

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

TUESDAY, THE 5TH DAY OF MAY 2015/15TH VAISAKHA, 1937

Bail Appl..No. 2215 of 2015

**CRIME NO. 135/2015 OF PUTHENVELIKKARA POLICE STATION,
ERNAKULAM DISTRICT.**
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PETITIONER/ACCUSED :

**FR. EDWIN FIGAREZ,
S/O. LATE MR.JOSEPH FIGAREZ,
AGED 40 YEARS, C/O. H.G.JOSEPH KARIKKASSERY,
BISHOP, BISHOPS HOUSE, KOTTAPURAM DIOCESE,
KOTTAPURAM P.O., THRISSUR DISTRICT,
KERALA STATE-680 667.**

**BY SRI.MATHAI M PAIKADAY(SENIOR ADVOCATE)
ADVS.SRI.V.RENJITH SHANKAR
SRI.SHIJU ABRAHAM VERGHIS**

RESPONDENT(S):

- 1. THE CIRCLE INSPECTOR OF POLICE,
VADAKKEKKARA POLICE STATION,
NORTH PARUR, ERNAKULAM.**
- 2. THE STATION HOUSE OFFICER,
PUTHENVELIKARA POLICE STATION,
NORTH PARUR, KERALA STATE.**
- 3. THE STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.**

BY SRI.ASIF ALI DIRECTOR GENERAL OF PROSECUTION

**THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION
ON 05-05-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

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K.RAMAKRISHNAN, J.

B.A.No.2215 OF 2015

Dated this the 5th day of May, 2015

ORDER

The accused in crime No.135/15 of Puthenvelikkara Police Station of Ernakulam district has filed this application for anticipatory bail under Section 438 of the Code of Criminal Procedure (hereinafter called 'the Code').

2. The case of the prosecution in nutshell was that from January 2015 till 28th March 2015 on several occasions the accused had sexual intercourse with the victim girl aged 14 years who came to church for prayer and for other religious activities misusing his official position and also sexually abused her and assaulted her even prior to that on several occasions and thereby he had committed offences punishable under Sections 376(2)(1) of the Indian Penal Code and Sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012.

3. Heard Sri.Mathai M. Paikaday, learned senior counsel appearing for the petitioner and Sri.Asif Ali, the learned Director General of Prosecution.

4. Sri.Mathai.M.Paikaday, learned senior counsel appearing for

the petitioner submitted that there is no necessity for custody of the petitioner. In this case, notice under Section 41A of Code has been sent to the petitioner and he has co-operated with the investigation. His passport has already been seized by the police. So there is no possibility of the petitioner fleeing away from the course of investigation. Further, being a person of respectable position, there is no possibility of flouting any conditions imposed by the court. Further there is doubt regarding the genuineness of the prosecution case. There is delay in giving the complaint about the incident and the manner in which the incident narrated by the mother of the victim shows some doubt regarding the prosecution case itself. Even after the victim alleged to have disclosed the alleged wrongful acts of the monster, there is delay in lodging the complaint and there is no acceptable explanation for the delay given as well. Unless he is found guilty, he is not expected to be sent behind the bars and there is no necessity for a custodial interrogation as he is prepared to co-operate with the investigation. Learned counsel has relied on the decisions reported in *Om Prakash v. State of Haryana (2011) 14 SCC 309*, *State of Karnataka v. Mapilla P.P. Soopi (2003) 8 SCC 202*, *Bharat Chaudhary*

and Another v. State of Bihar and Another (2003) 8 SCC 77 in support of his case.

5. Sri.Asif Ali, learned Director General of Prosecution and State Public Prosecutor vehemently opposed the application and submitted that the person who has to teach moral values to the devotees misused his religious position and sexually abused a minor girl aged 14 years who came there for doing services in church. Further his custody is required for proper investigation. If anticipatory bail is granted and he is allowed to remain outside, there is possibility of influencing the witnesses and smooth progressive investigation will be difficult. Church authorities conducted preliminary enquiry and for that the allegations are true and such an evidence is available in the case diary. The victim had narrated the incident in detail as well. So according to the Director General of Prosecution, it is not a fit case to invoke the power under Section 438 of the Code of Criminal Procedure to grant pre arrest bail to the petitioner.

