

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE GOPINATH P.

WEDNESDAY, THE 15TH DAY OF DECEMBER 2021 / 24TH AGRAHAYANA, 1943

BAIL APPL. NO. 9078 OF 2021

CRIME NO.688/2021 OF MUSEUM POLICE STATION, THIRUVANANTHAPURAM

PETITIONER/ACCUSED:

PRASANTH V.S.
AGED 39 YEARS
S/O.SASIDHARAN NAIR, TC 55/714, HOUSE NO.56, KAILAS,
RIVER GARDENS, NEERAMANKARA, NEAR KARAMANA RIVER,
KAIMANAM P.O., THIRUVANANTHAPURAM DISTRICT - 695 040

BY ADV. SASTHAMANGALAM S. AJITHKUMAR

RESPONDENTS/COMPLAINANT:

1 STATE OF KERALA
REP. BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA
ERNAKULAM - 682 031.

2 XXXXXXXXXXXX
XXXXXXXXXXXX

BY SMT. SEETHA S. (SR.PUBLIC PROSECUTOR)

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON
15.12.2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER

This is an application for regular bail.

2. The petitioner is the accused in Crime No.688 of 2021 of Museum Police Station, Thiruvananthapuram District, alleging commission of offences under Sections 354, 376, 376(2)(n) and 506 of the Indian Penal Code. The allegation against the petitioner is that he entered into a relationship with the de-facto complainant and conducted a farce marriage at Guruvayoor in the month of February 2019 and on that basis, subjected the de-facto complainant to sexual sexual intercourse and thereafter withdrew from the promise of marriage. It is alleged that this constitutes rape as defined in Section 375 of the Indian Penal Code.

3. The learned counsel for the petitioner would submit that the petitioner has been in custody for 76 days, having been arrested on 01.10.2021. It is submitted that his continued detention is not necessary for the purpose of investigation. It is submitted that even if the entire allegations are accepted to be true, the offence under Section 375 of the Indian Penal Code has not been committed. It is also submitted that the offence under

Section 354 of the Indian Penal Code is not attracted in the facts and circumstances of the case.

4. When this matter came up for consideration before this Court on 03.12.2021, it was directed that the Station House Officer, Museum Police Station shall serve notice of the bail application on the de-facto complainant, who is impleaded as 2nd respondent in this bail application. The matter was adjourned to be listed on 07.12.2021. Thereafter, this matter came up before me on 07.12.2021, when it was reported that the de-facto complainant is not available at the address available with the Station House Officer and that all efforts to contact the de-facto complainant over phone had also been unsuccessful. I, therefore, adjourned the matter to be listed on 09.12.2021. On 09.12.2021 also it was reported that the de-facto complainant could not be contacted. I, therefore, adjourned this matter to be listed on 13.12.2021. On 13.12.2021 also the notice could not be served on the de-facto complainant. Accordingly, I adjourned the matter to be listed today (15.12.2021). Today also it is reported that the de-facto complainant could not be served with the notice. The learned counsel for the petitioner would submit that the de-facto complainant is purposefully evading notice to prevent the

petitioner from being granted bail.

5. The learned Public Prosecutor submits that this Court through an order dated 08.11.2021 in Bail Application No.7811 of 2021 had rejected the earlier bail application filed by the petitioner. It is submitted that the allegations against the petitioner are serious and the grant of bail at this stage may not be conducive to the completion of investigation in a proper manner. It is submitted that the fact that the petitioner had subjected the de-facto complainant to physical assault is a matter to be considered while deciding whether the petitioner is entitled to bail. It is, therefore, submitted that the petitioner may not be granted bail at this stage.

6. In paragraphs 4, 5 and 6 of my order dated 08.11.2021 in Bail Application No.7811 of 2011, I had indicated the reasons which compelled me to take a view that the petitioner was not entitled to bail at that point of time.

7. Taking into consideration of the facts and circumstances of the case and considering the fact that the petitioner cannot be incarcerated for longer than necessary for the purpose of investigation of the crime registered against him,

I am of the view that the petitioner can be granted bail especially considering the fact that he has been in custody for more than 76 days.

8. In the result, the bail application is allowed and it is directed that the petitioner shall be released on bail subject to the following conditions:

- (1) The petitioner shall execute bond for a sum of Rs.50,000/- (Rupees fifty thousand only) with two solvent sureties for the like sum to the satisfaction of the Jurisdictional Court;
- (2) Petitioner shall appear before the investigating officer in Crime No.688 of 2021 of Museum Police Station, Thiruvananthapuram District, on every Saturday at 11 am until further orders;
- (3) The petitioner shall not enter Thiruvananthapuram District except for the purpose of complying with condition No.2 above;
- (4) The petitioner shall not attempt to interfere with the investigation or to influence or intimidate the victim or any witness in Crime No.688 of 2021 of Museum Police Station, Thiruvananthapuram District;

(5) The petitioner shall surrender his passport before the Jurisdictional Court;

(6) The petitioner shall not involve in any other crime while on bail.

If any of the aforesaid conditions are violated, the investigating officer in Crime No.688 of 2021 of Museum Police Station, Thiruvananthapuram District, may file an application before the Jurisdictional Court for cancellation of bail.

The learned counsel for the petitioner would request that it may be clarified that any observation contained in this order or in the order dated 08.11.2021 in Bail Application No.7811 of 2021 is made only for the purpose of considering the entitlement of the petitioner for bail and should not be treated as a finding on any point by this Court. I make it clear that any observation contained in this order or in the order in Bail Application No.7811 of 2021 shall not be treated as a finding on any point and shall be considered only as observations made for considering the entitlement of the petitioner for bail.

Sd/-
GOPINATH P.
JUDGE

DK