

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

FRIDAY, THE 10TH DAY OF JULY 2015/19TH ASHADHA, 1937

Bail Appl..No. 1898 of 2015 ()

**CRIME NO. 438/2015 OF TOWN NORTH POLICE STATION,
PALAKKAD DISTRICT**

PETITIONERS/ACCUSED 1 & 2 :

- 1. BIJU R., AGED 29 YEARS,
S/O.RAJAN, RAILWAY QUARTERS NO. 608/B,
OLD RAILWAY COLONY, OLAVAKKOD, PALAKKAD DISTRICT.**
- 2. OMANA, AGED 55 YEARS,
W/O.RAJAN, RAILWAY QUARTERS NO. 608/B,
OLD RAILWAY COLONY, OLAVAKKOD, PALAKKAD DISTRICT.**

BY ADV. SRI.T.GOPALAKRISHNAN

RESPONDENT/COMPLAINANT :

**STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA.**

BY PUBLIC PROSECUTOR SMT. MADHUBAN

**THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION
ON 10-07-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

bp

SUNIL THOMAS, J.

B.A. No. 1898 of 2015

Dated this the 10th day of July, 2015

O R D E R

This application for pre arrest bail is filed by the accused in Crime No. 438/2015 of Palakkad Town North Police Station for offence punishable under Sections 313, 376, 506(i) r/w S.34 of I.P.C and Section 66(e) of the Information Technology Act.

2. The allegation against the accused is that the 1st accused had sexual relationship with the de facto complainant, after taking her to various places, under a promise to marry her. It is alleged that the above incidents commenced on 26.06.2013. Thereafter, there had been a series of physical relationship between them. There is a further allegation that the 1st accused making the de facto complainant believe that he will marry her had taken the photographs of her naked body, on his

mobile phone. She was compelled to consume medicines for aborting the foetus. It is alleged that he thereafter refused to marry her. The mother also facilitated the commission of this part of the crime.

3. On the basis of the complaint laid by her, crime was registered and the police is in the process of investigation. The petitioners seeks pre arrest bail contending that he is absolute innocent of the crime and that the 1st accused has not committed any such offence.

4. Heard and examined the record.

5. According to the defacto complainant the 1st accused and herself are co-workers, being employed in Railway. It seems that they had a close relationship and there are indications that they have undergone to form of a marriage even. The specific and definite allegation of de facto complainant is that the 1st accused had physical relationship with her on various occasions at various places and under the offer to marry and thereafter

retracted from the offer. It is alleged by her that she had, in the course of the physical relationship conceived and medicines were administered by both the accused to abort. Even though she complained to the police repeatedly, each time the 1st accused promised to marry her, but later retracted.

6. The learned counsel for the petitioner vehemently contended that the de facto complainant was never willing to reside with him and the allegation that he, along with his mother had made her consume medicines to abort his foetus. It is further contended that such an allegation is made only to strengthen her case.

7. At present, I am not intending to going to the merits of the rival contention. The de facto complainant has categorically stated that they had physical relationship on several occasions. The mutual relationship between both parties seems to be not seriously disputed. There is nothing in regard to

disbelieve the version of the de facto complainant at this point of time.

8. The allegation against the 1st accused is very serious. Regarding the 2nd accused, the only allegation is that she criminally conspired with the 1st accused to administer medicine to abort. Apart from this part of allegation, there is no other serious allegation against the mother. This part of the allegation in so far as it relates to the 2nd accused, is to be essentially proved by the oral testimony of the de facto complainant. A custodial interrogation of the 2nd accused does not appear to be essential.

9. Hence, I feel that the 1st accused is not entitled for the benefit of a pre arrest bail, which if granted, may hamper the further investigation of the case. However, I am inclined to grant pre arrest bail to the 2nd petitioner, the mother. Petition is allowed in part as follows:

1. The Anticipatory Bail application of the

1st accused (1st petitioner) is dismissed.

2. The Anticipatory Bail application of the 2nd petitioner (2nd accused) is allowed as follows:

- a) The 2nd petitioner shall appear before the Investigating Officer on 21.07.2015 between 10 a.m and 11 a.m. and shall undergo interrogation. Thereafter, if the Investigating Officer proposes to arrest her, she shall released on bail on executing a bond for a sum of Rs.40,000/- (Rupees Forty Thousand Only) with two sureties for the like sum each.
- b) The 2nd petitioner shall co-operate with the investigation and shall appear before the Investigating Officer as and when demanded by the Investigating Officer.
- c) The 2nd petitioner shall not in any

manner interfere with the investigation,
threaten, coerce or intimidate the defacto
complainant and her relatives.

Petition is allowed in part as above.

Sd/-
SUNIL THOMAS
JUDGE

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