

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

TUESDAY, THE 28TH DAY OF APRIL 2015/8TH VAISAKHA, 1937

Bail Appl..No. 2234 of 2015 ()

CRIME NO. 540/2014 OF PERUMPETTY POLICE STATION.

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PETITIONER/ACCUSED:

**DOMINIC @ KUNJUMON, AGED 57 YEARS,
S/O.THOMAS, KAMBACHANIYEKKAL HOUSE,
CHENGAKKAL VILLAGE, KOOTHATTUKULAM MURI,
VECHUCHIM, PATHANAMTHITTA DISTRICT,
NOW RESIDING AT C/O.SHAHUL, OLIKKAPLAVIL,
KOTTAKAL VILLAGE, KOTTAKKAL MURI,
PATHANAMTHITTA DISTRICT.**

**BY ADVS.SRI.P.HARIDAS,
SMT.S.SIKKY.**

RESPONDENTS/STATE & COMPLAINANT:

- 1. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM-682 031.**
- 2. SUB INSPECTOR OF POLICE,
PERUMPETTY POLICE STATION, PIN-689 101.**

BY PUBLIC PROSECUTOR SMT.REMA. R.

**THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION
ON 28-04-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

rs.

K. RAMAKRISHNAN, J.

B.A. No.2234 of 2015

Dated this the 28th day of April, 2015.

ORDER

The petitioner is the accused in Crime No.540 of 2014 of Perumpetty Police Station has filed this petition for regular bail under Section 439 of the Code of Criminal Procedure.

2. The case of the prosecution in nutshell was that on 28.1.2014 during night, he had taken the prosecutrix to his house on the promise that he will look after her and thereafter he had intercourse with her and the second accused also had intercourse with her without her consent and thereby both of them committed the offence punishable under Section 376 of the Indian Penal Code.

3. Heard the counsel for the petitioner and the Public Prosecutor and perused the case diary file.

4. The counsel for the petitioner submitted that the petitioner has not committed any offence and he is innocent of the same and he has been falsely implicated in the case. The

complaint was filed long after the alleged incident and after she delivered the child. He was arrested on 18.3.2015 and he is in jail from that day onwards.

5. The application was opposed by the Public Prosecutor on the ground that the investigation is not over and he is the relative of the prosecutorix and in fact, he had cheated her and had sexual intercourse her on the promise of looking after her and thereafter abandoned her when she became pregnant.

6. It is seen from the records that the above case was registered when the prosecutorix was arrested in connection with crime No.823 of 2014 of Shornur Police Station when they found that the prosecutorix had abandoned an 8 days old child after delivery and when she was questioned, it was revealed that the present petitioner had sexual intercourse with her and he was responsible for the impregnation and accordingly they registered Crime No.540 of 2014 against the present petitioner on 8.8.2014. He was arrested on 18.3.2015 and he is in jail

from that day onwards. I am not at this stage going to the question as to whether the allegations are sufficient to attract the offence under Section 376 IPC or not. However, I am also not going to the question as to whether the delay is fatal in such cases as it has to be considered by the trial court and appreciated the delay in the circumstances under which it happened as explained by the prosecutor. However, considering the fact that the incident occurred in the year 2014 and the proescutorix had not made any complaint earlier, but only later when a crime was registered, against her for abandoning the child, which she delivered 8 days ago, as Crime No.823 of 2014 of Shornnur Police Station under Section 317 of the Indian Penal Code and Section 23 of the Juvenile Justice Act and only at the time when her statement was recorded under Section 164 Cr.P.C, she had divulged these facts and the custody of the petitioner is not required in any more in connection with the investigation and though the case was registered against two persons including the petitioner,

later the second accused deleted from the party-array as it was revealed that only the petitioner had intercourse with the prosecutrix, according to the prosecution and also considering the period of pre-trial detention and also the stage of the investigation, this Court feels that bail can be granted to the petitioner with some stringent conditions. So, the application is allowed with the following conditions:

i. The petitioner shall be released on bail on executing a bond for Rs.50,000/- with two solvent sureties for the like sum each to the satisfaction of the Judicial First Class Magistrate Court, Thiruvalla.

ii. The petitioner shall appear before the investigating officer on all Mondays and Saturdays between 9 a.m. and 10 a.m. for a period of two months and thereafter on the last Saturday of every month between the same timings till the final report is filed.

iii. The petitioner shall appear before the investigating officer for the purpose of interrogation as and when required in connection with the above crime in writing to do so till the final report is filed.

iv. The petitioner shall not intimidate or influence the witnesses.

v. The petitioner shall surrender his passports, if any with him before the Judicial First Class Magistrate Court, Thiruvalla within one week from the date of his release or file an affidavit if he is not having any passport to that effect within that time.

vii. The petitioner shall not leave State of Kerala without getting prior permission from the Judicial First Class Magistrate Court, Thiruvalla from the court to which the case will be committed to trial till the case is disposed of.

With the above conditions, this application is allowed.

Sd/-
K. RAMAKRISHNAN
JUDGE

Scl.