

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ASHOK MENON

TUESDAY, THE 31ST DAY OF DECEMBER 2019 / 10TH POUSHA, 1941

Bail Appl..No.8941 OF 2019

CRIME NO.845/2019 OF TOWN WEST POLICE STATION, THRISSUR

APPLICANT/ACCUSED:

MOHANAN
AGED 65 YEARS
S/O.KUNJIKUTTAN, RETIRED SECTION OFFICER,
CALICUT UNIVERSITY, MAYARAMAM, GREENFIELD,
AYYANTHOLE.P.O., THRISSUR-680 003.

BY ADVS.
SRI.P.VIJAYA BHANU (SR.)
SRI.P.M.RAFIQ
SRI.M.REVIKRISHNAN
SRI.V.C.SARATH
SRI.VIPIN NARAYAN
SRI.THOMAS J.ANAKKALLUNKAL
SRI.AJEESH K.SASI
SMT.POOJA PANKAJ
SRUTHY N. BHAT

RESPONDENT/COMPLAINANT:

STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM-682 031.

OTHER PRESENT:

SMT.SREEJA.V., PP

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON
31.12.2019, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER

The petitioner is a 65 year old man alleged to have committed offences punishable under Sections 376 AB, 376(2)(n) of the IPC and also under Section 75 of the Juvenile Justice (Care and Protection of Children) Act, 2015 and under Section 4 read with Section 3(b) and Section 6 read with Section 5(1)(m)(n) of the POCSO Act.

2. The allegation in brief against the petitioner is that from 2017 to 2019 on several occasions he had sexually abused his grandchild, who is aged 7 years. The alleged incident had occurred while she was studying in the UKG. Presently she is studying in the 2nd standard. The petitioner would contend that the allegations are false and fabricated and under instigation of her mother. The mother of the child allegedly had a promiscuous life. She had married three men, divorced all three of them. She had relationship with a man and then accused him of raping her. Complaint was filed two years after the alleged occurrence. The petitioner as her father had little control over her. He had been admonishing her and her child was a mute witness to the wayward life of her mother. The steps taken by the petitioner to correct his only daughter lead to this false accusations being made by her through her minor child. His daughter had even attempted to commit suicide when she was admonished, as is evident from Annexure F. The petitioner and his wife had even sought the custody of the

minor child from their daughter with intention to save her as is evident from Annexures D and E filed before the Vanitha Cell and also before the Circle Inspector of Police, Ayyanthole West Police Station on 16.10.2019 and 26.10.2019 respectively. In order to prevent that from happening, their daughter instigated her minor child to file a false complaint accusing the petitioner of abusing his grandchild. The FIR was registered on 27.11.2019.

3. The sequence of occurrences indicates that the possibility of the child being tutored cannot be ruled out completely. It is pointed out by the learned Public Prosecutor that the statement under Section 164 Cr.P.C. of the child also has not been recorded so far. In fact it ought to have been done immediately by the Investigating Officer. The petitioner is a retired Government servant. The fact that the petitioner and his wife had attempted to get custody of the child by itself indicates that there was some animosity between them and their daughter. The complaint which is lodged by the minor has been countersigned by the mother. All these are indicative of the fact that she had an actual axe to grind against the petitioner. There is no possibility of the petitioner absconding. In exceptional circumstances, even in cases registered under the POCSO Act can be considered for anticipatory bail. The fact remains that the minor is no longer living with the accused and his wife.

4. Under the circumstances, the exceptional powers of granting pre-arrest bail has been favourably exercised in favour of the petitioner. In the event of the

petitioner being arrested, he shall be released on bail on execution of a bond for Rs.50,000/- with two solvent sureties to the satisfaction of the Investigating Officer.

He shall not intimidate or influence witnesses. He shall not insist on the victim to reside with him.

Sd/-

**ASHOK MENON,
JUDGE**

vpv

/TRUE COPY/

P.A. TO JUDGE