IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C.S.DIAS

TUESDAY, THE 23RD DAY OF JULY 2024 / 1ST SRAVANA, 1946

BAIL APPL. NO. 3355 OF 2024

CRIME NO.214/2024 OF Poonthura Police Station, Thiruvananthapuram

PETITIONER/S:

XXX
XX

BY ADVS.
K.K.DHEERENDRAKRISHNAN
N.P.ASHA

RESPONDENT/S:

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

OTHER PRESENT:

SR PP SMT NEEMA T V

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 23.07.2024, ALONG WITH Bail Appl..3101/2024, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C.S.DIAS

TUESDAY, THE 23RD DAY OF JULY 2024 / 1ST SRAVANA, 1946

BAIL APPL. NO. 3101 OF 2024

CRIME NO.214/2024 OF Poonthura Police Station, Thiruvananthapuram

AGAINST THE ORDER/JUDGMENT DATED 16.03.2024 IN CRMP NO.533 OF 2024 OF ADDITIONAL DISTRICT COURT & SESSIONS COURT (ATROCITIES & SEXUAL VIOLENCE AGAINST WOMEN & CHILDREN),THIRUVANANTHAPURAM

PETITIONER/S:

XXXX
XXXXX, PIN - 695041

BY ADVS.
K.K.DHEERENDRAKRISHNAN
N.P.ASHA

RESPONDENT/S:

STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,HIGH COURT OF KERALA, PIN – 682031

.SR PP SMT SEETHA S

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 23.07.2024, ALONG WITH Bail Appl..3355/2024, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

C.S.DIAS,J

Bail Application Nos.3355 & 3101 of 2024

Dated this the 23rd day of July, 2024

COMMON ORDER

These applications are filed under Sec.438 of the Code of Criminal Procedure, 1973, for orders of pre-arrest bail.

2. The petitioners are the accused 1 and 2 in Crime No.214/2024 of the Poonthura Police Station, Thiruvananthapuram, which is registered against them, for allegedly committing the offences punishable under Sections 354, 354A, 323 and 506 r/w Section 34 of the Indian Penal Code (in short, 'IPC') and Section 75 of the Juvenile Justice (Care and Protection of Children) Act, 2015 and Section 7 read with Section 8 and Section 9(l)(n)(p), read with Section 10, 16, 17, 19 and 21 of the POCSO Act.

3. The concise case of the prosecution is that: 1st accused is the step father of the victim and the 2nd accused is the wife of the 1st accused and the biological mother of

the victim girl aged 13 years. On 23.01.2024, at around 20.00 hours, while the victim was preparing food in the kitchen, the 1st accused grabbed her left breast and outraged her modesty. Even though, the victim complained about the same to the 2nd accused, she ignored the victim and scolded her. Thereafter, while the victim and the 1st accused were sleeping in the bed room, the 1st accused touched the victim inappropriately. Thus, the accused have committed the above offences.

4. Heard; Sri. K.K.Dheerendrakrishnan, the learned counsel appearing for the petitioners and Smt.Seetha S., the learned Public Prosecutor.

5. The learned counsel for the petitioners submitted that the petitioners are totally innocent of the accusations leveled against them. They have been falsely implicated in the crime. The crime has been registered at the instance of the grandmother of the victim, who is inimical towards the 1st petitioner/the 2nd husband of the 2nd accused. Pursuant to the orders passed by this Court, the victim has in categorical terms stated that she has falsely got the

case registered at the instigation of her grandmother. The petitioners are law abiding citizens without any criminal antecedents. The petitioners are willing to abide by any stringent conditions that may be imposed by this Court. Hence, the applications may be allowed.

6. The learned Public Prosecutor, on instructions, submitted that the Investigating Officer has ascertained from the victim and has learnt that she had falsely stated that the 1st accused had outraged her modesty. The victim has further deposed that it was at the instigation of her grandmother that she made the above accusation against the petitioners. The Investigating Officer has filed a report, stating the above aspects.

7. The Honourable Supreme Court in ***Bhadresh Bipinbhal Sheth vs. State of Gujarat and another*** *[2015 KHC 4579]* has succinctly culled out the principles to grant orders of pre-arrest bail especially in matters where family disputes are involved. It is observed that the courts should carefully evaluate whether there is any falsity or frivolity in the complaint lodged against the

family members especially for the purpose of getting them arrested. In such cases, there is no requirement that the accused must make out a special case for the exercise of the power to grant an order of pre-arrsest bail which would virtually reduce the salutary power conferred under Section 438 of the Code of Criminal Procedure.

8. On an overall consideration of the facts, the rival submissions made across the Bar and the materials placed on record, especially on considering the statement made by the victim, that it was at the instigation of the grandmother that she has falsely filed the present complaint and the Investigating Officer has filed a report to the effect that the victim has made false accusations against the petitioners, and further that the petitioners are law abiding citizens without any criminal antecedents, I am satisfied that the petitioners have made out valid grounds to invoke discretionary jurisdiction of this Court under Sec.438 of the Code. Hence, I hold that the petitioners are entitled to an order of pre-arrest bail, subject to the condition that they co-operate with the

Investigating Officer. Hence, I am inclined to allow the application.

In the result, the applications are allowed subject to the following conditions:

(i) The petitioners are directed to surrender before the Investigating Officer within 10 days from today.

(ii) In the event of the petitioners' arrest, the Investigating Officer shall release the petitioners on bail on them executing a bond for Rs.50,000/- (Rupees fifty thousand only) with two solvent sureties for the like amount each;

(iii) The petitioners shall appear before the Investigating Officer for interrogation, as and when directed by the Investigating Officer.

(iv) The petitioners shall not directly or indirectly make any inducement, threat or procure to any person acquainted with the facts of the case so as to dissuade them from disclosing such facts to the court or to any Police Officer or tamper with the evidence in any manner, whatsoever;

(v) The petitioners shall surrender their passports before the jurisdictional court concerned within a period of one week from the date of their release on bail. If they have no passport, they shall file affidavits to the effect before said court within the said period;

(vi) The petitioners shall not get involved in any other offence while on bail;

(vii) In case of violation of any of the conditions mentioned above, the jurisdictional court shall be empowered to consider the application for cancellation of bail, if any filed, and pass orders on the same, in accordance with law.

(viii) Applications for deletion/modification of the bail conditions shall also be filed before the court below.

(ix) Needless to mention, it would be well within the powers of the Investigating Officer to investigate the matter and, if necessary, to effect recoveries on the information, if any, given by the petitioners

even while the petitioners are on bail as laid down by the Hon'ble Supreme Court in ***Sushila Aggarwal v. State (NCT of Delhi) And another*** *[2020 (1) KHC 663].*

(x) The observations made in this order are only for the purpose of considering the application and the same shall not be construed as an expression on the merits of the case to be decided by competent Courts.

Sd/-

rkc/23.07.2024 **C.S.DIAS, JUDGE**