



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

MONDAY, THE 3RD DAY OF JUNE 2024 / 13TH JYAISHTA, 1946

BAIL APPL. NO. 2418 OF 2024

CRIME NO.245/2024 OF PARIPPALLY POLICE STATION, KOLLAM

AGAINST THE ORDER DATED 19.03.2024 IN CRMC NO.442 OF 2024 OF I

ADDITIONAL DISTRICT COURT & I ADDITIONAL MOTOR ACCIDENT CLAIMS

TRIBUNAL, KOLLAM

PETITIONER/ACCUSED:

PRABHAKARAN P.

AGED 65 YEARS

S/O PARAMESWARAN PILLAI, KALANGARA VEEDU, CHATHANNOOR P.O,
KALLUVATHUKKAL, KOLLAM DISTRICT, PIN - 691572

BY ADVS.

P.VIJAYA BHANU (SR.)(K/421/1984)

ADITHYA RAJEEV

S.PARVATHI

SAFA NAVAS

RESPONDENTS/STATE:

1 STATE OF KERALA

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

ADDL R2 XXXXXXXXXXXX

XXXXXXXXXXXX XXXXXXXXXXXX

(ADDL R2 IMPEADED AS PER ORDER DATED 19.04.2024 IN
CRL.M.A.NO.2/2024)

BY ADV SURESH B S (CHIRAKKARA)

SR PP - RENJIT GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ORDERS ON 03.06.2024,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**“C.R”****ORDER****Dated this the 3rd day of June, 2024**

This is a petition filed under Section 438 of the Code of Criminal Procedure, seeking pre-arrest bail and the petitioner is the sole accused in crime No.245/2024 of Parippally Police Station, Kollam.

2. Heard the learned Senior counsel for the petitioner and the learned counsel appearing for the defacto complainant as well as the learned Public Prosecutor. Perused the relevant materials available.

3. The above case has been registered alleging commission of offences punishable u/s. 354A(1)(9i), 354A(1)(ii) and 354 of the Indian Penal Code, Sections 8 r/w 7, 10 r/w 9(f)(p) and 12 r/w 11(i), 11(iv) of the Protection of Children from Sexual Offences Act, 2012 and Section 75 of the Juvenile Justice (Care and Protection of Children) Act, 2015.

4. The prosecution allegation is that on 06.03.2024, the victim who is a 9th standard student of GHS, Chirakkara



went for tuition at Atlas Education Centre, Chirakkara at 8.00 am. The accused herein who is the Principal and teacher therein conducted test paper and finished the same at 9.45 am. After finishing the class, the accused called the victim nearby and stated certain words with sexual overtures as stated in the FIS. Further allegation is that, after saying words with sexual overtures the accused attempted to caught hold on the victim and she saved herself. Thereafter, the other girl students, who were outside the tuition centre brought boy students and thereby she escaped. Further, it is stated in the FIS that, prior to 06.03.2024, as on 01.03.2024 also at about 9.30 am, while the victim was getting out of the class during interval, the accused fondled on her breast and he repeatedly said that he would kiss the victim.

5. While canvassing anticipatory bail to the petitioner, the learned Senior counsel argued at that the accused is innocent and the allegations are false. He read out the FIS in detail and pointed out that the petitioner/accused has been running tuition centre for the last 38 years and no such instance reported prior to this. He also would submit that going by the allegations, even other wise, no serious overt



acts at the instance of the petitioner alleged by the prosecution warranting detention of the petitioner. Therefore, the learned Senior counsel pressed for grant of anticipatory bail with offer to co-operate with the investigation.

6. The learned counsel for the defacto complainant zealously opposed grant of anticipatory bail to the accused and submitted that going by the allegations in the FIS the prosecution allegation is well made out wherein arrest and custodial interrogation of the accused are necessary to accomplish meaningful investigation. He also pointed out that since the occurrence affected the moral of the victim, the sexual assault was reported on the date of occurrence itself before the Police and crime also registered forthwith. Therefore, grant of anticipatory bail to the petitioner, who alleged to have committed very serious offences would be fatal to the interest of the victim also.

7. The learned Public Prosecutor shared the arguments of the learned counsel for the defacto complainant, while opposing bail on the submission that materials are in abundance to see commission of offences by the accused, *prima facie*.



8. The learned counsel for the defacto complainant placed decision of the Apex Court reported in **[2022 SCC OnLine SC 1529] Sumitha Pradeep v. Arum Kumar C.K. and Another** and argued that in a case involving similar facts, when this Court granted anticipatory bail to an accused, the matter was challenged before the Apex Court, the Apex Court set aside the order granting anticipatory bail, after referring the order with particular mention, as stated in paragraph Nos. 10 to 16 as under:

10. The High Court, while granting anticipatory bail to the respondent No. 1 herein (original accused), observed in para 9 of the impugned order something which has really disturbed us. Para 9 reads thus:-

"9. With the above principle in mind, when the facts of the case are noticed, it is revealed that the petitioner is the maternal uncle of the victim to whose house the victim went in December, 2021. On 14.12.2021, the victim is alleged to have been asked to sit on the lap of the petitioner, who thereafter is alleged to have hugged and kissed the victim on her cheeks. Though on the one side, there is a possibility of such hugs and kisses being manifestations of



affection by an uncle, one cannot ignore the possibility of such show of 'affections' being coloured by sexual overtones. However, those are all matters for investigation."

