

VERDICTUM.IN

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE GOPINATH P.

MONDAY, THE 25TH DAY OF APRIL 2022 / 5TH VAISAKHA, 1944

BAIL APPL. NO. 2158 OF 2022

CRIME NO.267/2022 OF Palarivattom Police Station, Ernakulam

PETITIONER/ACCUSED:

ANEZ ANZARE, AGED 37 YEARS
S/O ANZARE,
PALLIPARABMIL ERAKKATHIL HOUSE,
PADAMUGAL P.O., KAKKANAD, PIN - 682021

BY ADVS.
S.RAJEEV
R.SUDHA
V.VINAY
M.S.ANEER
SARATH K.P.
D.FEROZE
C.J.JIYAS

RESPONDENT/STATE:

- 1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
PIN - 682031
- 2 STATION HOUSE OFFICER
PALARIVATTOM POLICE STATION,
ERNAKULAM DISTRICT
(CRIME NO. 267/2022 OF PALARIVATTOM
POLICE STATION, ERNAKULAM DISTRICT), PIN - 682025
- 3 JENIKA CHARITY FOUNDATION (SOUGHT TO BE IMPEADED)
(SOUGHT TO BE IMPEADED)

R1 & R2 BY SMT. SEETHA.S. PUBLIC PROSECUTOR
R3 BY ADV. R. SUDHA

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 25.04.2022,
ALONG WITH Bail Appl..2162/2022, 2163/2022 AND CONNECTED CASES,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE GOPINATH P.

MONDAY, THE 25TH DAY OF APRIL 2022 / 5TH VAISAKHA, 1944

BAIL APPL. NO. 2162 OF 2022

CRIME NO.266/2022 OF Palarivattom Police Station, Ernakulam

PETITIONER/ACCUSED:

ANEZ ANZARE
AGED 37 YEARS
S/O ANZARE,
PALLIPARABMIL ERAKKATHIL HOUSE,
PADAMUGAL P.O
KAKKANAD, PIN - 682021

BY ADVS.
S.RAJEEV
V.VINAY
M.S.ANEER
SARATH K.P.
D.FEROZE
C.J.JIYAS

RESPONDENT/STATE:

- 1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
PIN - 682031
- 2 STATION HOUSE OFFICER
PALARIVATTOM POLICE STATION,
ERNAKULAM DISTRICT
(CRIME NO. 267/2022 OF PALARIVATTOM
POLICE STATION, ERNAKULAM DISTRICT), PIN - 682025

BY SRI.M.C. ASHI PUBLIC PROSECUTOR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 25.04.2022, ALONG WITH Bail Appl.2158/2022 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE GOPINATH P.

MONDAY, THE 25TH DAY OF APRIL 2022 / 5TH VAISAKHA, 1944

BAIL APPL. NO. 2163 OF 2022

CRIME NO.268/2022 OF Palarivattom Police Station, Ernakulam
PETITIONER/ACCUSED:

ANEZ ANZARE
AGED 37 YEARS
PALLIPARABMIL ERAKKATHIL HOUSE,
PADAMUGAL P.O
KAKKANAD, PIN - 682021

BY ADVS.
S.RAJEEV
V.VINAY
D.FEROZE
C.J.JIYAS
M.S.ANEER
SARATH K.P.

RESPONDENT/STATE:

- 1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
PIN - 682031
- 2 STATION HOUSE OFFICER
PALARIVATTOM POLICE STATION,
ERNAKULAM DISTRICT
(CRIME NO. 268/2022 OF PALARIVATTOM
POLICE STATION, ERNAKULAM DISTRICT -, PIN - 682025

BY SRI.M.C. ASHI PUBLIC PROSECUTOR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON
25.04.2022, ALONG WITH Bail Appl..2158/2022 AND CONNECTED
CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT

THE HONOURABLE MR. JUSTICE GOPINATH P.

