2025:KER:31580

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

THURSDAY, THE 10TH DAY OF APRIL 2025/20TH CHAITHRA, 1947

BAIL APPL. NO. 4500 OF 2025

CRIME NO.272/2025 OF CHERPULASSERY POLICE STATION, PALAKKAD

PETITIONER:

SREEKKUTTAN
AGED 32 YEARS, S/O GANGADHARAN, CHOLAKKAL HOUSE,
CHERPPULASSERY (PO), PALAKKAD-, PIN – 679 503.

BY ADVS.
SRINATH C.V.
K.T.SAJU
ARUN K.
GAYATHRI RAJAGOPAL
PRABHU B.M.

RESPONDENTS:

1 **STATE OF KERALA**
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, PIN – 682 031.

2 **THE STATION HOUSE OFFICER**
CHERPPULASSERY POLICE STATION,
CHERPPULASSERY, PALAKKAD, PIN – 679 503.

BY ADV
NOUSHAD K A, SR.PP

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 10.04.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.V.KUNHIKRISHNAN, J

B.A.No.4500 of 2025

Dated this the 10th day of April, 2025

O R D E R

This Bail Application is filed under Section 482 of Bharatiya Nagarik Suraksha Sanhita.

2. Petitioner is the accused in Crime No.272 of 2025 of Cherppulassery Police Station, Palakkad. The above case is registered against the petitioner alleging offences punishable under Sections 64(1) and 318(4) of the Bharatiya Nyaya Sanhita, 2023 (for short 'BNS').

3. The prosecution case is that from August 2023 to 17.01.2025, the petitioner committed sexual assault on the defacto complainant at his residence and other several places on the pretext of false promise of marriage. It is also alleged that the accused misappropriated two and half lakhs rupees and 30

sovereigns of gold ornaments of the victim.

4. Heard counsel for the petitioner and the Public Prosecutor.

5. The Public Prosecutor made available a copy of the First Information Statement (FIS). The victim is aged 35 years and the petitioner is aged 32 years. Admittedly the victim is a widow with two children. According to the victim, she acquainted with the petitioner in the year 2023 and in August 2023 on a promise to marry, she had sexual intercourse with the petitioner from the house of the petitioner at Cherpulassery. Thereafter, on 01.12.2023 and 28.12.2023, she had sexual intercourse with the petitioner from Royal Plaza Hotel, Cherpulassery. Again on 15.11.2024, she had sexual intercourse with the petitioner from a Hotel at Aluva. Subsequently, on 17.01.2025, the victim had sexual intercourse with the petitioner from Daan Regency Hotel at Koorkanchery,

Thrissur. It is also stated that some amount is collected from the victim by the petitioner and there was an agreement executed between the victim and the petitioner that the amount will be returned. The amount is not returned. Hence it is alleged that the accused committed the offence.

6. A perusal of the FIS would show that there was continuous sexual intercourse between the petitioner and the victim at different places at different dates. The petitioner and the victim are major. Considering the facts and circumstances of the case, I think bail can be granted to the petitioner after imposing stringent conditions. There can be a direction to the petitioner to appear before the Investigating Officer two days continuously from 10 a.m. to 3 p.m., and after interrogation, if arrest is recorded, there can be a direction to release the petitioner on bail.

7. Moreover, it is a well accepted principle that the bail is the rule and the jail is the exception. The Hon'ble Supreme Court in **Chidambaram. P v Directorate of Enforcement [2019 (16) SCALE 870],** after considering all the earlier judgments, observed that, the basic jurisprudence relating to bail remains the same inasmuch as the grant of bail is the rule and refusal is the exception so as to ensure that the accused has the opportunity of securing fair trial.

8. Recently the Apex Court in **Siddharth v State of Uttar Pradesh and Another [2021(5)KHC 353]** considered the point in detail. The relevant paragraph of the above judgment is extracted hereunder.

> “12. We may note that personal liberty is an important aspect of our constitutional mandate. The occasion to arrest an accused during investigation arises when custodial investigation becomes necessary or it is a heinous crime or where there is a possibility of influencing the witnesses or accused may

> abscond. Merely because an arrest can be made because it is lawful does not mandate that arrest must be made. A distinction must be made between the existence of the power to arrest and the justification for exercise of it. (Joginder Kumar v. State of UP and Others (1994 KHC 189: (1994) 4 SCC 260: 1994 (1) KLT 919: 1994 (2) KLJ 97: AIR 1994 SC 1349: 1994 CriLJ 1981)) If arrest is made routine, it can cause incalculable harm to the reputation and self-esteem of a person. If the Investigating Officer has no reason to believe that the accused will abscond or disobey summons and has, in fact, throughout cooperated with the investigation we fail to appreciate why there should be a compulsion on the officer to arrest the accused."

9. In **Manish Sisodia v. Central Bureau of Investigation [2023 KHC 6961]**, the Apex Court observed that even if the allegation is one of grave economic offence, it is not a rule that bail should be denied in every case.

Considering the dictum laid down in the above decision and considering the facts and circumstances of this case, this Bail Application is allowed with the following directions:

1. The petitioner shall appear before the Investigating Officer two days continuously from 10 a.m. to 3 p.m., and shall undergo interrogation.

2. After interrogation, if the Investigating Officer propose to arrest the petitioner, he shall be released on bail on executing a bond for a sum of Rs.50,000/-(Rupees Fifty Thousand only) with two solvent sureties each for the like sum to the satisfaction of the arresting officer concerned.

3. The petitioner shall appear before the Investigating Officer for

interrogation as and when required. The petitioner shall co-operate with the investigation and 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 her from disclosing such facts to the Court or to any police officer.

4. Petitioner shall not leave India without permission of the jurisdictional Court.

5. Petitioner shall not commit an offence similar to the offence of which he is accused, or suspected, of the commission of which he is suspected.

6. 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 petitioner even while the petitioner is 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].

7. The observations and findings in this order is only for the purpose of deciding this bail application. The principle laid down by this Court in ***Anzar Azeez v. State of Kerala*** [2025 SCC OnLine KER 1260] is applicable in this case also.

8. If any of the above conditions are violated by the petitioner, the jurisdictional Court can cancel the bail in accordance to law, even though the bail is granted by this Court. The

prosecution and the victim are at liberty to approach the jurisdictional Court to cancel the bail, if any of the above conditions are violated.

Sd/-

P.V.KUNHIKRISHNAN
JUDGE

AMR