

BAIL APPL.NO. TMP 155 OF 2020

-2-

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C.S.DIAS

TUESDAY, THE 28TH DAY OF APRIL, 2020 /8TH VAISAKHA, 1942

BAIL APPL.NO. TMP 155 OF 2020

(CRIME NO.290/2019 OF TIRURANGADI POLICE STATION, MALAPPURAM DISTRICT)

Petitioners/Accused:

Ashraf, aged 50 years, S/o Aboobacker, Poonghadan House, Nellikkachira, Venniyoor Post, Tirurangadi, Malappuram - 676508:

By Advocates M/s. Arun Chand, Thareeq Anver K., K. Salma Jennath, Abhijith S.R., Shahnoy Shaji and Jai Govind M.J.

Respondents/Complainants:

1. State of Kerala represented by the Public Prosecutor, High Court of Kerala, Ernakulam District, Kerala – 682031
2. Sub Inspector of Police, Tirurangadi Police Station, Tirurangadi, Malappuram District, Kerala – 676306

BY PUBLIC PROSECUTOR SMT PUSHPALATHA M.K.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 28.04.2020, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER

This is an application filed under Section 438 of the Code of Criminal Procedure, seeking an order of pre-arrest bail.

2. The petitioner is the accused in Crime No.290 of 2019 of Tirurangadi Police Station. The petitioner is alleged to have committed the offences punishable under Sections 354, 354A(i)(3), 354B, 354C and 354D of the Indian Penal Code and Section 10 read with Sections 9(I), 9(n) and Section 12 read with Sections 11(iii)(iv) and 14(5) of POCSO Act and Section 75 of the Juvenile Justice Act.

3. The prosecution case, in brief, is that: the petitioner, who is the father of the victim, committed sexual harassment of the victim. The petitioner also outraged the modesty of the victim. Therefore, the petitioner has committed the above offences.

4. Heard the learned counsel for the petitioner and the learned Public Prosecutor through video-conferencing.

5. The learned counsel for the petitioner argued that

the petitioner is absolutely innocent of the accusations leveled against him. The victim had made a false complaint against the petitioner at the instigation of persons who are enemical towards him. The Child Welfare Committee has appointed the victim's grandmother as the victim's guardian. The guardian has now filed an affidavit, stating that the subject matter in dispute between the petitioner and the victim has been settled and that the victim has no subsisting grievance as against the petitioner. Thus, the petitioner may be granted an order of pre-arrest bail.

6. The application is vehemently opposed by the learned Public Prosecutor. The learned Public Prosecutor argued that the grandmother, the purported guardian, does not have the locus standi to file an application to settle the matter, as the victim is minor. Moreover, the offences alleged against the petitioner are heinous in nature falling under the Protection of Children from Sexual Offences Act, 2012. Under no circumstances, can the petitioner be granted an order of pre-arrest bail because it would hamper with the

investigation of the case. The statement of the victim has already been recorded under Section 164 of the Code of Criminal Procedure by the jurisdictional magistrate. Therefore, even if the grandmother has filed an affidavit, it is contrary to the statement of the victim. Hence, the bail application may be dismissed.

7. Having considered the facts and circumstances of the case, particularly the gravity of the offence and also the fact that the victim has already given her statement under Section 164 of the Code of Criminal Procedure, I do not think that this is a fit case to grant an order of pre-arrest bail.

8. The learned counsel for the petitioner then sought for a direction to be issued to the jurisdictional Court to consider the petitioner's bail application on date of surrender itself. Without expressing anything on merits, I direct the petitioner to surrender himself before the jurisdictional court and file an applications as enjoined in law, and the said Court is directed to consider such bail application proposed to be

filed by the petitioner, preferably on the date of filing itself, in accordance with law.

This bail application is dismissed with the above observation.

C.S.DIAS

JUDGE

ska