

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. 7205 of 2015

CRIME NO. 637/2015 OF NATTUKAL POLICE STATION, PALAKKAD
.....

PETITIONER(S)/ACCUSED:

**BASHEER, AGED 43 YEARS,
S/O.KUNJAYAMMU HAJI, NEDIYODATHU HOUSE P.O., KURUVATTOOR,
VALLAPPUZHA, PALAKKAD - 679 336.**

BY ADV. SRI.DINESH MATHEW J.MURICKEN

RESPONDENT(S)/COMPLAINANT:

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

BY GOVERNMENT PLEADER SMT.SEENA RAMAKRISHNAN

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

msv/

K.P. JYOTHINDRANATH, J.

B.A. No.7205 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 the petitioner is the accused in crime No.637/2015 of Nattukal Police Station, Palakkad where the offence alleged is under Section 376 of I.P.C.

3. It is the submission that the crime is registered upon a complaint forwarded under Section 156 (3) of Cr.P.C. It is the submission that as per the prosecution case the petitioner made believe the defacto complainant/victim that she is the legally wedded wife of him and had sexual relationship with her. The alleged date of marriage is 7.12.1995 and in that relationship there is a male child also. It is the submission that no stretch of imagination can say that such an offence committed by the accused. The petitioner also submitted before me that the offence that

may be allegedly committed, if the whole version of the prosecution is believed, will only come under Section 493 of IPC. But to overcome the bar under Section 198 of Cr.P.C., regarding Chapter XX of IPC, an offence under Section 376 of IPC is incorporated and investigation started. Otherwise police cannot file a charge sheet when there is no other cognizable offence alleged along with the same.

4. I heard the learned Public Prosecutor.

5. The learned Public Prosecutor submitted before me that here is a clear case of cheating and sexual intercourse without valid consent. The accused had sexual intercourse making believe her, there is marriage. It is also to be remembered that the defacto complainant is now passed M.A. B.Ed.

Thus considering the totality of the case and also the nature of the investigation involved in a crime like, the following order passed:

- 1) The petitioner shall appear before the Investigating Officer within ten days of this order. On such

appearance the Investigating Officer is at liberty to interrogate the petitioner. If the police officer feels that it is a case where arrest is necessary, he is at liberty to arrest the petitioner and after arrest, the police officer can continue the investigation like potency test etc. and thereafter the petitioner shall be released on bail on executing a bond for Rs.25,000/- (Rupees twenty five thousand only) with two solvent sureties each for the like amount to the satisfaction of the officer concerned.

2. After release on bail, the petitioner shall appear before the Investigating Officer on all Saturdays in between 10 a.m and 12 noon for a period of two months.
3. The petitioner shall not commit similar offences during the bail period.
4. The petitioner shall not influence or intimidate the witnesses.
5. The petitioner shall co-operate with the

investigation.

If an application under Section 311 (A) of Cr.P.C. is filed before the concerned Magistrate, the petitioner shall co-operate with the same.

On the above conditions, this anticipatory bail application is allowed.

Sd/-
K.P. JYOTHINDRANATH
JUDGE

//True copy//

P.A. TO JUDGE

shg/