6. I have perused the case diary file also.

7. It is seen from the case diary file that the above crime was

registered on the basis of the complaint given by the mother of the victim girl who is aged 14 years against the petitioner alleging commission of offence of rape and also sexual assault which spread over for a period of more than two years and on the basis of the complaint, Puthenvelikkara Police registered Crime No.135/15 originally for the offences punishable under Section 376(2)(1) of the Indian Penal Code and Sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012. The counsel for the petitioner submitted that earlier on 27.4.2015 the petitioner was interrogated and he was directed to surrender his passport. He was issued with notice under Section 41A of Criminal Procedure Code. Even prior to that, he filed present petition for anticipatory bail when he came to know about the registration of the case and this court by order dated 24.4.2015 directed not to arrest the petitioner till the next hearing date, namely 5.5.2015 i.e., today.

8. There is no dispute regarding the prepositions laid down in the decision reported in *Om Prakash case* and *Mapilla P.P. Soopi's case* cited supra by the counsel for the petitioner. In all those cases, the court has considered the effect of delay after trial considering the

evidence adduced by the prosecution witnesses. Now it has not reached that stage. Any opinion given by this court on these aspects is likely to affect the smooth progress of the prosecution itself. Further, in this case it was a helpless girl aged 14 years was said to have been raped by a priest of a church and any delay on the part of the parents at this stage cannot be taken as a ground to doubt the prosecution case, especially when the victim girl was questioned and she had narrated all the incidents before the investigating officer. Acceptability or unacceptability of the case can be considered by the trial court at the time of trial. While evaluating the evidence adduced at this stage court had only considered as to whether there are allegations to attract the alleged offences and nothing more. Further it is seen from the records that apart from the Sections already mentioned in the First Information Report, framing offence under Section 376(2)(1) of the Indian Penal Code and Sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012, Section 5 of the above Act was also incorporated in the case. It is quite unfortunate that abuse of children sexually for satisfying the lust of monstrously persons are increasing now-a-days. They are not

concerned about the future of the children, but they are only concerned about their lust being satisfied. In this case, the accused person is a priest who is supposed to teach moral values to the persons and prevent persons from committing any crime. The stress was on the genuineness of the prosecution case and the delay in launching the prosecution and not on the allegations made and the attempt was that such allegations were made to tarnish his image by other priests in the Church with the help of the de facto complainants who are in enimical terms with him. According to the senior counsel for the petitioner his custody is not required in connection with the investigation even if the allegations are taken as true on its face value and the dress of the victim has been recovered. The question to be considered is as to whether keeping the person outside will affect the progress of the investigation and whether there is any possibility of influencing the witnesses preventing them from giving evidence so as to unearth the real truth behind the incident. Being a person in high position in the religious order, the apprehension raised by the Director General of Prosecution that there is possibility of this petitioner influencing the witnesses and preventing persons giving

evidence before the investigating officer cannot be ruled out. Further the custody of the petitioner may be required for the purpose of further interrogation which he may not give while he was free and in order to find out whether any other children of this young age have been subjected to such sexual harassment at the hands of this person can also be unearthed only if he is kept under surveillance and custody. Further rape of a minor girl is a heinous and grave offence which has to be seriously viewed by the courts and persons who have said to have committed such crime cannot be allowed freely as others, especially, in this case a person of this status from whom such acts are not expected to be committed. The victim has narrated the incident and there is nothing to disbelieve her statement at this stage. It is also seen from the case diary file that the church authorities also conducted a preliminary enquiry on the allegation and appears to have convinced about the allegations made against the petitioner. Whether that is admissible or not need not be gone into at this stage.

In such circumstances, it is not a fit case where the extraordinary power of this court under Section 438 of the Code has to be

invoked to grant pre-arrest bail to the petitioner and the prayer for anticipatory bail is liable to be rejected. So the application is rejected. The interim order granted by this court on 24.4.2015 not to arrest the petitioner is hereby vacated. Any observation made by this court will not affect the right of the petitioner to raise the same before the trial court and the trial court considering the same on the basis of the materials available on record and take appropriate decisions thereon. These observations are made only for the purpose of considering the question as to whether the petitioner is entitled to get anticipatory bail or not and not for any other purpose.

**K.RAMAKRISHNAN,
Judge**

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