

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C.S.DIAS

FRIDAY, THE 28TH DAY OF JUNE 2024 / 7TH ASHADHA, 1946

BAIL APPL. NO. 4854 OF 2024

CRIME NO.570/2024 OF ANTHIKAD POLICE STATION, THRISSUR

PETITIONER/ACCUSED:

YUSAF ALI

AGED 45 YEARS

S/O. HUSSAIN, PALAKKAPARAMBIL, PATHIRIPALA, MANNOOR,
PALAKKAD, PIN - 678642

BY ADVS.

P.K.SAJEEVAN

MUHAMMED FIRDOUZ A.V.

B.RADHAKRISHNAN

ATHIRA SAJEEVAN

NIYATHA RAJEEV

FRANCIS K.V.

PRAVITHA T.

RESPONDENTS:

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

2 STATION HOUSE OFFICER
ANTHIKKAD POLICE STATION, THRISSUR DISTRICT, PIN -
680641

BY ADVS.

ABHILASH K.N.

SUNIL NAIR PALAKKAT

RISHI VARMA T.R.

K.M.TINTU

RITHIK S.ANAND

ANU PAUL

B.A. No.4854 2024

2

SREELAKSHMI MENON P.

OTHER PRESENT :

SR PP SMT SEETHA S

**THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON
28.06.2024, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

Dated this the 28th day of June, 2024

ORDER

The application is filed under Section 439 of the Code of Criminal Procedure, 1973, by the first accused in Crime No.570/2024 of the Anthikkad Police Station, Thrissur, which is registered against the accused for allegedly committing the offences punishable under Sections 328, 354 (A) (l) (i), 354B, 376(1) and 506 r/w Section 34 of the Indian Penal Code. The petitioner was arrested on 16.05.2024.

2. The concise case of the prosecution is that; on 24.04.2023, the first accused with an intent to rape the victim, a 22 year old girl, gave her some drug and

subjected the victim to sexual harassment by groping and biting on her breasts. Subsequently, he disrobed the victim and raped her. Thereafter, the accused 1 and 2 threatened the victim that he would kill her, if she revealed the incident to others. Thus, the accused have committed the above offences.

3. Heard; Sri. P.K.Sajeevan, the learned counsel appearing for the petitioner, Smt.Seetha S. , the learned Senior Public Prosecutor and Sri. K.N.Abhilash, the learned counsel appearing for the victim..

4. The learned counsel appearing for the petitioner submitted that the petitioner is innocent of the accusations levelled against him. There is no material to substantiate the petitioner's involvement in the crime. The victim and her mother used to frequently visit the petitioner, who is an astrologer and a consultant. It is on a total misconception of facts that the present crime

has been registered. In any given case, the petitioner has been in judicial custody for the last more than one month, the investigation in the case is practically complete, and the medical examinations have also been conducted. Therefore, the petitioner's further detention is unnecessary. Hence, the petitioner may be enlarged on bail.

5. The learned Public Prosecutor opposed the application. The Investigating Officer has filed a bail objection report, inter alia, contending that there are incriminating materials to substantiate the petitioner's involvement in the crime. The petitioner had committed rape on the victim and threatened her of dire consequences if she revealed the incident to others. Considering the nature, gravity and seriousness of the accusations levelled against the petitioner, this Court may not enlarge him on bail. If the petitioner is

enlarged on bail, there is every likelihood of him intimidating the victim and the witnesses and tampering with evidence. Hence, the application may be dismissed.

6. The learned counsel for the victim also opposed the application. He has filed a statement, inter alia, contending that the petitioner had given some drug to the victim and then committed the heinous act. Subsequently, the petitioner and the second accused threatened the victim not to reveal the incident to other person. The petitioner is a habitual offender, who frequently abuses innocent girls. If the petitioner is released on bail, he would certainly intimidate the victim and also tamper with evidence. Hence, the application may be dismissed.

7. The prosecution allegation against the petitioner is that, the accused in furtherance of their common

intention, the first accused gave some drug to the victim and when she lost her consciousness, and then he outraged her modesty, and the committed rape on her. The petitioner contends that the crime has been registered on a total misconception of facts. On the contrary, the victim submits that her modesty has been outraged by the petitioner, who also raped her. The investigation in the case is only at a nascent stage. The offences alleged against the petitioner are grave and heinous. The presumption of innocence cannot be drawn in favour of the petitioner at this stage.

8. In **Prasanta Kumar Sarkar v. Ashis Chatterjee** [(2010) 14 SCC 496], the Honourable Supreme Court has laid down the broad parameters for Courts while dealing with bail applications by holding as follows:

“9.xxx xxx xxx 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".

9. Similarly, in **Kalyan Chandra Sarkar v. Rajesh Ranjan**, [(2004) 7 SCC 528], the Honourable Supreme Court observed thus:

"11.The law regarding grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the court

granting bail to consider among other circumstances, the following factors also before granting bail; they are:

(a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.

(b) Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.

(c) Prima facie satisfaction of the court in support of the charge.

(See *Ram Govind Upadhyay v. Sudarshan Singh* [(2002) 3 SCC 598] and *uran v. Rambilas* [(2001) 6 SCC 338].)

10. Likewise, in **Gurucharan Singh Ors. V. State (Delhi Administration)** [(1978) 1 SCC 118], the Honourable Supreme Court has held that while considering an application of bail, it is necessary to consider the nature and seriousness of the offence; the character of the evidence, circumstances which are peculiar to the accused, a reasonable possibility of the presence of the accused not being secured at the trial, reasonable apprehension of witnesses being tampered with, the larger interests of the public or the State, and similar factors which may be relevant in the facts and circumstances of the case.

On an overall conspectus of the facts, the rival submissions made across the Bar, and the materials placed on record and on comprehending the nature, seriousness and gravity of the accusations levelled against the petitioner, the prima facie materials that substantiate the petitioner's involvement in the crime, the investigation in the case is only at its nascent stage and the apprehension projected by the prosecution that the petitioner may intimidate the victim and the witnesses and tamper with evidence, I am not satisfied that the petitioner has made out any valid ground to enlarge him on bail at this stage. The application is meritless and is only to be dismissed.

Restulantly, the application is dismissed.

SD/-

rmm/28/6/2024

C.S.DIAS, JUDGE