

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

MONDAY, THE 21ST DAY OF DECEMBER 2015/30TH AGRAHAYANA, 1937

Bail Appl..No. 8083 of 2014 ()

CRIME NO.589/2012 OF CHEVAYUR POLICE STATION, KOZHIKODE

PETITIONER(S)/ACCUSED NO.3:

**SHAKKEER M.K., AGED 36 YEARS,
S/O. ALI. M.K., MANNITHODI HOUSE, KIZHUPARAMBA,
AREEKODE, MALAPPURAM DISTRICT.**

**BY ADVS.SRI.B.RAMAN PILLAI (SR.)
SRI.R.ANIL
SRI.M.SUNILKUMAR
SRI.SUJESH MENON V.B.
SRI.T.ANIL KUMAR
SRI.MANU TOM
SRI.THOMAS ABRAHAM (NILACKAPPILLIL)
SRI.M.VIVEK**

RESPONDENT(S)/COMPLAINANT:

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

BY PUBLIC PROSECUTOR SRI.V.S.SREEJITH.

**THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 21-12-2015,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

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RAJA VIJAYARAGHAVAN V, J.

B.A.No.8083 of 2014

Dated this the 21st day of December, 2015

O R D E R

This petition is filed under S.438 of the Code of Criminal Procedure seeking pre-arrest bail.

2. The petitioner is the 3rd accused in Crime No.589/2012 of Chevayoor Police Station. The said crime has been registered on 10.11.2012 alleging offence punishable under S.366(A), 376 and S. 109 of the IPC.

3. The first accused in the aforesaid crime is the mother of the de-facto complainant. The allegation is that during the first week of March 2012, the accused No.2 in the crime at the instance of the 1st accused took the victim from her house at Paroppady in a car and was taken to Sarovaram . Thereafter it is alleged that one Government officer took her in a Toyota Corolla Car to the Skyline

Apartment. According to the de-facto complainant, they reached the apartment at 5.45 p.m and in the night, one person had repeatedly raped her and on the next day, she was dropped back to her residence at Kozhikode. It was on the basis of the above allegations that on 10.11.2012, the aforesaid crime was registered.

4. I have heard the learned counsel appearing for the petitioner as well as the learned Public Prosecutor.

5. The learned counsel appearing for the petitioner submitted that he has been falsely arrayed as an accused at a very belated stage by introducing a story which is at variance with the earlier statement of the victim. The learned counsel highlighted the fact that though the crime was registered in the year 2012, his name was included only in the year 2014 and that too after substituting a unnamed Government servant who was originally implicated in the FIR. According to the learned counsel, his implication at the

late stage was at the instance of certain persons who are inimical towards him and to leave out the unnamed Government servant . The learned counsel submitted that as early as on 02.05.2014, the petitioner had filed an application for obtaining copy of the FIR, FIS and 164 statement in Crime No.589/2012 of Chevayur police station and as per Annexure A order dated 02.05.2014, the learned Magistrate had partially allowed his application. Referring to Annexure A order, the learned counsel has submitted that even on 02.05.2014, on which date the Annexure A order was passed, no report had been filed to incorporate the name of the petitioner as an accused in the FIR. The tracing of the petitioner on the basis of his phone number and the identification of his photograph by the victim, made use of by the prosecuting agency to array him as an accused at a later stage, was attacked by the learned counsel and it was contended that these efforts were made by the Investigating officer to give a clean chit to an influential government servant. The learned counsel also placed reliance on the

order dated 18.7.2014 in BA No 961 /2012 to buttress his contentions.

6. The learned Public Prosecutor, on the other hand has submitted that the case records reveal that the minor informant was raped by the petitioner. Though it is admitted that initially a Government Officer was arrayed as the accused , later the telephone number of the petitioner was traced thus revealing his complicity. It is further submitted that the victim had identified the petitioner when his photograph was shown to her by the investigating officer in the course of the investigation. It is further submitted by the learned Public Prosecutor that S.23 of the Juvenile Justice Act and S.5 & 6 of the Immoral Traffic (Prevention) Act,1956 has later been added.

7. I have considered the rival contentions.

8. It is clear from Annexure B FIR that the crime was

registered on 10.11.2012 and the records would reveal that there originally there were 3 accused in the crime. The 3rd accused was an unnamed Government employee. Annexure A order passed by the learned Magistrate on 02.05.2014 would reveal that no concrete information was received by the investigating officer even on that date with regard to the role played by the petitioner in the crime. There appears to be some merit in the submission of the learned counsel for the petitioner that there are certain questionable circumstances surrounding the implication of the petitioner in the aforesaid crime. Taking note of the fact that the crime was registered in the year 2012, and that the name of the petitioner was substituted in the place of another after a couple of years and all the attendant facts and circumstances, I am of the considered view that the relief as prayed for can be granted to the petitioner subject to stringent conditions so that effective investigation of the case is not thwarted.

- i. The petitioner shall, within a period of ten days, surrender before the investigating officer and submit

himself for interrogation. Thereafter, he shall execute a bond for Rs.1,00,000/- (Rupees one lakh only) with two solvent sureties for the like sum to the satisfaction of the investigating officer.

ii. The petitioner shall appear before the investigating officer at 10.00 a.m. on the next three consecutive days and submit himself for physical tests if asked for and also for interrogation.

iii. If the investigating officer requires the attendance of the petitioner on any further occasion than the days mentioned above, he shall direct the accused in writing to appear and co-operate with the investigation.

iv. The petitioner shall surrender his passport before the Magistrate concerned in one week from the date of appearance before the investigating officer. If the accused does not have a passport, he shall file an affidavit to that effect within seven days of his release.

v. The petitioner shall not contact or communicate with the victim girl or her close relatives; nor shall he intimidate or attempt to influence the witnesses.

vi. If the investigating officer wants to get a test identification parade conducted to ascertain his identity, he may do so within two weeks of his arrest and release, and it is for the petitioner to take precautions not to allow the victim to see him before the test identification parade is conducted.

vii. He shall not destroy or tamper with evidence.

viii. This order is not applicable if the petitioner chooses to surrender before the Magistrate concerned and in such case the learned Magistrate may take appropriate action in accordance with law.

This application is allowed as above.

Sd/-
**RAJA VIJAYARAGHAVAN V,
JUDGE.**

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[True copy]

P.A to Judge