



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

FRIDAY, THE 1ST DAY OF SEPTEMBER 2023 / 10TH BHADRA, 1945

BAIL APPL. NO. 7170 OF 2023

CRIME NO.1030 OF 2023 OF THIRUVALLA POLICE STATION,
PATHANAMTHITTA DISTRICT

PETITIONER/2ND ACCUSED:

UMESH
AGED 46 YEARS
RESIDING AT FLAT 107 ASMAWI BUILDING DUBAI UAE
HOLDER OF INDIAN PASSPORT Z4991167 FROM THEKUMCOIL
HOUSE, VELOOR P.O., KOTTAYAM, PIN - 606 003.

BY ADV SASTHAMANGALAM S. AJITHKUMAR

RESPONDENT/COMPLAINANT:

STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, PIN - 682 031.

BY ADV. SRI.SANGEETHA RAJ N.R [PP]

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON
01.09.2023, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:



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ORDER

Dated this the 1st day of September, 2023

This application is filed u/s 438 of the Code of Criminal Procedure seeking pre-arrest bail.

2. The applicant is the accused No.2 in Crime No.1030/2023 of Thiruvalla Police Station. The offences alleged are punishable under Sections 376 D of the Indian Penal Code and 67 a of the Information Technology Act.

3. The prosecution case, in short, is that the applicant and the accused No.1 brought the victim to a hotel at Thiruvalla, stupefied her after giving liquor, engaged in sexual intercourse, took her sexually explicit video and transmitted the same on electronic media.

4. I have heard Sri. Sasthamangalam S. Ajithkumar, the learned counsel for the applicant and Sri. Sangeetha Raj N.R, the learned Public Prosecutor. Perused the case diary.

5. The learned counsel for the applicant submitted that the applicant is innocent and has been falsely implicated in the present



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case. The counsel further submitted that no materials are on record to connect the applicant with the alleged crime; hence, he is entitled to get bail. The learned Public Prosecutor, on the other hand, submitted that the alleged incident occurred as a part of the intentional criminal acts of the applicant, and if he is released on bail at this stage, it will affect the course of the investigation.

6. I went through the FIS as well as Annexure-3 WhatsApp screenshot between the applicant and the victim. WhatsApp screenshot would show that the victim voluntarily went to the hotel knowing very well that the applicant and the accused No.1 were there in the hotel. The WhatsApp chat would further show that the sex they had at the hotel was consensual in nature. Annexure -4 receipt for payment of Rs.5,000/- coupled with her WhatsApp chat would show that the applicant paid Rs.5,000/- to the victim after the alleged incident of rape. Moreover, there is a delay of 12 days in lodging the FIR. Considering the allegations levelled against the applicant, his custodial interrogation does not appear to be necessary. For these reasons, it is a fit case where pre-arrest bail can be granted to the applicant.



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In the result, the application is allowed on the following conditions:-

(i) The applicant shall be released on bail in the event of his arrest on executing a bond for Rs.1,00,000/- (Rupees One lakh only) with two solvent sureties for the like sum each to the satisfaction of the arresting officer/investigating officer, as the case may be.

(ii) The applicant shall fully cooperate with the investigation, including subjecting himself to the deemed police custody for discovery, if any, as and when demanded.

(iii) The applicant shall appear before the investigating officer between 10.00 a.m. and 11.00 a.m. every Saturday until further orders. He shall also appear before the investigating officer as and when required.

(iv) The applicant shall not commit any offence of a like nature while on bail.

(v) The applicant shall not attempt to contact any of the prosecution witnesses, directly or through any other person, or in any other way try to tamper with the evidence or influence any witnesses or other persons related to the investigation.



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(vi) The applicant shall not leave the State of Kerala without the permission of the trial Court.

(vii) The application, if any, for deletion/modification of bail conditions or cancellation of bail on the grounds of violating the bail conditions shall be filed at the jurisdictional court.

Sd/-

**DR. KAUSER EDAPPAGATH
JUDGE**

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