

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

THURSDAY, THE 13TH DAY OF OCTOBER 2022 / 21ST ASWINA, 1944

CRL.MC NO. 5791 OF 2022

AGAINST THE ORDER IN CRMC 1303/2022 OF SESSIONS

COURT, KOZHIKODE DTD.12.8.2022

PETITIONER/COMPLAINANT:

STATE OF KERALA
REP. BY THE ADDL. PUBLIC PROSECUTOR
HIGH COURT OF KERALA, PIN - 682031

BY SRI T A SHAJI-DGP

RESPONDENT/ACCUSED:

CIVIC CHANDRAN @ C.V.KUTTAN
AGED 73 YEARS ,
S/O LATE VELAPPAN,
CHINNANGATH HOUSE, WEST HILL (P.O.)
KOZHIKODE., PIN - 673005

BY ADVS.NIRMAL S
VEENA HARI

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 13.10.2022, ALONG WITH Cr1.MC.5885/2022, THE COURT ON THE
SAME DAY PASSED THE FOLLOWING:

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

THURSDAY, THE 13TH DAY OF OCTOBER 2022 / 21ST ASWINA, 1944

CRL.MC NO. 5885 OF 2022

AGAINST THE ORDER IN CRMC 1303/2022 OF SESSIONS COURT,
KOZHIKODE

CRIME No.501/2022 of Koyilandy Police Station

PETITIONER/DE FACTO COMPLAINANT:

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XXX

BY ADVS.U.JAYAKRISHNAN
C.C.ANOOP
SOORAJ D.

RESPONDENTS/STATE & ACUSED:

- 1 STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM, PIN - 682031
- 2 THE STATION HOUSE OFFICER
KOYILANDY POLICE STATION,
KOZHIKODE DISTRICT, PIN - 673305
- 3 CIVIC CHANDRAN @ C.V KUTTAN,
AGED 73 YEARS, S/O.LATE VELAPPAN,
CHINNANGATH HOUSE,
WEST HILL, P.O., KOZHIKODE, PIN - 673005

BY ADVS.NIRMAL S
VEENA HARI
SRI.T.A.SHAJI, DGP

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 13.10.2022, ALONG WITH Crl.MC.5791/2022, THE COURT ON THE
SAME DAY PASSED THE FOLLOWING:

“C.R.”

O R D E R

Both these Crl.M.Cs. have been filed to set aside the order granting pre arrest bail by the Sessions Court, Kozhikode (for short 'the court below') to the accused in Crime No.501/2022 of Koyilandy Police Station.

2. Crl.M.C.No.5791/2022 has been filed by the State. The respondent therein is the accused. Crl.M.C.No.5885/2022 has been filed by the de facto complainant/victim. The 3rd respondent therein is the accused.

3. The crime was registered against the accused based on the statement given by the victim on 29.7.2022.

4. The offences alleged are punishable under Sections 354 and 341 of the Indian Penal Code.

5. The prosecution allegation is that, on 8.2.2020 at 5 p.m., there was a cultural camp in Kadal veedu on Nandi beach. After the function, while the victim, who was a young female writer, was taking rest near the seashore, the accused forcefully

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embraced and outraged her modesty.

6. The accused moved an application for pre arrest bail at the court below as Crl.M.C.No.1303/2022. The court below after hearing the accused as well as the prosecutor granted pre arrest bail to the accused as per the order dated 12.8.2022. The said order is under challenge in both these Crl.M.Cs.

7. I have heard Sri.T.A.Shaji, the learned Director General of Prosecution, Sri.Jayakrishnan, the learned counsel for the victim and Smt.Veena Hari, the learned counsel for the accused.

8. The learned Director General of Prosecution submitted that the court must be cautious and circumspect in exercising the power under Section 438 of the Cr.P.C. which is discretionary in nature and that if the discretionary power to grant pre arrest bail was exercised without any valid reason or on considerations irrelevant or not germane to the determination, such order could not be sustained. The learned Director General of Prosecution further submitted that there was improper exercise of jurisdiction

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by the learned Sessions Judge while admitting the accused to bail and perverse and unwarranted findings were made in the impugned order. The observation in the impugned order that Section 354 of the IPC will not be attracted if the victim was wearing sexually provocative dress cannot be sustained, submitted the learned Director General of Prosecution. Relying on the decision of the Apex Court in ***Aparna Bhat and Others v. State of Madhya Pradesh and Another*** (2021 (2) KHC 603), the learned Director General of Prosecution submitted that the above observation in the bail order amounts to judicial indiscipline and is liable to be expunged.

