

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

TUESDAY, THE 31ST DAY OF MARCH 2015/10TH CHAITHRA, 1937

Bail Appl..No. 1696 of 2015 ()

CRL.MP 669/2015 of SESSIONS COURT, PALAKKAD
CRIME NO. 843/2014 OF CHALISSERY POLICE STATION , PALAKKAD

APPLICANT/ACCUSED:

BIJU M. AGED 30 YEARS
S/O.UNNIKRISHNAN, KOTTARATHIL MANGATTU HOUSE
KOOTTANAD P O, KOOTTANAD, PATTAMBI
PALAKKAD , PIN-679633

BY ADVS.SRI.P.VIJAYA BHANU (SR.)
SRI.VIPIN NARAYAN

RESPONDENT/COMPLAINANT:

STATE OF KERALA
REP BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM

PUBLIC PROSECUTOR, SRI.SREEJITH V.S.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON
31-03-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

B.KEMAL PASHA, J.

B.A.No.1696 of 2015

Dated this the 31st day of March 2015

ORDER

Petition under Section 438 Cr.P.C.

2. Petitioner is the accused in Crime No.843/2014 of Chaliserry Police Station, Palakkad district, presently pending investigation for the offences punishable under Sections 406, 420 and 376(2)(n) of the I.P.C. Initially the crime was registered for the offences under Sections 420 and 406 of the I.P.C. The *defacto complainant* initially alleged that she was in love with the petitioner and by promising that he would marry her, the petitioner had obtained an amount of ₹50,000/- from her banks accounts by making use of her ATM card, and also took away her gold bracelet. In the F.I.S., she had specifically averred that there were no

physical contacts between them. The petitioner moved for anticipatory bail before the Sessions Court, Palakkad, and vide order dated 26.11.2014, anticipatory bail was granted to the petitioner.

3. It seems that, after that, the *defacto complainant* had approached the learned Magistrate in the crime and wanted to make a disclosure through a statement under Section 164 Cr.P.C. In the said statement, over and above the facts narrated in the F.I.S., and also by overlooking her assertion in the F.I.S. that there were no physical contacts between them, she has stated before the learned Magistrate that she was 'sexually exploited' by the petitioner. It seems that even at that time, she had no case that she was raped or subjected to sexual intercourse. Thereafter, it seems that the Investigating Officer has recorded a detailed statement of the *defacto complainant*. In such a statement, she has allegedly stated that on repeated occasions she was subjected to sexual

intercourse by the petitioner and she had consented to the same on the belief that he would marry her.

4. Heard learned senior counsel for the petitioner and learned Public Prosecutor. Perused the C.D.

5. It seems that in the F.I.S., the *defacto complainant* had specifically asserted that there were no physical contacts between her and the petitioner. Even in the statement under Section 164 Cr.P.C. furnished by the *defacto complainant* before the learned Magistrate, she had no case that she was raped by the petitioner; whereas her case was that she was 'sexually exploited'. Originally, anticipatory bail was granted to the petitioner by the learned Sessions Judge when the offences were under Sections 420 and 406 of the I.P.C. When the offence under Section 376(2)(n) of the I.P.C. was incorporated, the petitioner again moved the Sessions Court for anticipatory bail; but the same was dismissed. Considering the facts and circumstances of the case and the earlier

narrations made by the *defacto complainant*, I am of the view that this is a fit case wherein anticipatory bail can be granted to the petitioner, especially when the petitioner has been co-operating with the investigation on the basis of the conditions imposed for granting anticipatory bail in the very same crime.

6. In the result, this bail application is allowed and the investigating officer or such other police officer, who is conducting the arrest of the petitioner, is directed to enlarge the petitioner on bail in the event of his arrest on his executing a bond for ₹ 1,00,000- (Rupees one lakh only) with two solvent sureties each for the like sum to the satisfaction of the officer conducting arrest, and subject to the following terms and conditions:-

(i) The petitioner shall report before the investigating officer in between 9 a.m. and 11 a.m. on all Tuesdays and Fridays, commencing from 7.4.2015 for a period of three months or till the filing of the final report in this case, whichever is earlier.

(ii) The petitioner shall not tamper with the evidence or influence witnesses.

(iii) The petitioner shall make himself available for interrogation as and when required by the investigating officer.

(iv) The petitioner shall not involve in any offence while on bail.

It is made clear that the violation of any of the conditions stipulated above will result in the cancellation of bail.

Sd/-
B.KEMAL PASHA,
JUDGE

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PA to Judge