MONDAY, THE 25TH DAY OF APRIL 2022 / 5TH VAISAKHA, 1944

BAIL APPL. NO. 2167 OF 2022

CRIME NO.274/2022 OF Palarivattom Police Station, Ernakulam
PETITIONER/ACCUSED:

ANEZ ANZARE
AGED 37 YEARS
PALLIPARABMIL ERAKKATHIL HOUSE,
PADAMUGAL P.O
KAKKANAD, PIN - 682021

BY ADVS.
S.RAJEEV
V.VINAY
M.S.ANEER
SARATH K.P.
D.FEROZE
C.J.JIYAS

RESPONDENT/S:

- 1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
PIN - 682031
- 2 STATION HOUSE OFFICER
PALARIVATTOM POLICE STATION,
ERNAKULAM DISTRICT
(CRIME NO. 274/2022 OF PALARIVATTOM
POLICE STATION, ERNAKULAM DISTRICT)., PIN - 682025

BY SRI.T.R.RENJITH SR.PUBLIC PROSECUTOR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON
25.04.2022, ALONG WITH Bail Appl..2158/2022 AND CONNECTED
CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER

[Bail Appl. Nos.2158/2022, 2162/2022, 2163/2022, 2167/2022]

These petitions are filed by the same person seeking anticipatory bail in 4 cases registered against him before the Palarivattom Police Station.

2. B.A.No.2158/2022 arises out of Crime No.267/2022 of Palarivattom Police Station alleging commission of offences under Sections 354, 354-B, 354-A(1)(i) and 354-A(2) of the Indian Penal Code. The gist of the allegations against the petitioner, in Crime No.267/2022 is that on 29.8.2021, when the *de facto* complainant had gone to the Bridal Studio of the petitioner for makeup, the petitioner had inappropriately touched her on her private parts under the guise of applying the makeup on her neck etc. It is also alleged that the petitioner inappropriately pulled the t-shirt of the *de facto* complainant. Under the guise of applying the make-up, the petitioner looked at the private parts of the *de facto* complainant and thereby, he committed the offences alleged against him. The complaint was registered based on an e-mail from the *de facto* complainant who is now living abroad.

3. In B.A.No.2162/2022 arising out of Crime No.266/2022 of Palarivattom Police Station, the allegation against the petitioner is that on 12.9.2015, the petitioner made the *de facto* complainant stand before him wearing a sari blouse and underskirt alone and also asked her various questions with sexual innuendos and also as to whether she had any sexual

relationship with her fiance earlier and also touched her on her private parts and pulled her underclothing and thereby he committed the offences under Sections 354, 354A(1)(i), 354-A(2), 354A(1)(iv), 354-A(3) and 509 of the Indian Penal Code.

4. B.A.No.2163/2022 arises out of Crime No.268/2022 of Palarivattom Police Station, alleging commission of offences under Sections 354, 354-A(1)(i), 354-A(2), 354-A(1)(iv), 354-A(3) and 509 of the Indian Penal Code. The allegation against the petitioner is that on 1.5.2015, when the *de facto* complainant had gone to the make up studio of the petitioner for bridal make up, the petitioner had under the guise of applying make up, put his hand inside the blouse of the *de facto* complainant and touched her on her private parts inappropriately and had thereafter sent messages to her asking her as to whether she enjoyed the make up session and as to whether her husband was at home etc., and thereby he committed the offences alleged against him.

5. B.A.No.2167/2022 arises out of Crime No.274/2022 of Palarivattom Police Station where the allegation is that the *de facto* complainant, who had applied to the petitioner for the position of an Accountant (in 2016) was appointed as such and three days after her appointment, the *de facto* complainant was asked to come to the makeup studio at Chalikkavattom, Vyttila where the petitioner required the *de facto* complainant to make a cup of coffee for him and thereafter pretended to be over-friendly with the *de facto* complainant. It is alleged that still later, under

the guise of showing the *de facto* complainant around the studio, the petitioner started touching and groping the *de facto* complainant. It is alleged that the *de facto* complainant somehow managed to escape from the clutches of the petitioner and rushed home and informed the matter to her mother and to her grandmother. It is alleged that knowing that several other women had raised complaints against the petitioner, the *de facto* complainant also decided to file a complaint against the petitioner. Accordingly Crime No.274/2022 was registered alleging the commission of offences under Sections 354, 354-A(2) and 354-A(1)(i) of the Indian Penal Code.

