

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

WEDNESDAY, THE 11TH DAY OF JULY 2018 / 20TH ASHADHA, 1940

Bail Appl..No. 4510 of 2018

(CRIME NO.32/2018 OF CB CID, THIRUVANANTHAPURAM)

PETITIONER/1ST ACCUSED:

REV.FR.SONY VARGHESE,
AGED 42 YEARS, S/O. P.M. VARGHESE,
PUTHOTU HOUSE,
MUNDIAPALLY, KUNNAMTHANAM, THIRUVALLA,
PATHANAMTHITTA.

BY ADVS.SRI.BECHU KURIAN THOMAS (SR.)
SRI.PAUL JACOB (P)
SRI.ENOCH DAVID SIMON JOEL
SRI.RONY JOSE
SRI.GEORGE A.CHERIAN
SRI.LEO LUKOSE

RESPONDENT/COMPLAINANT:

STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM. (THROUGH THE SUPERINTENDENT OF POLICE, CRIME
BRANCH, HEAD QUARTERS, TRIVANDRUM)

BY SENIOR GOVERNMENT PLEADER SRI.SUMAN CHAKRAVARTHY

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 11-07-2018 ALONG
WITH B.A. NOS.4511 & 4573 OF 2018, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

RAJA VIJAYARAGHAVAN V., J

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B.A. Nos. 4510, 4511 & 4573 of 2018

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Dated this the 11th day of July, 2018

O R D E R

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These applications are filed under §438 of the Cr.P.C.

2. The applicants herein are the accused Nos. 1, 2 and 4 in Crime No.32 of 2018 of CBCID, Thiruvananthapuram. They face allegations of having committed offence punishable under §376, 354, 354A, 506(i) of the IPC. Separate applications seeking anticipatory bail have been filed by the applicants. As the matter involves a common victim and the allegations are closely interlinked, these applications are considered and disposed off together.

3. The survivor is a married woman while the applicants herein are clergymen of the Malankara Orthodox Syrian Church. The husband of the survivor lady approached the Bishop of the Marthomma Church and submitted a complainant wherein allegations of gross sexual impropriety were alleged against the applicants and two others. This was leaked to the media from some quarters. A veteran political leader took up the issue and

submitted a representation to the State Police Chief requesting for action. A preliminary enquiry was ordered by the State Police Chief. The survivor and her husband were questioned and after evaluating the materials made available, a report was submitted before the State Police Chief that a cognizable offence was made out warranting registration of a crime.

4. In terms of the directions issued by the Apex Court, the victim was produced before the learned Magistrate and her statement was recorded under §164 of the Cr.P.C. In the said statement, the survivor has narrated the sequence of events and the details of sexual abuse to which she was subjected to by the accused.

5. To avoid prejudice being caused either to the survivor or the accused, I shall refrain from extracting the entire statement given by the survivor before the learned Magistrate. I shall also mask the names and details of persons and institutions to ensure their privacy. Suffice is to state that I have scrutinized the entire materials for the purpose of evaluating the allegations against the applicants.

6. The survivor has stated that she was subjected to sexual abuse by the 1<sup>st</sup> accused from November, 1999 onwards on a false promise to marry her. The sexual abuse continued till the marriage of the 1<sup>st</sup> accused to another lady in 2002. They did not maintain any contact till 2005, when the survivor met the 1<sup>st</sup> accused and she was asked to come to a School at Thiruvalla, where the 1<sup>st</sup> accused was working. She alleges that she was threatened by the 1<sup>st</sup> accused to expose her, if she was not prepared to heed to his wishes to have a relationship. She claims that she was subjected to sexual abuse inside the School where he was working. The interaction between both of them continued even after her marriage on 16.10.2006 and after her pregnancy. It lasted till the year 2017.

7. The 2<sup>nd</sup> accused is a Vicar of a nearby Church and the survivor is alleged to have divulged her relationship with the 1<sup>st</sup> accused during confession. She alleges that she was summoned by the accused and she was threatened that the contents of the confession would be revealed to her husband. Under the said threat, sexual favours were sought from her. It is alleged that the survivor was subject to sexual abuse on more than one

occasions by summoning her to an Institution that was being managed by the 1<sup>st</sup> accused during that period. She further alleges that the 2<sup>nd</sup> accused used to speak about sexual activities over phone and that the abuse continued till 2012.