9. The learned counsel for the de facto complainant, Sri.Jayakrishnan, submitted that the court below granted pre arrest bail to the accused on wrong understanding of facts, circumstances and the law that too by making unwarranted findings. According to the learned counsel, the impugned order suffers from serious infirmities. The learned counsel further submitted that the statement given by the victim would clearly

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attract the ingredients of the offence under Section 354 of the IPC and when *prima facie* case is made out, the court below ought not to have granted pre arrest bail. The learned counsel for the accused, Smt.Veena Hari, on the other hand, submitted that, though the observation in the impugned order regarding the wearing of sexually provocative dress by the victim appears to be misplaced, on merits, the accused is entitled for pre arrest bail. There is undue delay of 2½ years in lodging the FIR, the investigation is practically over and the accused is a senior citizen. In these circumstances, the order granting pre arrest bail by the court below cannot be upset, submitted the learned counsel.

10. The accused is a well known writer and social activist, aged 74 years. The victim also is an artist and a writer. She is a post-graduate. A perusal of the FIS would show that there are sufficient ingredients to attract the offences punishable under Sections 354, 354A(2) and 341 of the IPC. Still, the court below heavily relying on certain pictures of the victim published in

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social media observed that Section 354A of the IPC will not be *prima facie* attracted as the victim was wearing sexually provocative dress.

11. Everyone has the freedom to wear whatever he/she wants to wear subject to the laws of the land. Objectifying women in regard to what she wears cannot be justified. There is no reason why a woman should be judged by her clothes. Norms that categorize woman based on her attire and expressions can never be tolerated. There cannot be any thought that women dress only to lure male attention. It is wrong to say that a woman was sexually assaulted just because she was wearing provocative clothes. Sexually provocative dressing of a victim cannot be construed as a legal ground to absolve an accused from the charge of insulting the modesty of a woman. The right to wear any dress is a natural extension of personal freedom guaranteed by the Constitution of India. Even if a woman wears a sexually provocative dress, that cannot give a licence to a man to outrage her modesty. The Apex Court in ***Aparna Bhat*** (supra)

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has held that discussion about the dress, behaviour, or past conduct of the victim should not enter the verdict while granting bail to the accused. It was further observed in the said judgment that the Judges should not use any words, spoken or written, that would undermine or shake the confidence of the survivor in the fairness or impartiality of the court. For these reasons, the remarks in the impugned order regarding provocative dress of the victim cannot be sustained and they are hereby expunged.

12. The learned counsel for the de facto complainant submitted that, since the finding in the impugned order that, Section 354A of the IPC will not be attracted if the victim was wearing sexually provocative dress, is not sustainable, the bail application is to be remanded to the court below for fresh disposal. I cannot subscribe to the said submission. A perusal of the entire records would show that, even otherwise, on merits, the accused has made out a case for pre arrest bail. As stated already, the de facto complainant is an educated woman. She is a writer. The alleged incident took place on 8.2.2020. Annexure-

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A1 FIS was given only on 29.7.2022. Thus, there is a delay of 2½ years. It is true that in the matter of sexual offence, the delay does not have much significance. But, considering the fact that the de facto complainant is a very educated lady, she should explain the delay satisfactorily. The explanation shown by the de facto complainant in Annexure-A1 that the delay occurred due to fear and shame is vague and not convincing. That apart, the accused is a senior citizen, aged 74 years. The learned Director General of Prosecution submitted that the investigation is almost over. Considering the facts and circumstances of the case, custodial interrogation of the accused does not appear to be necessary. In these circumstances, I am of the view that, even though the reason shown by the court below for granting pre arrest bail cannot be justified, the order granting pre arrest bail by the court below cannot be set aside. However, the court below did not impose sufficient conditions while granting pre arrest bail. In these circumstances, the pre arrest bail granted by the court below to the accused is confirmed, but, subject to the following

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conditions:-

- (i) The accused shall be released on bail in the event of his arrest on executing a bond for Rs.1,00,000/- (Rupees One lakh only) with two solvent sureties for the like sum each to the satisfaction of the arresting officer/investigating officer, as the case may be.
- (ii) The accused shall fully co-operate with the investigation, including subjecting himself to the deemed police custody for the purpose of discovery, if any, as and when demanded.
- (iii) The accused shall appear before the investigating officer between 10.00 a.m and 11.00 a.m on every Saturday until further orders. The accused shall also appear before the investigating officer as and when required by him.
- (iv) The accused shall not commit any offence of like nature while on bail.
- (v) The accused shall not make any attempt to contact any of the prosecution witnesses, directly or through any other person, or any other way try to tamper with the evidence or

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influence any witnesses or other persons related to the investigation.

(vi) The accused shall not leave the State of Kerala without the permission of the court below.

Both the Crl.M.Cs are disposed of as above.

Sd/-

DR. KAUSER EDAPPAGATH
JUDGE

skj

APPENDIX OF CRL.MC 5885/2022

PETITIONER'S ANNEXURES

ANNEXURE A1 TRUE COPY OF THE FIS GIVEN BY THE
PETITIONER IN CRIME NO.501/2022 OF THE
KOIYALANDI POLICE STATION.

ANNEXURE A2 CERTIFIED COPY OF THE ORDER DATED
12.08.2022 OF THE SESSIONS COURT,
KOZHIKODE IN CMP NO 1303/2022 (CR.NO
501/2022 OF KOYILANDY POLICE STATION)