

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

WEDNESDAY, THE 13TH DAY OF MAY 2020 / 23RD VAISAKHA, 1942

BA NO.2679 OF 2020

(Crime No. 58/2020 of Kumbbla Police Station)

PETITIONERS:

Abdul Kareem, Aged 37years,
S/o. Hassainar,
R/at, Arikkady Kadavath,
PO Kumbbla, Kasaragod District.

BY ADVS. SRI.T.B.SHAJIMON , SMT.GOVINDU P RENUKA DEVI

RESPONDENT:

STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM. 682031

By P.P. Sri.B.Jayasurya (Sr) & Sri. C.K.Prasad

THIS BAIL APPLICATION HAVING BEEN FINALLY HEARD ON
13.05.2020, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

P.V.KUNHIKRISHNAN, J.

B.A.No.2679 of 2020

Dated this the 13th day of May, 2020

O R D E R

This Bail Application filed under Section 438 of Criminal Procedure Code (Cr.P.C) was heard through Video Conference.

2. Petitioner is the accused in Crime No.58 of 2020 of Kumbala Police Station registered alleging offences punishable under Sections 354, 354(A), 376(2)(f)(n) and 506 IPC.

3. The prosecution case is that in the month of July 2018 at 10 am at the residential house of the defacto complainant at Kalathur, Pallam, the petitioner outraged the modesty of the defacto complainant. It is the further case that, in the months of April and October, 2019, the petitioner raped the defacto complainant without her consent.

4. The counsel for the petitioner submitted that, the case of the victim cannot be accepted at all. According to him, even if the prosecution case is accepted, no offence is made out. He also submitted that, if the prosecution case is accepted, an element of consent can also be considered. He further submitted that, if this

Court is granting bail to the petitioner, he is ready to abide by any condition imposed by this Court.

5. The learned Public Prosecutor opposed the bail application. He submitted that the petitioner is the accused in Crime No.59/2020 of the same Police Station also. The offences include sections under the POCSO Act also. The learned Public Prosecutor seriously opposed the bail application.

6. After hearing both sides, I am not interested in allowing this bail application. Serious allegations are there. Whether the allegation amounts to an offence or not, is a matter to be decided by the investigating officer during investigation. I am not in a position to decide the same while considering the bail application under Section 438 Cr.P.C. Moreover, the petitioner is the accused in a POCSO case also. That bail application is also dismissed today in B.A No.2682/2020. In the light of the facts and circumstances of the case, according to me, this is not a fit case, in which the extraordinary jurisdiction under Section 438 of the Cr.P.C. can be invoked.

7. Moreover, the jurisdiction to grant bail under Sec.438 Cr.P.C has to be exercised on the well settled principles laid down by the Hon'ble Supreme Court in **Chidambaram P v Directorate**

of Enforcement (AIR 2019 SC 4198). The anticipatory bail is not to be granted as a matter of rule and it has to be granted only when court is convinced that exceptional circumstances exists to resort to the extraordinary jurisdiction.

8. It is true that, there is no hard and fast rule regarding grant or refusal to grant anticipatory bail. Each case has to be decided on the basis of the facts and circumstances of that case. In the light of the general principles laid down in the above judgment and considering the facts and circumstances of this case, I am of the opinion that this is not a fit case in which the petitioner can be released on bail under Sec.438 Cr.P.C. Hence this Bail Application is dismissed.

**P.V.KUNHIKRISHNAN
JUDGE**

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