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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

FRIDAY, THE 21ST DAY OF MARCH 2025 / 30TH PHALGUNA, 1946

BAIL APPL. NO. 1777 OF 2025

CRIME NO.1492/2024 OF Aranmula Police Station,

Pathanamthitta

AGAINST THE ORDER/JUDGMENT DATED 05.02.2025 IN CRMP
NO.267 OF 2025 OF ADDITIONAL DISTRICT COURT (ADHOC),
PATHANAMTHITTA

PETITIONER/S:

NOUSHAD
AGED 58 YEARS
S/O IBRAHIMKUTTY, THOTTATHIL HOUSE, PONNANI,
MALAPPURAM, PIN - 679577

BY ADVS. SR.ADV.SRI.P.VIJAYBAHANU
S.RAJEEV
V.VINAY
M.S.ANEER
SARATH K.P.
ANILKUMAR C.R.
K.S.KIRAN KRISHNAN

RESPONDENT/S:

1 STATE OF KERALA



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REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF
KERALA (CRIME NO. 1492/2024 OF ARANMULA POLICE
STATION, PATHANAMTHITTA DISTRICT), PIN - 682031

2 XXXXXXXXXX
 XXXXXXXXXX XXXXXXXXXXXX

SRI.KA.NOUSHAD, SR.PP
SMT.PARVATHI A MENON FOR KeLSA (VRC)

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON
17.03.2025, THE COURT ON 21.03.2025 DELIVERED THE FOLLOWING:



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P.V.KUNHIKRISHNAN, J**B.A. No.1777 of 2025****Dated this the 21st day of March, 2025****O R D E R**

The petitioner is an accused in Crime No.1492/2024 of Aranmula Police Station. Petitioner is a lawyer practising in this Court. He is alleged to have committed rape on a minor girl. The offences alleged are under Sections 376(2)(j), 376(2)(n), 376(3), 377, 506 of the Indian Penal Code, Sections 75 & 77 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (for short 'JJ Act') and Sections 4(2), 3(a)(b), 6, 5(l)(p)(i), 7, 8, 9(l)(p), 10, 11(v), 12, 16, 17 of the Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act').

2. The victim in this case gave a statement before the



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Konni Police Station on 14.12.2024 at 2.30 pm in the presence of one Jeeva Thomas. She stated that she is a Plus-2 grade student and her date of birth is 02.08.2007. She stated that her father and mother are not on good terms and they are living separately. The petitioner is known to her. He is a friend of her aunt. She stated that, in 2022, while she was studying in the 9th standard, she went to the Park Residency Hotel at Kozhenchery. At that time, the petitioner was also there. Two rooms were taken and the petitioner occupied one room. Her aunt and children along with her occupied the other room. Her aunt told her and the children to go to the room of the petitioner. They went to the room of the petitioner. After some time, her aunt also came to that room. It is stated that the petitioner took two bottles of liquor along with two glasses. He asked the victim whether she would take liquor. She said that she would not take it. The petitioner compelled her to consume alcohol.



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Accordingly, she took one glass of drink. Then the petitioner stated that the victim lacked willpower and that is why she was not taking more drinks. Then the victim again consumed another half glass. Thereafter she became drowsy. But she can understand the conversations between the petitioner and her aunt. Subsequently, her aunt left the room. The petitioner locked the room and had forceful sexual intercourse with the victim girl. When she experienced pain, the petitioner said that she need not take it seriously. It is also stated that her aunt knocked on the door two or three times and the petitioner opened the door and closed it again. The next morning, when she got up, the petitioner was sleeping on her side in the bed. She went to the toilet and there was bleeding to her. Even on the bed sheet, there was blood. It is also stated by her that the petitioner bit her nipple and there were marks on her breasts. Thereafter, she went to the room of her aunt. She did not disclose the things



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to her aunt. On that day at noon, they vacated the room and went to the house. After one week, the victim's aunt asked her about the details. She also informed the victim that, in the iPad of the petitioner, her photos and videos were there. At that time, she disclosed everything to her aunt and her 'Ammachi'. It is stated by her that, thereafter also, the petitioner sexually abused the victim several times. This happened with the knowledge of her aunt. Several other instances are also mentioned in the First Information Statement. Therefore, it is alleged that the petitioner committed the above-said offences.

3. Heard the learned Senior Counsel Adv. Sri. P. Vijayabhanu assisted by Adv. S. Rajeev for the petitioner and the learned Public Prosecutor.