6. The learned counsel appearing for the petitioner in these cases vehemently contends that the allegations raised against the petitioner are completely baseless and false. It is submitted that except in Crime No.267/2022 where the allegation relates to the date - 29.8.2021 - the allegations in all the other cases relate to the years 2015 and 2016. It is submitted that the complaints are malafide and raised with an intention to drive the petitioner out of business. It is submitted that the complaints are raised at the instance of one Priya, who was earlier associated with the petitioner and who started a social media campaign against the petitioner. It is submitted that the allegations surfaced immediately after an allegation of rape was alleged against a tattoo artist, which incident got substantial attention from the media. It is submitted that the said case prompted the aforesaid Priya to make various persons complain against the petitioner so as to drive the

petitioner out of business. It is submitted that the wife of the petitioner is also working with the petitioner and it is quite unbelievable that the petitioner would have attempted to molest anyone in such circumstances. It is submitted that the petitioner is a victim of vilification. It is submitted that the petitioner had not sexually abused any of the *de facto* complainants. It is submitted that the *de facto* complainant in Crime No.274/2022 had left the service of the petitioner for reasons attributable to her and not on account of any misbehaviour by the petitioner. It is submitted that, at any rate, considering the nature of the allegations, the custodial interrogation of the petitioner is not necessary.

7. The learned Public Prosecutor opposes the grant of bail to the petitioner. It is submitted that several persons have raised allegations of sexual abuse against the petitioner and this cannot be written off as being a campaign to drive the petitioner out of business as is suggested by the learned counsel for the petitioner. It is submitted that there are serious allegations raised against the petitioner in each of the cases registered against him. It is submitted that the delay, if any, in raising the complaint against the petitioner is no ground to believe that the petitioner is not guilty of the offences alleged against him and that such delay is not fatal to the prosecution case as allegations of this nature usually surface after a substantial period of time. It is submitted that the *de facto* complainants in these cases have no apparent connection with each other. It is submitted that considering the nature of the allegations, the

custodial interrogation of the petitioner is absolutely necessary. It is submitted that the petitioner is not entitled to anticipatory bail.

8. In B.A.No.2159/2022, a Foundation named M/s. Jenika Charity Foundation represented by its President has filed an impleading petition stating that it has a right to be heard in the matter. It is submitted that M/s. Jenika Charity Foundation is a registered trust giving grass-root level service to the survivors of domestic violence, sexually abused women, disabled and mentally challenged persons. It is submitted with reference to Annexure-R2(a) series of documents that some among the victims had approached the Foundation seeking its support in taking action against the petitioner. Taking a cue from the recent judgment of the Supreme Court in ***Jagjeet Singh and others v. Ashish Mishra @ Monu and another; 2022 SCC Online SC 453*** (Crl.Appeal No.632/2022) and taking note of the fact that the Foundation is espousing the case of the victims or some among them on the basis of their request, I am inclined to consider the submissions made by the learned counsel appearing for M/s. Jenika Charity Foundation, though without formally allowing their application for impleading. I overrule the serious objection raised by the learned counsel for the petitioner that they have no right to be heard. It is submitted by the learned counsel for the Jenika Charity Foundation that the *modus operandi* of the petitioner is to sexually abuse ladies who come for bridal make-up on the day of their marriage so that they will not reveal the incident to any person or dare to make a complaint. It is submitted that the

delay in filing the complaint is no reason to hold that the complaints in question are not genuine. It is submitted that if the petitioner is granted anticipatory bail, there is every chance of material witnesses being influenced in the matter. It is submitted that the petitioner is not entitled to anticipatory bail.

9. In all the cases except in Crime No.274/2022, the allegations against the petitioner are that the petitioner had made inappropriate advances and had attempted to sexually molest the victims/*de facto* complainants while applying the bridal make-up on them. In **Jagjeet Singh (supra)**, the Supreme Court has, apart from recognising the right of the victim to be heard, considered and reiterated the parameters and principles which should guide this Court in deciding whether an accused is entitled to bail. It has been reiterated that the High Court should not grant bail without advertent to the circumstances set out in **Prasanta Kumar Sarkar v. Ashis Chatterjee and another; (2010) 14 SCC 496**, where it was held as follows:-

“9. We are of the opinion that the impugned order is clearly unsustainable. It is trite that this Court does not, normally, interfere with an order passed by the High Court granting or rejecting bail to the accused. However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are:

- (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;*
- (ii) nature and gravity of the accusation;*

- (iii) severity of the punishment in the event of conviction;
- (iv) danger of the accused absconding or fleeing, if released on bail;
- (v) character, behaviour, means, position and standing of the accused;
- (vi) likelihood of the offence being repeated;
- (vii) reasonable apprehension of the witnesses being influenced; and
- (viii) danger, of course, of justice being thwarted by grant of bail.

