

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE BABU MATHEW P.JOSEPH

FRIDAY, THE 29TH DAY OF MAY 2015/8TH JYAISHTA, 1937

Bail Appl..No. 6305 of 2014 ()

CRIME NO. 735/2014 OF CHOTTANIKKARA POLICE STATION,ERNAKULAM DISTRICT

PETITIONER/ACCUSED:-

**AMAL BABY, AGED 23 YEARS,
PALATHINKAL HOUSE, ARUNODAYAM ROAD,
THIRUVANKULAM P.O.,ERNAKULAM - 682 305.**

**BY ADVS.SRI.DINNY THOMAS
SRI.JAISHANKAR V.NAIR
SRI.ALBERT V.JOHN
SMT.ROSHNI MANUEL**

RESPONDENT/COMPLAINANT:-

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

BY PUBLIC PROSECUTOR SRI.GITHESH.R.

**THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION
ON 29-05-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

sts

BABU MATHEW P. JOSEPH, J.

=====

B.A.No. 6305 of 2014

=====

Dated this the 29th day of May, 2015

ORDER

This petition is filed under Section 438 of Cr.P.C. for anticipatory bail.

2. Heard the learned counsel appearing for the petitioner and the learned Public Prosecutor appearing for the respondent. C.D. produced.

3. The petitioner is the accused in Crime No.735 of 2014 of Chotanikkara Police Station. The offence alleged is under Section 376 of IPC. Learned counsel for the petitioner submits that the petitioner is totally innocent of the allegations raised against him. The allegation raised against the petitioner is that he had committed rape on the de facto complainant during the period between July, 2011 to March, 2012. The complaint preferred against the petitioner was on 13.08.2014 after a period of about 2 ½ years. The de facto complainant is married and during the period when the alleged offence took place,

her husband was working abroad. The accused was aged only 18 during that period. The investigation of the case is almost over. The custodial interrogation of the petitioner is not required in this case. The petitioner is ready and willing to undergo the potency test as and when directed by the investigating agency. The delay in lodging the complaint by the de facto complainant is fatal in this case in the light of the ruling of the Honourable Supreme Court in **Vijayan v. State of Kerala [2008 (3) KLT SN 86 (C.No.106) SC]**. The allegation of rape alleged in this case will not be amounting to that offence in the light of the ruling rendered by the Honourable Supreme Court in **Prashant Bharati v. State of NCT of Delhi [2013 (1) KLT Suppl. 31 (SC)]**. He further submits that the petitioner apprehends arrest by the police at any time.

4. The Case Diary shows that the investigation of the case is almost over. The learned Public Prosecutor submits that the required potency test could not be

conducted so far. Learned counsel for the petitioner has already submitted that the petitioner is ready and willing to undergo the potency test as and when directed by the investigating agency. On considering the facts and circumstances, stage of the investigation and the age of the petitioner, this Court is of the considered view that the petitioner can be granted anticipatory bail imposing appropriate conditions.

5. Therefore, the petitioner is granted anticipatory bail subject to the following conditions:

1) The petitioner shall surrender before the Investigating Officer on or before 06.06.2015. In the event of his arrest, he shall be released on bail on his executing a bond for ₹25,000/- (Rupees twenty five thousand only) with two solvent sureties each for the like sum to the satisfaction of the Investigating Officer.

2) The petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade

him or her from disclosing such facts to the Court or to any Police Officer.

3) The petitioner shall make himself available for interrogation as and when required by the Investigating Officer. The petitioner shall undergo the required potency test as and when directed by the Investigating Officer.

4) The petitioner shall not influence or intimidate the prosecution witnesses nor shall he attempt to tamper with the evidence for the prosecution.

5) The petitioner shall not commit any similar offence while on bail.

6) The petitioner shall not leave India without the previous permission of the concerned Magistrate's Court.

This application is allowed as above.

Sd/-

**BABU MATHEW P. JOSEPH
JUDGE**

rkj

//TRUE COPY//

P.A.TO JUDGE