violation of any of the above conditions, the jurisdictional Court shall be empowered to consider the application for cancellation, if any, and pass appropriate orders in accordance with the law, notwithstanding the bail having been granted by this Court.

**Sd/-**  
**BECHU KURIAN THOMAS**  
**JUDGE**

vps

/True Copy/

PS to Judge