[See State of U.P. v. Amarmani Tripathi [(2005) 8 SCC 21 : 2005 SCC (Cri) 1960 (2)] (SCC p. 31, para 18), Prahlad Singh Bhati v. NCT of Delhi [(2001) 4 SCC 280 : 2001 SCC (Cri) 674] , and Ram Govind Upadhyay v. Sudarshan Singh [(2002) 3 SCC 598 : 2002 SCC (Cri) 688] .]

It was also held that if the aforesaid circumstances are not kept in mind, the order of the High Court would suffer from the vice of non-application of mind.

Sushila Aggarwal v. State (NCT of Delhi), (2020) 5 SCC 1, is a recent decision of a constitution bench of the Supreme Court where the principles governing the grant or refusal of anticipatory bail have been set out. The Court in that judgment (after referring to ***Gurbaksh Singh Sibbia v. State of Punjab***, (1980) 2 SCC 565) held :-

“56. The reason for enactment of Section 438 in the Code was parliamentary acceptance of the crucial underpinning of personal liberty in a free and democratic country. Parliament wished to foster respect for personal liberty and accord primacy to a fundamental tenet of criminal jurisprudence, that everyone is presumed to be innocent till he or she is found guilty. Life and liberty are the cherished attributes of every individual. The urge for freedom is natural to each human being. Section 438 is a procedural provision concerned with the personal liberty of each individual, who is entitled to the

benefit of the presumption of innocence. As denial of bail amounts to deprivation of personal liberty, the court should lean against the imposition of unnecessary restrictions on the scope of Section 438, especially when not imposed by the legislature. In Sibbia [Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC 565 : 1980 SCC (Cri) 465] , it was observed that : (SCC p. 589, para 35)

“35. ... Anticipatory bail is a device to secure the individual's liberty; it is neither a passport to the commission of crimes nor a shield against any and all kinds of accusations, likely or unlikely.”

It was also held in **Sushila Aggarwal (supra)** that :-

“92.7. An order of anticipatory bail does not in any manner limit or restrict the rights or duties of the police or investigating agency, to investigate into the charges against the person who seeks and is granted pre-arrest bail.

92.8. The observations in Sibbia [Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC 565 : 1980 SCC (Cri) 465] regarding “limited custody” or “deemed custody” to facilitate the requirements of the investigative authority, would be sufficient for the purpose of fulfilling the provisions of Section 27, in the event of recovery of an article, or discovery of a fact, which is relatable to a statement made during such event (i.e. deemed custody). In such event, there is no question (or necessity) of asking the accused to separately surrender and seek regular bail. Sibbia [Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC 565 : 1980 SCC (Cri) 465] had observed that : (SCC p. 584, para 19)

“19. ... if and when the occasion arises, it may be possible for the prosecution to claim the benefit of Section 27 of the Evidence Act in regard to a discovery of facts made in pursuance of information supplied by a person released on bail by invoking the principle stated by this Court in State of U.P. v. Deoman Upadhyaya [State of U.P. v. Deoman Upadhyaya, AIR 1960 SC 1125 : (1961) 1 SCR 14 :

1960 Cri LJ 1504].”

92.9. It is open to the police or the investigating agency to move the court concerned, which grants anticipatory bail, for a direction under Section 439(2) to arrest the accused, in the event of violation of any term, such as absconding, non-cooperating during investigation, evasion, intimidation or inducement to witnesses with a view to influence outcome of the investigation or trial, etc.”

Keeping the principles laid down in the aforesaid cases and considering the nature of the allegations, I am of the opinion that the petitioner can be granted anticipatory bail in all the cases registered against him subject to conditions. The allegations raised against the petitioner are, no doubt, serious. In all the cases registered against the petitioner, the commission of offences under Section 354 IPC is alleged. In Crime No.267/2022, the commission of an offence under Section 354B of the Indian Penal Code is also alleged. The other offences alleged include offences under Sections 354A and 509 of the Indian Penal Code. Thus out of the offences registered against the petitioner in the cases, the non-bailable offences are those under Section 354 and 354B of the Indian Penal Code. Under Section 354 of the Indian Penal Code, the punishment provided for is imprisonment for a period not less than one year but which may extend to five years together with a fine. Under Section 354B, the punishment provided for is imprisonment, which shall not be less than three years but which may extend to seven years along with fine. Thus, the maximum penalty for offences alleged against the petitioner in these cases is that of imprisonment for a term which shall extend to 7 years (Section 354 B

