



2024:KER:64574

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C.S.DIAS

FRIDAY, THE 23<sup>RD</sup> DAY OF AUGUST 2024 / 1ST BHADRA, 1946

BAIL APPL. NO. 6202 OF 2024

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

AGAINST THE ORDER DATED IN BAIL APPL. NO.4854 OF 2024 OF  
HIGH COURT OF KERALA

PETITIONER/FIRST ACCUSED:

YUSAF ALI,  
AGED 45 YEARS  
S/O. HUSSAIN, PALAKKAPARAMBIL,  
PATHIRIPALA, MANNOOR,  
PALAKKAD., PIN - 678642

BY ADVS.  
VISHNU BHUVANENDRAN  
B.ANUSREE  
MIRAL K.JOY  
ABHILASH C.V.  
VARUN JACOB

RESPONDENT/STATE:

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

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON  
23.08.2024, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:



**Dated this the 23<sup>rd</sup> day of August, 2024**

**ORDER**

The application is filed under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023, 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) (I) (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 drugs 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. Vishnu Bhuvanendran, the learned counsel appearing for the petitioner and Smt. Seetha.S., the learned Senior Public Prosecutor.

4. The learned counsel appearing for the petitioner submitted that the petitioner is totally innocent of the accusations levelled against him. He has been falsely implicated in the crime. There is a change of circumstances in the filing of the present application because, after the passing of the Annexure A1 order, the investigation in the case is complete, and the final report has been filed on 06.07.2024. Moreover, the second accused has been enlarged on bail by this Court. Furthermore, the petitioner does not have any criminal antecedents. Hence, the application may be allowed.

5. The learned Public Prosecutor opposed the application. She submitted that if the petitioner is enlarged on bail, there is every likelihood of him intimidating the victim and the witnesses and tampering



with evidence. Merely because the final report has been laid, the same is not a ground to enlarge the petitioner on bail. Nonetheless, she did not dispute the fact that the final report has been laid on 06.07.2024, and the second accused has also been enlarged on bail.

6. The prosecution allegation is that, the first accused gave some drug to the victim, and when she lost her consciousness, he outraged her modesty and committed rape on her. The fact remains that the petitioner has been in judicial custody for the last 100 days, the investigation in the case is complete, the final report has been laid on 06.07.2024, and the second accused has already been enlarged on bail. Moreover, the petitioner does not have any criminal antecedents.

7. In **Dataram Singh v. State of U.P.**, [(2018) 3 SCC 22] the Honourable Supreme Court observed that grant of bail is the rule and putting a person in jail is an exception. Even though the grant of bail is entirely the discretion of the court, it has to be evaluated based on



the facts and circumstances of each case and the discretion has to be exercised in a judicious and compassionate manner.

8. In **Manish Sisodia v. Directorate of Enforcement** [2024 INSC 595] the Honourable Supreme Court has reiterated that, over a period of time, the trial courts and the High Courts have forgotten a very well-settled principle of law that bail is not to be withheld as a punishment. From its experience, it appears that the trial courts and the High Courts attempt to play safe in matters of grant of bail. The principle that bail is the rule and refusal is an exception is, at times, followed in breach. On account of non-grant of bail even in straight forward open and shut cases, the Honourable Supreme Court is flooded with huge number of bail petitions thereby adding to the huge pendency. It is high time that the trial courts and the High Courts recognize the principle that “bail is the rule and jail is an exception.



9. In **Prabir Purkayastha v. State (NCT of Delhi)**[2024 SCC OnLine SC 934], the Honourable Supreme Court has observed as follows:-

“21. The Right to Life and Personal Liberty is the most sacrosanct fundamental right guaranteed under Articles 20, 21 and 22 of the Constitution of India. Any attempt to encroach upon this fundamental right has been frowned upon by this Court in a catena of decisions. In this regard, we may refer to following observations made by this Court in the case of Roy V.D. v. State of Kerala[(2022) SCC OnLine SC 929]

“7. The life and liberty of an individual is so sacrosanct that it cannot be allowed to be interfered with except under the authority of law. It is a principle which has been recognised and applied in all civilised countries. In our Constitution Article 21 guarantees protection of life and personal liberty not only to citizens of India but also to aliens.”

10. On an overall consideration of the facts, the rival submissions made across the Bar, and the materials placed on record, particularly considering the fact that the petitioner has been in judicial custody for the last



100 days, the investigation in the case is complete, the second accused has been enlarged on bail, the final report has been laid, and further that the petitioner does not have any criminal antecedents, I am of the firm view that the petitioner's further detention is unnecessary. Hence, I am inclined to allow the bail application, but subject to stringent conditions.

In the result, the application is allowed, by directing the petitioner to be released on bail on him executing a bond for Rs.1,00,000/- (Rupees one lakh only) with two solvent sureties each for the like sum, to the satisfaction of the court having jurisdiction, which shall be subject to the following conditions:

(i) The petitioner shall appear before the Investigating Officer on every alternate Saturday between 9 a.m. and 11 a.m till the conclusion of the trial in Crime No.570/2024.

(ii) The petitioner shall not directly or indirectly make any inducement or threat to the victim or her witnesses or to any person



acquainted with the facts of the case, so as to dissuade them from disclosing such facts to the court or to any Police Officer, or tamper with the evidence in any manner, whatsoever;

(iii) The petitioner shall not commit any offence while he is on bail;

(iv) The petitioner shall surrender his passport, if any, before the court below at the time of execution of the bond. If he has no passport, he shall file an affidavit to the effect before the court below on the date of execution of the bond;

(v) The petitioner shall not enter the Police Station limits of the victim till the conclusion of the trial in Crime No.570/2024, other than for the purpose of reporting before the Investigating Officer;

(vi) In case of violation of any of the conditions mentioned above, the jurisdictional court shall be empowered to consider the application for cancellation of bail, if any filed, and pass orders on the same, in accordance with law.





(vii) Applications for deletion/modification of the bail conditions shall be moved and entertained by the court below.

(viii) Needless to mention, it would be well within the powers of the Investigating Officer to investigate the matter and, if necessary, to effect recoveries on the information, if any, given by the petitioner even while the petitioner is on bail as laid down by the Hon'ble Supreme Court in **Sushila Aggarwal v. State (NCT of Delhi) and another [2020 (1) KHC 663]**.

(ix) The observations made in this order are only for the purpose of considering the application and the same shall not be construed as an expression on the merits of the case to be decided by competent Courts.

**Sd/-**

**C.S.DIAS, JUDGE**

mtk/23.08.24



2024:KER:64574

B.A.No.6202 of 2024

10

**APPENDIX OF BAIL APPL. 6202/2024**

**PETITIONER ANNEXURES**

**Annexure-I**

**ORDER DATED 28-06-2024 IN BAIL  
APPL.4854/2024 ON HIGH COURT**