

VERDICTUM.IN

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

THURSDAY, THE 14TH DAY OF JULY 2022 / 23RD ASHADHA, 1944

BAIL APPL. NO. 4844 OF 2022

AGAINST B.A. NO.997/2022 OF HIGH COURT OF KERALA

CRIME NO.291/CB/EKM/11/21 OF CRIME BRANCH CENTRAL UNIT-II,
ERNAKULAM

PETITIONER/ACCUSED:

MONSON
AGED 52 YEARS
MAVUNKAL HOUSE,
CHERTHALA,
ALAPPUZHA DISTRICT, PIN - 688524

BY ADVS.
SRI.RENJITH B.MARAR
SMT.LAKSHMI.N.KAIMAL
SRI.ARUN POOMULLI
SMT.AISWARYA THANKACHAN
SMT.MEERA JOPPAN

RESPONDENT/COMPLAINANT:

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

BY ADVS.
SRI.GRASHIOUS KURIAKOSE, ADDL.DIRECTOR GENERAL OF
PROSECUTION

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON
11.07.2022, THE COURT ON 14.07.2022 PASSED THE FOLLOWING:

BECHU KURIAN THOMAS, J.

B.A. No.4844 of 2022

Dated this the 14th day of July, 2022

ORDER

This is an application for regular bail filed under Section 439 of the Code of Criminal Procedure, 1973.

2. Petitioner faces an indictment in Crime No.291/CB/EKM/II/21 of Crime Branch Central Unit-II, Ernakulam. The offences alleged against the petitioner are punishable under sections 342, 354, 376(2)(n), 376(2)(f), and 506(i) of the Indian Penal Code, 1860.

3. The prosecution has alleged that the survivor, who was a staff of the accused, was raped on different days during the period from 11-01-2020 till 24-09-2021 in the house of the petitioner and thereby the accused committed the offences alleged against him.

4. Sri.Renjith B. Marar, learned counsel for the petitioner contended that petitioner has been in custody since 06.11.2021. According to the learned counsel, even if the entire allegations are assumed to be correct, still, an offence under section 376 is

not made out, and it can, at the most, reveal only a consensual sexual relationship. It was pointed out that when the crime branch questioned the survivor in another case against the petitioner, earlier to the registration of this crime, the survivor had not even mentioned any instance of rape. It was argued that the said conduct alone is sufficient to show the falsity of the case of the survivor. In any event, the learned counsel contended that the continued detention of the petitioner is not required and that petitioner is willing to abide by any condition that may be imposed by this Court.

5. Sri.Grashious Kuriakose, learned Additional Director General of Prosecution opposed the bail application and submitted that considering the peculiar nature of the case and the enormous influence that the petitioner could wield over the gullible witnesses, petitioner ought not to be granted bail despite him having been taken into custody in this case on 06.11.2021. It was further pointed out that contrary to what was submitted, the witnesses include not only the survivor but also her brother and mother, all of whom were petitioner's employees and therefore, releasing him on bail would prejudice the prosecution case.

6. While appreciating the contentions of the learned Counsel, this Court cannot ignore the antecedents of the petitioner. The petitioner is admittedly involved in various crimes, including three cases of rape. The trial of one case under section 376 IPC coupled with the offence under the POCSO Act for having raped a minor is already underway. The said minor survivor is alleged to have been raped even after she attained majority, and this crime relates to the said offensive conduct. The witnesses, in this case, include the employees of the petitioner. Due to the alleged clout of influence wielded by the petitioner, I find force in the contention of the learned Additional Director General of Prosecution that there is a possibility that the petitioner may influence the witnesses if released on bail.

7. The criminal antecedents of the petitioner also stare against him in granting bail. Several cases are alleged to have been committed by him and therefore, such antecedents cannot be ignored while considering the application for bail.

8. In the decision in **P.Chidambaram v. Directorate of Enforcement** [(2020) 13 SCC 791] the Supreme Court had observed that each case will have to be considered on a case-to-case basis. In the decision in **Prahlad Singh Bhati v. NCT,**

Delhi and Another [(2001) 4 SCC 280], the Supreme Court had held that the jurisdiction to grant bail ought to be exercised on the basis of the well-settled principles having regard to the circumstances of each case and the following factors were to be taken into consideration. (i) The nature of accusations and the severity of the punishment in the event of conviction and the nature of materials relied upon by the prosecution; (ii) Reasonable apprehension of tampering with the witnesses or apprehension of threat to the complainant or the witnesses; (iii) Reasonable possibility of securing the presence of the accused at the time of trial or the likelihood of him absconding; (iv) character, behaviour and standing of the accused and the circumstances which are peculiar to the accused and (v) Larger interest of the public or the State and similar other considerations.

9. There is no hard and fast rule regarding grant or refusal to grant bail. Each case has to be considered on the facts and circumstances of each case and on its own merits. The discretion of the court has to be exercised judiciously and not in an arbitrary manner. The nature of accusation and the severity of the punishment, apprehension of the prosecution about

influencing the witnesses, the circumstances that are peculiar to the accused and the larger interest of the public all lean against the grant of bail to the petitioner.

10. Taking into consideration the nature of crime alleged to have been committed and the surrounding circumstances, I am of the view that this is not a fit case where the petitioner can be released on bail.

On an appreciation of the above factors, I find no merit in this bail application and hence the same is dismissed.

Sd/-
BECHU KURIAN THOMAS
JUDGE

vps

/True Copy/

PS to Judge