8. The 3<sup>rd</sup> accused was her senior in College. He got in touch with her and started contacting through WhatsApp. In course of time, the tenor of messages that he sent online turned out to be explicit ones. He is alleged to have morphed her face onto a nude picture of another lady and threatened to circulate it on the web. According to the survivor, she was taken in a car and was subjected to sexual assault. She further states that she was tormented by the acts and illicit requests of the accused.

9. In the meanwhile, she received a friend request from the 4<sup>th</sup> accused, who is a counselor. She decided to disclose the details of her past to him. The 4<sup>th</sup> accused showed affinity towards the survivor. However, in the course of time, he threatened to expose her past and sexually abused her on his visit to Kerala. She was also made to send her nude pictures and videos and is alleged to have stayed together at a Five Star Hotel at Cochin on more than one occasion till January, 2018.

She was made to pay the bill for the stay.

10. The survivor also alleged that the accused were all having close interaction with her family members including her husband all through this period. According to the victim, her husband had occasion to check her mail and he saw her debit card statement. She was asked about the payment made towards room rent in a Five Star Hotel. When she was probed in detail, she divulged to him about the abuse to which she had been subjected to by the accused. The chat history on her phone corroborated her statements. The involvement of priests who were all held in high esteem was revealed to the husband of the survivor. He immediately rushed to the Church authorities and laid a complaint. Some action was taken against the priests. However, the police were not informed. It was only later when the matter was leaked to the media, a public furore was created and investigation was ordered.

11. The learned Senior Counsel appearing for the accused Nos. 1 and 2 took this Court through the materials and submitted that the allegations levelled against the applicants are clearly untrue. The case of the survivor is a well scripted

play to tarnish the reputation of the applicants and to humiliate them in front of the public. According to the learned Senior Counsel, on the basis of information received from the media that the husband of the survivor has filed a complaint before the Church authorities, the applicants approached the Church authorities and sought for a copy of the complaint filed by the husband. They were served with a copy of Annexure-A1 affidavit filed by the victim. The affidavit has been prepared in stamp paper and a perusal of the same would show that the allegations, even if it is assumed to be true, only points to a relationship that is consensual between willing adults. The long delay of more than a decade in revealing the incident would affect the credibility of the version of the victim, at least insofar as the 1<sup>st</sup> accused is concerned, contends the learned Senior Counsel. Relying on the decision of the Apex Court in **Bhadresh Bipin Sheth v. State of Gujarat** [2015 (2) KLD 555 (SC)], it was argued that the provision of anticipatory bail enshrined in §438 of the Cr.P.C. is conceptualized under Article 21 of the Constitution, which relates to personal liberty. According to the learned Senior Counsel, such a provision calls for liberal interpretation of §438 of the Cr.P.C. in the light of Article 21 of

the Constitution. The learned Senior Counsel fervently submitted that the object of bail is to secure the attendance of the accused at the trial and the proper test to be applied is whether it is probable that the party will appear to take his trial. The custodial interrogation of the applicants is not at all necessary in the facts and circumstances of the instant case, contends the learned Senior Counsel. It is urged that the plenitude of §438 of the Cr.P.C. has to be given full play and there is no requirement for the accused to make out a special case for the exercise of the powers to grant anticipatory bail in a case of instant nature.

12. The learned counsel appearing for the 4<sup>th</sup> accused submitted that Annexure-A1 affidavit sworn to by the victim do not incriminate the 4<sup>th</sup> accused in any manner. The act committed by the 4<sup>th</sup> accused would not come within the ambit of the offence of rape. The learned counsel has referred to the decisions of the Apex court in **Uday v. State of Karnataka** [2003 (SCC CrI.775)], **Deelip Singh v. State of Bihar** [2005 KHC 189] and **Kaini Rajan v. State of Kerala** [2013 CrI. L.J. 4888] to hammer home his point.