11. In our considered opinion, the observations made in Para 9 of the impugned order are totally unwarranted and have been made overlooking the specific allegations contained in the FIR, duly supported with the Statement of the victim - girl child under Section 164 of the Code.

12. In a case containing such serious allegations, the High Court ought not to have exercised its jurisdiction in granting protection against arrest, as the Investigating Officer deserves free-hand to take the investigation to its logical conclusion. It goes without saying that appearance before the Investigating Officer who, has been prevented from subjecting Respondent No. 1 to custodial interrogation, can hardly be fruitful to find out the prima facie substance in the allegations, which are of extreme serious in nature.

13. The fact that the victim girl is traumatized to such a high degree that her academic pursuits have been adversely impacted alone, coupled with the legislative



intent especially reflected through Section 29 of the POCSO Act, are sufficient to dissuade a Court from exercising its discretionary jurisdiction in granting pre-arrest bail.

14. It may be true, as pointed out by learned counsel appearing for Respondent No. 1, that charge-sheet has already been filed. It will be unfair to presume on our part that the Investigating Officer does not require Respondent No. 1 for custodial interrogation for the purpose of further investigation.

15. Be that as it may, even assuming it a case where Respondent No. 1 is not required for custodial interrogation, we are satisfied that the High Court ought not to have granted discretionary relief of anticipatory bail.

16. We are dealing with a matter wherein the original complainant (appellant herein) has come before this Court praying that the anticipatory bail granted by the High Court to the accused should be cancelled. To put it in other words, the complainant says that the High Court wrongly exercised its discretion while granting anticipatory bail to the accused in a very serious crime like POCSO and, therefore, the order passed by the High Court granting anticipatory bail to the accused should be



quashed and set aside. In many anticipatory bail matters, we have noticed one common argument being canvassed that no custodial interrogation is required and, therefore, anticipatory bail may be granted. There appears to be a serious misconception of law that if no case for custodial interrogation is made out by the prosecution, then that alone would be a good ground to grant anticipatory bail. Custodial interrogation can be one of the relevant aspects to be considered along with other grounds while deciding an application seeking anticipatory bail. There may be many cases in which the custodial interrogation of the accused may not be required, but that does not mean that the prima facie case against the accused should be ignored or overlooked and he should be granted anticipatory bail. The first and foremost thing that the court hearing an anticipatory bail application should consider is the prima facie case put up against the accused. Thereafter, the nature of the offence should be looked into along with the severity of the punishment. Custodial interrogation can be one of the grounds to decline anticipatory bail. However, even if custodial interrogation is not required or necessitated, by itself, cannot be a



ground to grant anticipatory bail.”

9. Applying the same ratio, the learned counsel for the defacto complainant submitted that the accused does not deserve anticipatory bail.

10. Going by the ratio in **Sumitha Pradeep's** case (supra), in cases containing such serious allegations, the High Court could not exercise its jurisdiction in granting protection against arrest, as the Investigating Officer deserves free-hand to take the investigation to its logical conclusion. When, the victim girl is traumatized to such a high degree that her academic pursuits have been adversely impacted alone, coupled with the legislative intent especially reflected through Section 29 of the POCSO Act, are sufficient to dissuade a Court from exercising its discretionary jurisdiction in granting pre-arrest bail. Merely because charge has been filed, it will be unfair to presume on our part that the Investigating Officer does not require the accused for custodial interrogation for the purpose of further investigation.

11. Further, even assuming it a case where the



accused is not required for custodial interrogation, the same by itself is not a ground for grant of anticipatory bail. In many anticipatory bail matters, one common argument being canvassed that no custodial interrogation is required and, therefore, anticipatory bail may be granted. There appears to be a serious misconception of law that if no case for custodial interrogation is made out by the prosecution, then that alone would be a good ground to grant anticipatory bail. Custodial interrogation can be one of the relevant aspects to be considered along with other grounds while deciding an application seeking anticipatory bail. There may be many cases in which the custodial interrogation of the accused may not be required, but that does not mean that the *prima facie* case against the accused should be ignored or overlooked and he should be granted anticipatory bail.

12. The first and foremost thing that the court hearing an anticipatory bail application should consider is the *prima facie* case put up against the accused. Thereafter, the nature of the offence should be looked into along with the severity



of the punishment. Custodial interrogation can be one of the grounds to decline anticipatory bail. However, even if custodial interrogation is not required or necessitated, by itself, cannot be a ground to grant anticipatory bail.

13. In this matter, the petitioner is none other than the Principal and tuition master of the victim. Going by the statement given by the victim, on the date of occurrence itself, there is allegation that the accused used many words with sexual overtures and the accused attempted to caught hold on the victim, though she saved herself. It was also stated that as on 01.03.2024 at about 9.30 am, while the victim was getting out of the class during interval, the accused fondled on her breast and he repeatedly said that he would kiss the victim.

14. Applying the ratio laid down in ***Sumitha Pradeep's*** case (supra) in the case at hand, the accused could not be released on anticipatory bail, since the allegations are made out, *prima facie* and the defacto complainant lodged the complaint on the day itself, where arrest and custodial interrogation of the accused are



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necessary to accomplish meaningful investigation and eventful prosecution.

Therefore, this bail application must fail and is accordingly dismissed.

Sd/-

**A. BADHARUDEEN
JUDGE**

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