

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.

FRIDAY, THE 3RD DAY OF FEBRUARY 2023 / 14TH MAGHA, 1944

BAIL APPL. NO. 301 OF 2023

PETITIONER/ACCUSED:

XXXXXXXXXX
XXXXXXXXXXXXXX

BY ADVS.
JOHNSON GOMEZ
S.BIJU (KIZHAKKANELA)
SANJAY JOHNSON
JOHN GOMEZ
ARUN JOHNY
DEEBU R.

RESPONDENTS/RESPONDENT:

1 STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, ERNAKULAM THROUGH THE STATION HOUSE
OFFICER, PATHANAPURAM POLICE STATION, KOLLAM
DISTRICT, PIN - 682 018.

2 XXXXXX
XXXXXXXXXXXXXXXXXXXX

SRI.M.P.PRASHANTH - PUBLIC PROSECUTOR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON
03.02.2023, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

ORDER

The petitioner is the accused in Crime No.39 of 2023 of Pathanapuram Police Station, which now stands transferred to Punalur Police Station and re-numbered as Crime No.56 of 2023.

2. The offences alleged against the petitioner are under Sections 7 and 8 of the POCSO Act. The prosecution case is as follows:

3. The petitioner is the father of the victim, who is aged just seven years. The allegation is that, on 26.12.2022 between 10:00 hours and 17:00 hours, the petitioner kissed on the chest, armpits, navel and other parts of the body of the victim after removing her dresses to take her to bath. The crime was registered based on the said allegation, and the matter is now pending investigation. This application is filed by the petitioner seeking anticipatory bail.

4. The learned counsel for the petitioner contends that the petitioner is falsely implicated in the said case. According to him, certain matrimonial disputes are pending between the petitioner and his wife, the mother of the child. The petition regarding the child's custody is also pending before the Family

Court, Kottarakkaa. Besides the same, it is also pointed out that, earlier, based on a private complaint submitted by the petitioner, cognizance was taken against the mother of the victim and another person by the Special Court, Kollam, for the offences punishable under Sections 7 r/w 8, 11(i) r/w 12 of the POCSO Act, which is now numbered as S.C.No.1076 of 2019. The trial of the said case is now in progress. According to the learned counsel for the petitioner, this case was falsely registered as a counterblast to the aforesaid Sessions Case and also to prevent the petitioner from seeking custody of the child.

5. On the other hand, the learned Public Prosecutor would seriously oppose the said contention. According to the learned Public Prosecutor, there are statements given by the victim indicating the commission of the offence. The matter is under investigation, and therefore, if anticipatory bail is granted at this stage, it would hamper the investigation. Thus, the learned Public Prosecutor seeks for dismissal of the application.

6. I have gone through the records and heard the contentions raised from either side. The statement of the victim given under Section 164 of Cr. P.C was also carefully scrutinized

by me. On going through the same, I have some serious doubts as to whether the acts allegedly committed by the petitioner were with any sexual intent. The possibility of the same being done on account of fatherly affection cannot be ruled out. The child was just aged four years and admittedly, the petitioner used to take her for bath and the incident occurred during the course of the same. While considering this issue, a crucial aspect to be noticed is the series of litigations pending between the parties, including the petition pending before the Family Court for the custody of the child. Apart from the above, the prosecution, under the provisions of the POCSO Act against the mother of the child, is also pending before the jurisdictional court based on a private complaint submitted by the petitioner. In such circumstances, the case advanced by the learned counsel that this is a case of false accusation as the retaliation of the aforesaid proceedings cannot be simply brushed aside. However, since the crime has been registered, an investigation is to be conducted for which the cooperation of the petitioner is to be ensured. As it is not very clear from the statement of the victim that the acts allegedly committed by the petitioner were with any sexual intent, I deem it

appropriate to give protection to the personal liberty of the petitioner.

In such circumstances, in the peculiar facts and circumstances of the case, I am of the view that the interest of justice would be served if the petitioner cooperates with the investigation.

In such circumstances, this Bail Application is disposed of with the following directions:

1. The petitioner shall surrender before the Investigating officer, within a period of two weeks from today, for subjecting himself to interrogation.
2. After interrogation, the petitioner shall be released on bail on the same day of surrender upon executing a bond for Rs 1,00,000/- (Rupees One Lakh only) with two solvent sureties each for the like sum, to the satisfaction of the investigating officer.
3. The petitioner shall fully cooperate with the investigation, including subjecting herself to the deemed police custody for recovery, if any, as and when demanded.
4. The petitioner shall appear before the Investigating Officer between 10.00

a.m and 11.00 a.m every Wednesday until the filing of the final report.

5. The petitioner shall also appear before the investigating officer as and when required by him.

6. The petitioner shall not commit any offence of like nature while on bail.

7. The petitioner shall not leave the State of Kerala without the permission of the jurisdictional court.

In case of violation of any of the above conditions, the jurisdictional court shall be empowered to consider the application for cancellation of bail, if any, and pass appropriate orders in accordance with the law.

Sd/-

**ZIYAD RAHMAN A.A.
JUDGE**

APPENDIX OF BAIL APPL. 301/2023

PETITIONER ANNEXURES

Annexure A8

*A TRUE COPY OF THE CASE STATUS IN OP (G&W)
NO. 883/2018 BEFORE THE FAMILY COURT
KOLLAM*