13. The learned Public Prosecutor has ardently opposed the prayer. It is submitted that the investigation has just commenced. The applicants herein are clergymen and they are in a position of dominance over the survivor, who is a parishioner. If the applicants are ensconced with a favourable order under §438 of the Cr.P.C., the entire prosecution case will be reduced to shambles, contends the learned Public Prosecutor. Referring to Annexure-A1 affidavit, it is submitted that the mere fact that the accused have themselves produced the same before this Court even prior to the registration of the Crime would show that the same was manipulated to set up an alternate story and to cause prejudice to the survivor. It is contended that no reliance can be placed on Annexure-A1 affidavit at this stage.

14. The learned Public Prosecutor would then advert to the contention of the accused that the relation was consensual. According to the learned counsel, there is no basis for the said submission. The learned Public Prosecutor would also rely on Explanation (2) to §375 of the IPC and it was contended that “consent” would mean an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or

non-verbal communication, communicates willingness to participate in the specific sexual act. In her 164 statement, she has narrated in detail the abuse to which she has been subjected to. She has denied that the consent was unequivocal or voluntary. There is no reason to doubt her version at this stage, contends the learned Public Prosecutor. It is further argued that the statement of the survivor has been corroborated by the evidence of other witnesses and electronic evidence in the form of CDR's and Chat Transcripts.

15. It is then submitted that an attempt was made to cover up the whole incident and it was only when the media had reported about the incident that fresh life was infused into the case. The whole incident would have been swept under the carpet if it was not for the timely intervention of certain individuals contends the learned Public Prosecutor. It is finally urged that if the accused are granted pre-arrest bail, it would greatly harm the investigation and impede the proceedings. Reliance is also placed on the decisions of the Apex Court in **CBI v. Anil Sharma** [(1997) 7 SCC 187], **State of Andhra Pradesh v. Bimal Krishna Kundu and Ors.** [JT 1997 (8) SC

383] and **Enforcement Officer, Ted, Bombay v. Bher Chand Tikaji Bora and Ors.** [(1999) 5 SCC 720] to bring home his point that in a case of instant nature, wherein grave allegation of rape has been alleged, this Court will not be justified in insulating the applicants from an effective investigation by arming them with an order of pre-arrest bail.

16. I have anxiously considered the submissions and have scrutinized the case diary. The Crime was registered on 2.7.2018 after conducting a preliminary investigation by a senior officer. The statement of the survivor has been recorded by the learned Magistrate. The accused are all clergymen and the serious accusations made by the survivor cannot be ignored as false or frivolous at this stage. They were in a position of dominance over the victim and by exploiting the said status, they are alleged to have sexually abused her. The victim in her statement emphatically asserted that the consent was not unequivocal or voluntary. On the other hand, she has given a graphic description as to how she was threatened and forced to succumb to the carnal desires of the accused. I find no reason to ignore her statement at this stage or to place reliance on

Annexure-A1 which does not inspire confidence. The survivor has an explanation to offer for keeping the incident under wraps.

17. Prima facie, it appears that the applicants have acted as predators and they have taken undue advantage of the position of the survivor to their advantage. From her version, it appears that the survivor has been systematically abused by the accused who are all closely known to the family members of the victim. The apprehension of the prosecution that the applicants would manage to tamper with the evidence and influence the witnesses cannot be ignored, the investigation being in the preliminary stages. The reasonable possibility of the applicants managing to obstruct the course of justice, if released at this stage, cannot be brushed aside.

18. Having regard to the gravity of the crime alleged, the character of the evidence, position and status of the accused with reference to the victim and witnesses, the likelihood of the accused fleeing from justice, the possibility of them tampering with the witnesses and obstructing the course of justice, I am of the view that the applicants are not entitled to an order of pre-

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arrest bail.

19. At this stage, the learned Senior Counsel submits that the applicants be granted an opportunity to surrender before the court having jurisdiction and seek regular bail. No specific directions are required for that purpose. The applicants are directed to surrender forthwith before the court having jurisdiction and if an application for regular bail is preferred, the same shall be considered and orders shall be passed on its merits.

These applications will stand dismissed.

Sd/-  
**Raja Vijayaraghavan V.,**  
**Judge**

ps/11/7/2018

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P.S. To Judge