

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.2682 OF 2020

(Crime No. 59/2020 Kumbala Police Station)

PETITIONERS:

Abdul Kareem, Aged 37years,
S/o. Hassainar,
R/at, Arikkady Kadavath,
PO Kumbala, 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.2682 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.59 of 2020 of Kumbala Police Station, registered alleging offences punishable under Sections 354, 354(A) of IPC & Section 10 r/w Section 9(1)(m) (n) of POCSO Act.

3. The prosecution case is that in the month of April, 2019 at 10.30 am, at the residential house of the defacto complainant at Kalathur, Pallam, the petitioner had subjected penetrating sexual assault to a small child and thus he is alleged to have committed the above offences.

4. The counsel for the petitioner submitted that he has not committed any offence. This is a false case registered to strengthen the case in Crime No.58/2020 which is registered based on the statement of the mother of the victim. He submitted that he is ready

to abide by any condition, if this Court is granting bail to the petitioner.

5.The learned Public Prosecutor opposed the bail application. The learned Public Prosecutor submitted that a small kid aged three months is the victim in this case. A detailed investigation is necessary in this case. The petitioner is involved in Crime No.58/2020 also.

6. After hearing both sides and after considering the facts narrated by the learned Public Prosecutor, I am not in a position to grant anticipatory bail in this case. Its a fact to be noted that the petitioner is the accused in Crime No.58/2020, which is also registered under Section 376 IPC for the alleged rape to the mother of the victim. The bail application of the petitioner in that crime is already dismissed by me today in B.A.No.2679/2020. Hence, I am not inclined to grant bail in this case.

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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