

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.P.JYOTHINDRANATH

THURSDAY, THE 17TH DAY OF DECEMBER 2015/26TH AGRAHAYANA, 1937

Bail Appl..No. 6816 of 2015 ()

**CRIME NO. 397/CR./HHW/1/TVPM/2012 OF VARKALA POLICE STATION,
THIRUVANANDAPURAM DISTRICT**

PETITIONER :

**SOORAJ, AGED 25 YEARS,
S/O.SUNIL KUMAR, KEZHAKUZHIVEEDU,
KARUNILAKKODE, EDAVA.P.O., VARKALA.**

BY ADV. SMT.MEREENA JOSEPH

RESPONDENT/COMPLAINANT :

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

BY PUBLIC PROSECUTOR SRI.C. RASHEED

**THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION
ON 17-12-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

bp

K.P. JYOTHINDRANATH, J.

B.A. No.6816 of 2015

Dated this the 17th day of December, 2015

O R D E R

This is an application filed under Section 438 of the Code of Criminal Procedure.

2. When the petition came up for hearing, the learned counsel for the petitioner submitted before me that a woman by name Mini committed suicide by hanging in the year 2010. A crime was registered under Section 174 of Cr.P.C. Thereafter, in the year 2012 the crime is converted into for offences under Sections 306, 376 r/w. Section 34 of IPC. It is the submission that the first accused is the mother of the petitioner herein and the second accused is the petitioner. It is the submission made by the counsel before me that the allegation is that the petitioner is used to park his car near the place where deceased used to work. It is the allegation that without her consent he had sexual relationship with her and thereby committed an offence under Section 376. It is submitted before me that without an iota of any evidence or materiel the police is

behind the petitioner.

3. I heard the learned Public Prosecutor.

4. The learned Public Prosecutor submitted before me that no crime was registered during 2010. But considering the fact that it is an unnatural death police was probing the same and when only credible informations received regarding the involvement of the petitioner herein a crime was registered in the year 2012. By that time the petitioner absconded and not co-operating with the case and now in 2015 he came up with an application for anticipatory bail. It is also the submission that earlier he had filed an application but not pressed. Surely the said application was filed while he was abroad; may be it may not be maintainable. But still it is a fact that an earlier application was dismissed has to be borne in mind.

5. At this juncture the counsel for the petitioner submitted before me that the said application was not pressed by the petitioner and it can be seen from the earlier order itself. Non-prosecuted application, even if dismissed,

will not have any effect.

6. In this case the learned Public Prosecutor made available the case diary. I have gone through the same. It shows that the death is due to hanging. It further reveals that the post-mortem certificate available in the case diary further reveals that she had former intercourse. Two finger was admissible in the vagina and the old tear of hymen was also therein. Surely, in the case of a grown up woman this alone will not be any indication of rape; especially when two finger allowed. But considering the totality and the nature of investigation involved and also keeping in mind that if an anticipatory bail granted, it may cause hurdle in the process of interrogation and investigation, I feel that it may not be proper to grant anticipatory bail in a matter like this to the petitioner. At the very same time, if the petitioner so advised, he can very well surrender before the police and co-operate with the investigation; especially in the light of the allegation of the prosecution that he was absconded abroad. Thus if the petitioner is arrested and produced

before the learned Magistrate and a bail application is moved, it shall be considered on merit. Bail Application dismissed.

Sd/-
K.P. JYOTHINDRANATH
JUDGE

//True copy//

P.A. TO JUDGE

shg/