

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.HARIPRASAD

MONDAY, THE 12TH DAY OF OCTOBER 2015/20TH ASWINA, 1937

Bail Appl..No. 5299 of 2015

CRIME NO. 780/2015 OF KAZHAKUTTOM POLICE STATION, THIRUVANANTHAPURAM

PETITIONER(S)/ACCUSED:

**RIYAS, AGED 26 YEARS,
S/O.SHAHUL HAMEED, PARANDODE, ARYANADU,
THIRUVANANTHAPURAM.**

BY ADV. SRI.AJIKHAN.M

RESPONDENT(S)/COMPLAINANT:

**1. STATE OF KEALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM-695011.**

**2. SUB INSPECTOR OF POLICE,
KAZHAKUTTOM POLICE STATION,
THIRUVANANTHAPURAM-695001.**

BY PUBLIC PROSECUTOR SMT.T.Y.LALIZA

**THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 12-10-2015,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

PJ

A.HARIPRASAD, J.

B.A. No.5299 of 2015

Dated this the 12th day of October, 2015

ORDER

Application under Section 438 of the Code of Criminal Procedure.

2. Petitioner is the accused in Crime No.780 of 2015 registered for offences punishable under Sections 363 and 364A of the Indian Penal Code.

3. Prosecution case is that the defacto complainant's minor daughter, aged 17 years, found missing from 11.05.2015 at 9.00 a.m. Onwards. So the defacto complainant filed a complaint. It is revealed in the investigation that the accused kidnapped her from lawful custody and he committed sexual offences on her.

4. Heard both sides.

5. Learned counsel for the petitioner submitted that the whole allegations are false. According to her, a habeas corpus petition was filed before this Court wherein the girl appeared in the court and submitted that she was not kidnapped by anyone and no allegation was made against the petitioner. Another order passed by the Division Bench of this Court in W.P. (Crl.) No.320 of 2015 is also produced for perusal. Based on that order, it

is argued that the minor girl was not under the detention of anyone and she was not coerced by anyone to give a statement before the Division Bench.

6. Learned Prosecutor stiffly opposed the bail application.

7. Statement of the victim (defacto complainant's daughter) recorded by the learned Magistrate having jurisdiction on 25.09.2015 under Section 164 of the Code of Criminal Procedure is produced for my perusal. On going through the statement, various instances of sexual assaults on the victim have been narrated. The ingredients of the offences have been clearly spelt out prima facie from the statement of the victim. Considering the nature of allegations and the sanctity of the statement recorded in a proceeding under Section 164 of the Code of Criminal Procedure, I am of the view that the petitioner is not entitled to get a pre-arrest bail. Therefore, the bail application is dismissed.

A. HARIPRASAD, JUDGE.

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