4. The Senior counsel submitted that, it is a false case foisted against the petitioner. The Senior counsel also submitted that the victim in this case filed a complaint



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against another boy earlier and that was compromised. She and her family are making money by filing false complaints. This case is also filed to tarnish the image of the petitioner. It is submitted that the petitioner is a lawyer practising in this Court for several years. If this Court rejects the bail application, that will affect his future and the reputation of the petitioner. Even if the petitioner is finally acquitted after trial by a competent court, the damage caused to the petitioner at this stage cannot be compensated.

5. The Senior Counsel also made available a copy of the judgment acquitting another accused, also in which the victim is the same girl. In that case, the victim turned hostile and the accused was acquitted. The Senior Counsel also took me through the statements of the victim and submitted that her statement is unbelievable. The Senior Counsel submitted that this is a fit case in which this Court has to grant anticipatory bail.



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6. The Public Prosecutor seriously opposed the bail application. The Public Prosecutor made available the case diary. The Public Prosecutor submitted that this is a clear case of rape, in which a lawyer is the 1st accused. He submitted that the case which is mentioned by the Senior Counsel, in which the accused was acquitted is also connected to this case. According to the Public Prosecutor, the petitioner was actively involved in that settlement also and he collected money from the accused in that case for settlement as if he was the mediator. The Public Prosecutor submitted that the Investigation Officer took the statement of the victim about the earlier case and she gave a detailed narration of the facts. The Public Prosecutor made available those statements also.

7. The Senior Counsel, Adv. P. Vijayabhanu also produced a pen drive which contained the statement of the victim, which this Court has not perused. The Public



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Prosecutor submitted that this statement is also given by the victim at the instance of the petitioner herein and others. There is a threat to the life of the victim and if this Court grants bail to the petitioner, the petitioner will influence the victim, is the submission. The Public Prosecutor also relied on Section 482(4) of Bharatiya Nagarik Suraksha Sanhita, 2023 (for short 'BNSS') and submitted that an anticipatory bail application cannot be entertained in this case, because, the offence alleged against the petitioner includes the offence under Section 376(3) of the Indian Penal Code (for short 'IPC').

8. Adv. Parvathi A. Menon, Project Coordinator, Victim Right Centre (KeLSA) also appeared in this case. She submitted a report after interacting with the victim. Smt. Norhas Antony, Psychologist, Family Counselling Center, HCLSE, Kerala, also submitted a report after counselling the victim.



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9. This Court considered the contention of the petitioner and the Public Prosecutor. This Court also perused the report submitted by the Project Coordinator, VRC, KeLSA and also the counselling report submitted by Smt. Norhas Antony, Psychologist.

10. A preliminary point is raised by the Public Prosecutor that this bail application is not maintainable in the light of Section 482(4) of BNSS. Section 482(4) of BNSS is extracted hereunder:-

“Section 482. Direction for grant of bail to person apprehending arrest.

(1) xxx

(2) xxx

(3) xxx

(4) Nothing in this section shall apply to any case involving the arrest of any person on accusation of having committed an offence under Section 65 and sub-section (2) of Section 70 of the Bharatiya Nyaya Sanhita, 2023.”

11. This Court considered the impact of Section 438(4) Cr.PC, which corresponds to Section 482(4) of BNSS in **xxx**



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v. State of Kerala [2023 (6) KHC 158]. It will be better to extract the relevant portion of the above judgment:-

23. In the wake of the above findings, the question posed at the beginning of this order is answered negatively. I hold that the exclusion of pre-arrest bail provision by S.438(4) of CrPC in respect of the offences mentioned therein is not to be read as absolute, where it was discernible to the court that the allegations are patently false or motivated and no prima facie materials exist warranting the arrest of the accused. The exclusion clause applies only when a prima facie case of commission of offences is made out. This may have to be determined by the Court concerned with the facts and circumstances of each case.

