

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.HARIPRASAD

TUESDAY, THE 22ND DAY OF SEPTEMBER 2015/31ST BHADRA, 1937H

Bail Appl..No. 5476 of 2015 ()

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CRIME NO. 962/2015 OF PARIYARAM POLICE STATION, KANNUR DISTRICT.**

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PETITIONER/ACCUSED:

**RAJESH, AGED 38 YEARS,
S/O. KUNHAPPAN, PULIKKEEL HOUSE,
KAITHAPRAM P.O., MATHAMANGALAM,
KANNUR DISTRICT.**

BY ADV. SRI.I.V.PRAMOD.

RESPONDENT/COMPLAINANT/STATE:

**STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM, KOCHI - 682 031.**

BY PUBLIC PROSECUTOR SMT.R. REMA.

**THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION
ON 22-09-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

rs.

A.HARIPRASAD, J.

B.A. No.5476 of 2015

Dated this the 22nd day of September, 2015

ORDER

Petitioner seeks bail under Section 438 of the Code of Criminal Procedure.

2. Petitioner is involved in Crime No.962 of 2015 of Pariyaram Police Station registered for offences punishable under Sections 376 and 312 of the Indian Penal Code.

3. Prosecution case, in short, is that the accused who is a person having acquaintance with the husband of the defacto complainant, lent money to her in 2013. In spite of returning the money, he raped the defacto complainant on many occasions. He even extended a promise to marry her. When she became pregnant, the fetus was aborted.

4. Heard both sides.

5. Learned counsel contended that this is a false case filed on the eve of the petitioner's marriage. According to him, totality of the prosecution case does not reveal any offence. Learned counsel cited a decision by a single bench of this Court in **Jose Thettayil v. Station House Officer (2013 (3) KLT 552)** and a division bench decision in **Babu v. State of Kerala (2013 (2) KLT 574)** to buttress a contention that indulging in sexual activity after promising to marry in all cases may not lead to an offence under Section 376 of the Indian Penal Code.

6. I do not wish to express any opinion on the merits of this matter. The only question for consideration is whether the petitioner is entitled to get pre-arrest bail under Section 438 of the Code of Criminal Procedure.

7. After hearing the learned counsel on both sides and also after perusing the case diary, I am of the considered opinion that the petitioner is not entitled to get anticipatory bail in this case. His interrogation in custody is essential. The material witnesses are yet to be questioned in this matter. Therefore, the following directions are issued:

In the event the petitioner surrenders before the investigating officer in two weeks, he shall be questioned and thereafter he shall be produced before the Magistrate having jurisdiction on the date of surrender itself. If the petitioner moves for bail, the court below shall, untrammelled by any of the observations in this order, consider the bail application on merits as expeditiously as possible. If the petitioner does not surrender before the investigating officer within the said time, the investigating officer is free to arrest the petitioner, as if no order has been passed in this case.

Application is disposed of.

A. HARIPRASAD, JUDGE.

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