

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.HARIPRASAD

WEDNESDAY, THE 23RD DAY OF SEPTEMBER 2015/1ST ASWINA, 1937

Bail Appl..No. 5592 of 2015

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

PETITIONER(S)/ACCUSED :

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

**BY 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 PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.**

BY SRI.T.ASAF ALI, DIRECTOR GENERAL OF PROSECUTION

**THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION
ON 23-09-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

Msd.

A.HARIPRASAD,J.

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B.A.No.5592 of 2015

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Dated this the 23rd day of September, 2015

O R D E R

Application for bail under Section 438 of Cr.p.C.

2. The petitioner is the accused in Crime No.135/2015 of the Puthanvelikara Police Station, Ernakulam district, registered for offences under Sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012

3. Gist of the prosecution allegation is that, the petitioner, who is a priest in a church, committed rape on a minor girl aged 15 years during a day in the month of January 2015 and thereafter on another day in the month of March 2015.

4. Heard learned counsel for the petitioner and the learned Director General of Prosecution.

5. Learned counsel for the petitioner submitted that the petitioner was always prepared to co-operate with the investigation and in spite appearing before the Investigating Officer and giving statement and also

expressing his willingness to produce materials like Passport, Mobile Phone, Laptop etc as required by the prosecution, the Investigating Officer refused to receive other materials except the passport and let him off. It is also submitted that this Court as per the order in bail application No.2215 of 2015 dt 05-05-2015 refused to grant Anticipatory bail to the petitioner. The matter was taken up before the Apex Court. As per Order dt.20-07-2015, the Supreme Court dismissed the S.L.P filed by the petitioner as it was withdrawn.

6. The learned counsel for the petitioner further submitted that a notice under Section 41A of Cr.PC was issued. Learned counsel submitted that after issuing the notice under Section 41A of Cr.P.C, the police is legally precluded from arresting the petitioner without showing sufficient reason for demanding his custody.

7. Learned Director General of Prosecution

opposed all these submissions. He produced the case diary for perusal. I have gone through the de facto complainant's version and the version of the victim recorded by the learned Magistrate under Section 164 of Cr.p.C.

8. This Court as per the order passed on the earlier bail application has considered the matter in extenso and found that the petitioner was not entitled to get anticipatory bail. Learned Director General of Prosecution contended that the petitioner's custody is highly essential for conducting potency test examination of his laptop, mobile Phones etc, wherein, it is alleged that noxious photographs are stored. That apart, examination of hair, blood samples etc are also essential for which the custody of the petitioner is highly needed. Learned Counsel for the petitioner reiterated the submission that the petitioner is prepared to co-operate with the investigation. The plea for anticipatory bail refused

by this Court on earlier occasion can be re-considered only on establishing the change of circumstance warranting invocation of powers under Sections 438 of Cr.PC.

After hearing the learned counsel for the petitioner and the learned Director General of Prosecution, and on perusal of the Case Diary, I do not find any reason to hold that the petitioner is entitled to get pre-arrest bail under Section.438 Cr.P.C. I am not impressed that there is any change of circumstances warranting indulgence. Hence the bail application is dismissed.

Sd/-
A.HARIPRASAD
JUDGE

AVS