12. Again this Court considered the same point in **K.R Jayachandran v. State of Kerala [2025 KHC OnLine 1527]**. It will be better to extract the relevant portion of the above judgment:-

9. The learned Public Prosecutor, as well as the learned counsel for the grandmother of the victim child pointed out the bar contained in Section 438(4) Cr.P.C. against entertaining pre-arrest bail application in respect of offences under Section 376 AB IPC. Per contra, it is submitted by



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the learned counsel for the petitioner that there is no absolute bar in invoking the powers under Section 438 Cr.P.C in a case where it would prima facie appear that the accusations against the applicant are ex-facie unsustainable. The decision rendered by a Single Judge of this Court in xxx v. State of Kerala [2023 (5) KLT 514] has been relied on by the learned counsel for the petitioner in support of the above argument. The dictum laid down by this Court in the above regard has no applicability in the present case since there are prima facie materials pointing to the involvement of the petitioner in the crime. It is not possible to accept the argument of the learned counsel for the petitioner that the victim child has been tutored to tender false statements implicating the petitioner in a crime of this nature. Since the materials gathered by the prosecution in the instant case, prima facie point to the involvement of the petitioner in the crime, and also since the custodial interrogation of the petitioner is indispensable for an effective and fruitful investigation, the prayer in this petition for pre-arrest bail cannot be entertained.

13. A perusal of the above judgment would show that, if the prosecution case is patently false or motivated and no prima facie material exists warranting the arrest of the accused, the Bar under Section 438(4) of Cr.P.C/ 482(4) of



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BNSS can be relaxed in appropriate cases. Therefore, the question to be decided is whether the prosecution case is patently false or motivated and no prima facie material exists warranting the arrest of the accused.

14. Keeping in mind the above principle, this Court carefully perused the pleadings in the bail applications, contention of the petitioner and also the prosecution case along with the case diary produced by the Public Prosecutor.

15. This Court also perused the report submitted by Adv. Parvathi A. Menon, the Project Coordinator, VRC, KeLSA. Adv. Parvathi submitted that she reproduced the statement of the victim in her report and did not add or subtract anything from her statement. She patiently heard the victim, recorded the same and prepared the report. In the report, she stated that the victim has no grievance against Alvin, who is the accused in the earlier case, which ended up in his acquittal. This judgement is produced by the



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counsel for the petitioner to show that, the victim falsely implicated others in rape cases for money. However, she was forced to give a statement against Alvin to the police is her submission. The victim affirmed that Alvin had never abused her. The statement originally given to the police and others by the victim is at the instance of the petitioner and others, is the submission. In the report, it is also stated that it was extremely challenging for an adolescent girl from a dysfunctional family, with no proper guidance, to resist the frequent advances of the accused, especially when she was completely dependent on an aunt, who herself was leading a hyper-sexual lifestyle. It is also stated that the survivor has not received any money from either the accused or her paternal aunt.

16. Adv. Parvathi in her report stated that the victim was calm, composed and narrated the incidents in a coherent manner without any compulsion or prompting. In the report,



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it is stated that the statements presented in it are solely the narrations of the survivor, her father and her friend, all of whom have played a crucial role in these proceedings. Adv. Parvathi clearly stated that she has not made any conclusions or assumptions, but only recounted their versions and statements. Adv. Parvathi also stated in her report that these statements may kindly be treated solely as her objection/version in the bail application with the utmost privacy and confidentiality they deserve. The report submitted by the Project Co-ordinator, Victim Rights Centre (VRC), KeLSA and the counselling report of Mrs Norhas Antony will be part of this file. The Registry will seal the same and kept in the file so that if any subsequent bail application is filed by the petitioner, these reports can be used. After going through the entire Case Diary, the report submitted by the Project Co-ordinator and the counselling report, I am of the considered opinion that a prima facie case



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is made out against the petitioner and it can be stated that it has progressed beyond the stage of prima facie. I do not want to discuss the merit of the case further, but suffice it to say that this is a bail application, which cannot be entertained because of the bar under section 482(4) BNSS. But I am also forced to say that, if the facts narrated by the prosecution and the victim are correct, it is unfortunate because the petitioner is from a noble profession. After going through the statement of the victim (if it is correct), a human being cannot complete reading it without tears in their eyes because the allegation is that the petitioner abused a minor girl, without her consent. The allegation is that the petitioner, who is a lawyer gave alcohol to the victim and thereafter, committed penetrative sexual intercourse with a minor girl. If the facts are correct, it is a shame to the profession. Such a person is not entitled to any discretionary relief from this Court. I am of the considered opinion that the petitioner is



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not entitled to anticipatory bail. The report of Advocate Parvathi concludes with these words:

“Survivor is now focused on completing her 12th grade and joining the coaching centre for Medicine. With pride in her eyes, she expressed her ambition to become a Forensic Surgeon”

The entire society is with her, fingers crossed, to achieve her dream.

With the above observation, this bail application is dismissed.

DM/AMR/SKS

sd/-
P.V.KUNHIKRISHNAN
JUDGE