IPC). The Supreme Court in ***Siddharth v. State of Uttar Pradesh; (2022) 1 SCC 676*** has approved the view taken by the Delhi High Court in ***High Court of Delhi v. C.B.I; 2004 SCC Online Delhi 53 (reported as Court on its own motion v. Central Bureau of Investigation)***. In ***High Court of Delhi v. C.B.I (supra)*** it was held: -

“20. Rather the law is otherwise. In normal and ordinary course the police should always avoid arresting a person and sending him to jail, if it is possible for the police to complete the investigation without his arrest and if every kind of co-operation is provided by the accused to the Investigating Officer in completing the investigation. It is only in cases of utmost necessity, where the investigation cannot be completed without arresting the person, for instance, a person may be required for recovery of incriminating articles or weapon of offence or for eliciting some information or clue as to his accomplices or any circumstantial evidence, that his arrest may be necessary. Such an arrest may also be necessary if the concerned Investigating Officer or Officer-in-Charge of the Police Station thinks that presence of accused will be difficult to procure because of grave and serious nature of crime as the possibility of his absconding or disobeying the process or fleeing from justice cannot be ruled out.”

Further taking into account the allegations raised against the petitioner I am of the view that the custodial interrogation of the petitioner may not be necessary for a proper investigation into the cases registered against the petitioner. I am, therefore, inclined to allow these bail applications. The petitioner shall be released on bail in the event of arrest in connection with Crime Nos.267/2022, 266/2022, 268/2022 and 274/2022 of Palarivattom Police Station subject to the following conditions:-

(i) Petitioner shall execute separate bonds in each crime for sums of Rs.1,00,000/- (Rupees One lakh only) each with two solvent sureties each for the like sum to the satisfaction of the arresting officer;

(ii) Petitioner shall co-operate with the investigation in every manner. He shall appear before the Investigating officer in Crime Nos.267/2022, 266/2022, 268/2022 and 274/2022 of Palarivattom Police Station on 27.4.2022, 28.4.2022, 29.4.2022 & 30.4.2022 at 9 a.m and thereafter as and when called upon to do so. The deemed custody of the petitioner will be with the prosecution for the purposes of the investigation;

(iii) The petitioner shall surrender his passport before the investigating officer in Crime Nos.267/2022, 266/2022, 268/2022 and 274/2022 of Palarivattom Police Station, on 27.4.2022. If the petitioner does not have a passport, he shall execute an affidavit to that effect and file the same before the before the investigating officer in Crime Nos.267/2022, 266/2022, 268/2022 and 274/2022 of Palarivattom Police Station, on 27.4.2022, without fail;

(iv) Petitioner shall not attempt to contact the *de facto* complainants or interfere with the investigation or to influence or intimidate any witness in Crime Nos.267/2022, 266/2022,

268/2022 and 274/2022 of Palarivattom Police Station;

(v) Petitioner shall not involve in any other crime while on bail.

If any of the aforesaid conditions are violated, the Investigating officer in Crime Nos.267/2022, 266/2022, 268/2022 and 274/2022 of Palarivattom Police Station may file an application before the jurisdictional Court for cancellation of bail.

Sd/-

**GOPINATH P.
JUDGE**

acd

APPENDIX OF BAIL APPL. 2162/2022

PETITIONER ANNEXURES

Annexure1 THE TRUE COPY OF THE POSTERS PUBLISHED ON
THE INSTAGRAM PAGE AS STORIES

APPENDIX OF BAIL APPL. 2163/2022

PETITIONER ANNEXURES

Annexure1 TRUE COPY OF THE POSTERS PUBLISHED BY PRIYA
IN HER INSTAGRAM PAGE AS STORIES.

APPENDIX OF BAIL APPL. 2167/2022

PETITIONER ANNEXURES

Annexure I THE TRUE COPY OF THE POSTERS PUBLISHED BY
PRIYA IN HER INSTAGRAM PAGE AS STORIES

APPENDIX OF BAIL APPL. 2158/2022

PETITIONER ANNEXURES

Annexure1 THE TRUE COPY OF THE POSTERS PUBLISHED ON
THE INSTAGRAM PAGE AS STORIES