

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE R. NARAYANA PISHARADI

FRIDAY, THE 29TH DAY OF DECEMBER 2017/8TH POUSHA, 1939

Bail Appl..No. 8808 of 2017 ()

**CRIME NO. 1078/2017 OF KOYILANDY POLICE STATION ,
KOZHIKODE DISTRICT**

PETITIONER/ACCUSED:

**SASI, 45 YEARS, S/O.V.P.MANNAN,
KOPA VAYALIL, KAPPAD, KOZHIKODE.**

BY ADV. SMT.K.DEEPA (PAYYANUR)

RESPONDENT(S):

- 1. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM-682031.**
- 2. THE SUB INSPECTOR OF POLICE,
KOYILANDY POLICE STATION, KOZHIKODE, PIN-673001.**

R BY PUBLIC PROSECUTOR SMT. B. SREEJA

**THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION
ON 29-12-2017, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

PBS

R.NARAYANA PISHARADI, J

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B.A. No.8808 of 2017

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Dated this the 29th day of December, 2017

ORDER

This is an application for anticipatory bail filed under Section 438 Cr.P.C.

2. The petitioner is the accused in the case registered as Crime No.1078/2017 of Koyilandy Police Station under Sections 11(i) and 12 of the Protection of Children from Sexual Offences Act, 2012. The prosecution case is that on 06.11.2017, at about 16.15 hours, while the defacto complainant and his son aged 7 years entered into a shop for drinking juice, the petitioner, who was an employee of that shop, made gestures to the boy with his hand and eyes with sexual intent.

3. Heard the learned counsel for the petitioner and the learned Public Prosecutor.

4. Section 11(i) of the Protection of Children from Sexual Offences Act provides that a person is said to

commit sexual harassment upon a child when such person with sexual intent utters any word or makes any sound, or makes any gesture or exhibits any object or part of his body with the intention that such word or sound shall be heard, or such gesture or object or part of body shall be seen by the child. The Explanation to this Section provides that any question regarding sexual intent shall be a question of fact.

5. In the instant case, the allegation against the petitioner is that he made gesture to the boy with his eyes and also hands and that such gesture was made with sexual intent. It is significant that at the time of the act allegedly committed by the petitioner, the child was not alone but he was with his father. The prosecution has no case that the petitioner has got any criminal antecedents or that he is a person who has been accused of committing similar acts on previous occasions. The first information statement given to the police by the father of

the victim does not reveal why he felt that the gestures made by the petitioner were with sexual intent. In these circumstances, it appears very doubtful whether the offence alleged against the petitioner would lie against him on the basis of the allegations contained in the first information statement. At any rate, custodial interrogation of the petitioner is not necessary to have an effective investigation in the case. Medical examination of the petitioner is also not essential. Considering these aspects, I find that the discretion of this Court can be exercised in favour of the petitioner to grant him pre-arrest bail on appropriate conditions.

6. In the result, the petition is allowed and it is ordered as follows:

1) The petitioner shall be released on bail on executing a bond for ₹50,000/- with two sureties each for the like amount in the event of his arrest by the police in Crime No.1078/2017 of Koyilandy Police Station.

2) The petitioner shall appear before the

investigating officer between 9 a.m and 11 a.m on all Saturdays for a period of two months from the date of his release on bail.

3) The petitioner shall not influence or intimidate the prosecution witnesses. He shall not make any attempt to tamper with the evidence in the case.

4) The petitioner shall not leave the State of Kerala without the prior permission of the Court having jurisdiction over the case.

5)The petitioner shall appear before the investigating officer as and when directed in writing to do so.

(Sd/-)
R.NARAYANA PISHARADI
JUDGE

//True copy//

vgd

PA To Judge