

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

FRIDAY, THE 8TH DAY OF JULY 2022 / 17TH ASHADHA, 1944

BAIL APPL. NO. 5164 OF 2022

CRIME NO.711 OF 2022 OF ERNAKULAM CENTRAL POLICE STATION

PETITIONER/ACCUSED:

NAVANEETH N. NATH
AGED 29 YEARS
S/O. NARENDRA NATH,
SURYAGAYATHRI HOUSE, KANINAD. P.O.
VADAVUKODE, PUTHENCROZE,
ERNAKULAM, PIN - 682310

BY ADVS.
SRI.C.P.UDAYABHANU
SRI.M.RAMESH CHANDER (SR.)
SRI.RASSAL JANARDHANAN A.
SRI.ABHISHEK M. KUNNATHU
SRI.P.R.AJAY
SRI.P.U.PRATHEESH KUMAR
SRI.BOBAN PALAT

RESPONDENTS/COMPLAINANTS:

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

2 SUB INSPECTOR OF POLICE
CENTRAL POLICE STATION,
ERNAKULAM, PIN - 682031

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*(ADDL. R3 IS IMPEADED AS PER ORDER DATED
07.07.2022 IN CRL.M.A. NO.1 OF 2022)

BY ADVS.
SRI.NOUSHAD K.A, PUBLIC PROSECUTOR
SRI.V.JOHN SEBASTIAN RALPH

SRI.RALPH RETI JOHN
SRI.VISHNU CHANDRAN
SRI.APPU BABU
SMT.SHIFNA MUHAMMED SHUKKUR
SRI.GIRIDHAR KRISHNA KUMAR
SMT.VISHNUMAYA M.B.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON
07.07.2022, THE COURT ON 08.07.2022 DELIVERED THE
FOLLOWING:

BECHU KURIAN THOMAS, J.

B.A. No.5164 of 2022

Dated this the 8th day of July, 2022

ORDER

This is an application for regular bail filed under Section 439 of the Code of Criminal Procedure, 1973.

2. Petitioner is the accused in Crime No.711 of 2022 of Ernakulam Central Police Station, alleging offences punishable under section 376(2)(n) and section 313 of the Indian Penal Code, 1860.

3. On 21.06.2022, at around 10.30 pm, the petitioner, a lawyer practising in the High Court of Kerala was arrested on the basis of a statement given by the victim in the above-referred crime. The victim is also an Advocate practising in this Court and she gave her statement to the police from the Intensive Care Unit of a hospital in Ernakulam. She was admitted to the hospital as she had slit her wrist. Based on her statement, the police arrested the petitioner on the same night itself since the allegations revealed the offence of rape.

4. Prosecution alleges that on 21-06-2022, the victim

slashed her wrist while she was inside the room where the petitioner and his fiancée were staying and thereafter she was rushed to the hospital from where she gave her statement implicating the petitioner. The crime was registered alleging that petitioner had raped the victim at various places including at a hotel in Ernakulam, at Vagamon and at other places after promising to marry her and thereafter backed out from the promise and decided to marry another lady. The prosecution alleges that on coming to know about the proposed marriage, the victim attempted to commit suicide. The prosecution further alleges that during the course of the investigation it was revealed that the victim was forced to undergo two miscarriages at the instigation of the petitioner and hence section 313 IPC was also incorporated.

5. Sri.M.Ramesh Chander, learned Senior Counsel for the petitioner duly instructed by Adv.C.P.Udayabhanu contended that the prosecution case is built upon a false premise and that even if the entire case is admitted for argument's sake, still, an offence under section 376 IPC will not be made out. The learned Senior Counsel asserted that the first statement given by the victim reveals only a relationship of love for the past four years

along with a consensual sexual relationship. There was never any promise of marriage and the relationship became physical as a natural course, without any promise to marry. It was further argued that even the allegation of aborting her pregnancy twice would not advance the case of the prosecution since the continuance of the relationship even after the first pregnancy itself, is a clear indication that there was never any promise of marriage and on the other hand, the relationship was purely consensual.

6. The Senior Counsel further submitted that though petitioner wanted to marry the victim due to reasons beyond his control, the relationship could not fructify into a marriage. If a relationship does not result in marriage due to objections from family or for other reasons, such conduct cannot convert the physical union into a rape. According to the learned counsel, the statement of the victim given on 21.06.2022 belies the entire prosecution story and the subsequent allegations incorporated by the police are factually and legally not tenable. The learned Senior Counsel submitted that in any event, since the investigation is practically completed, continued detention of the petitioner is not warranted, especially since no further

questioning of the petitioner or recovery is required.

7. Sri. M.K.Noushad, the learned Public Prosecutor vehemently objected to the grant of bail and pointed out that the victim had, in her statement given under section 164 of the Cr.P.C specifically dealt with the instances of when and how the crime was committed. It was further submitted that the petitioner had induced the victim into a physical relationship and after promising to marry her, continued the heinous crime for the last four years. It was also pointed out that during the course of the investigation and on the basis of the statement given by the victim under section 164 Cr.P.C, the offence under section 313 of the IPC was also added since it was revealed that the victim was forced to terminate her pregnancy twice. The learned Prosecutor also contended that in one of the consent forms submitted for terminating the pregnancy, the petitioner had even put his signature as her husband, which is also in consonance with the allegation of the defacto complainant. The attempt of the petitioner to influence the victim through their common friends and colleagues also indicate that if the petitioner is released on bail, he will be a threat to the victim, contended the learned Prosecutor.

8. Sri.V.John Sebastian Ralph, learned counsel appearing for the victim contended that right from the beginning, petitioner was postponing the marriage under one pretext or the other, though at the same time, indulging in the sexual relationship after promising to marry her. The said conduct itself is, according to Adv. Ralph, indicative of the crime committed by the petitioner. It was further submitted that the ingredients of the offences under section 376 as well as section 313 IPC are made out and that the petitioner ought not to be shown any leniency. The learned Counsel also pointed out that there was a concerted attempt on the part of the petitioner to suppress the crime by pressurising the victim even after the incident.

9. I have considered the rival contentions.

10. A sexual relationship between two willing adult partners will not amount to rape coming within the purview of section 376 of the IPC, unless the consent for sex was obtained by a fraudulent act or misrepresentation. Even if a sexual relationship between two willing partners does not culminate in marriage, still the same will not amount to rape, in the absence of any factor that vitiates the consent for sex. A subsequent refusal to marry or a failure to lead the relationship into a marriage are not

factors that are sufficient to constitute rape even if the partners had indulged in a physical relationship. The sexual relationship between a man and a woman can amount to rape only if it was against her will or without her consent or when consent was obtained by force or fraud.

11. Consent for sex obtained by a promise to marry will amount to rape only when the promise was given in bad faith or is vitiated by fraud or was not intended to be adhered to at the time of making it. In order to convert a physical relationship between a man and a woman into rape due to the failure to abide by the promise of marriage, it is essential that the decision of the woman to engage in the sexual act must be based on the promise of marriage. To establish a false promise, the maker of the promise should have had no intention to uphold his word at the time of making it and the said promise should have induced the woman to submit herself to the physical relationship. There must be a direct nexus between the physical union and the promise of marriage. The Supreme Court had laid down the aforesaid principles in the decision in **Pramod Suryabhan Pawar v. State of Maharashtra and Another** [(2019) 9 SCC 608]. The said principles were reiterated in the decision in

Sonu alias Subhash Kumar v. State of Uttar Pradesh and Another (AIR 2021 SC 1405) also.

12. In the FI Statement given by the victim, it is stated that the accused had promised to marry her and had sexually assaulted the victim several times. However, she was aware that petitioner became acquainted with and got close to another lady, with whom he is now engaged to marry. Victim herself had stated that petitioner had conveyed to her that he does not intend to marry anyone and despite the same when the fiancée of the petitioner conveyed to her their decision to marry each other, defacto complainant went over to the room where the petitioner and his fiancée were staying and gashed her wrist with a blade. The victim also says that she was in love with the petitioner for the past four years.

13. Though the aforesaid narrative will have a bearing at the time of trial, I remind myself that this Court is only considering an application under section 439 of the Cr.P.C for grant of regular bail. The parameters that govern the grant of bail are different from the parameters to be considered during the trial.

14. The Supreme Court had observed in **Prahlad Singh**

Bhati v. NCT, Delhi and Another [(2001) 4 SCC 280] as below:

“The jurisdiction to grant bail has to be exercised on the basis of well-settled principles having regard to the circumstances of each case and not in an arbitrary manner. While granting the bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character, behaviour, means and standing of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public or State and similar other considerations.”

15. In this context, this Court reminds itself that the concept of bail being the rule and jail an exception still permeates our system of administration of justice, as observed by the Supreme Court in **P. Chidambaram v. Directorate of Enforcement** [(2020) 13 SCC 791].

16. When the aforesaid factors are borne in mind, it can be appreciated that though the offences alleged against the petitioner are very serious, still, the possibility of him fleeing from justice is remote especially since he is stated to be a

Central Government Counsel. The further factors like the arguable points on the merits of the case, the absence of criminal antecedents of the petitioner, the absence of the requirement of any further recovery, and the fact that the investigation is practically completed, all lean in favour of the petitioner being released on bail. Taking note of the above aspects which are material while considering a bail application under section 439 Cr.P.C, I am of the view that the continued detention of the petitioner is not essential.

17. Accordingly, I allow this bail application on the following grounds

- (i) Petitioner shall 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.
- (ii) Petitioner shall continue to appear before the Investigating Officer once every alternate Saturday between 9 a.m. and 11 a.m., for a period of three months.
- (iii) Petitioner shall not intimidate or attempt to influence the witnesses; nor shall he tamper with the evidence or contact the victim or her family members directly or indirectly or through an associate of his; nor attempt to dominate the victim or her family.
- (iv) Petitioner shall appear before the Investigating Officer as and when required.
- (v) Petitioner shall not commit any offence while he is on

bail.

(vi) Petitioner shall not leave India without the permission of the Court having jurisdiction.

18. In case of violation of any of the above conditions, the jurisdictional Court shall be empowered to consider the application for cancellation, if any, and pass appropriate orders in accordance with the law, notwithstanding the bail having been granted by this Court.

19. It is clarified that the observations made in this order are purely for the purpose of considering this bail application and shall not have any effect on the merits of the case in any other proceeding.

Sd/-

**BECHU KURIAN THOMAS
JUDGE**

vps

/True Copy/

PS to Judge