

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

FRIDAY, THE 30TH DAY OF APRIL 2021 / 10TH VAISAKHA, 1943

Bail Appl..No.2642 OF 2021

CRIME NO.101/2021 OF Kunnamangalam Police Station, Kozhikode

PETITIONER/ACCUSED:

RAJEEESH KUMAR  
AGED 37 YEARS  
RAJEEESH KUMAR, SON OF BALAN, SAI KRIPA,  
PERUVAYAL P.O  
673008

BY ADVS.  
SHRI.K.K.JAYARAJ NAMBIAR  
SHRI.SIDHARTH J NAMBIAR

RESPONDENT:

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

R1 BY PUBLIC PROSECUTOR SRI.M.R.DHANIL

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON  
27-04-2021, THE COURT ON 30-04-2021 PASSED THE FOLLOWING:

**O R D E R**

Dated this the 30<sup>th</sup> day of April, 2021

This is an application filed u/s 438 of Code of Criminal Procedure seeking pre-arrest bail.

2. The petitioner is the accused in Crime No.101/2021 of Kunnamangalam Police Station. The offences alleged are under Sections 376(2)(n), 323, 324, 506, 448 r/w 34 of IPC.

3. The prosecution case in short is that the petitioner indulged in sexual intercourse with the victim on 20/5/2020 at a rented house at Thengilakadavu and several times thereafter at a lodge at Kottakkal, at a lodge near Medical College, Kozhikode, at Wayanad and at a house at Chooloor and thereafter on 7/3/2021 at 8.00 p.m., the petitioner and his brother-in-law trespassed into the house of the victim, assaulted her and criminally intimidated her, thereby committed the offence.

4. Heard both sides and perused the case diary.

5. The learned counsel for the petitioner submitted that the petitioner is absolutely innocent and he has been falsely

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implicated in the present case. He further submitted that there are no materials to connect the petitioner with the alleged crime and hence he is entitled to get bail. The learned Public Prosecutor opposed the bail application. He contended that the alleged incident occurred as a part of the intentional criminal acts of the petitioner and if the petitioner is released on bail at this stage, it would affect the course of investigation.

6. The First Information Statement of the victim would show that she and the petitioner were in love. The statement would further show that she knew pretty well that the petitioner was married and having two children. Since the petitioner is a married person, the victim cannot legally marry him. The case of the prosecution is that petitioner subjected the victim to sexual intercourse after giving her a false promise of marriage. In

***Pramod Suryabhan Pawar v. State of Maharashtra*** [(2019) 9 SCC 608], the Supreme Court has explained the distinction between false promise and breach of promise. It was held that the promise of marriage must have been a false promise, given in bad faith and with no intention of being adhered to at the time it was given and the false promise must bear a direct nexus to the

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woman's decision to engage in the sexual act. Here, the petitioner is a married person with two children. The victim was well aware of the fact that she cannot legally marry the petitioner without dissolving his subsisting marriage. Therefore, she cannot expect that the petitioner would marry her when she subjected herself to sexual act with the petitioner.

7. The allegation in the FIS do not indicate that the victim engaged in sexual relation with the accused on the basis of the promise to marry. There is no allegation in the FIS that when the petitioner promised to marry the victim, it was with an intention to deceive her. It appears from the FI statement that the petitioner and the victim voluntarily went to several places, stayed in different lodges and had consensual sexual intercourse. All these factors persuade me to view the prosecution case with suspicion. Considering the allegations levelled against the petitioner, the custodial interrogation of the petitioner does not appear to be necessary. For all these reasons, the petitioner is entitled to pre-arrest bail on conditions.

In the result, the application is allowed on the following conditions:-

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(i) The petitioner shall be released on bail in the event of his arrest on executing a bond for ₹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 petitioner 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 petitioner shall appear before the investigating officer between 10.00 a.m and 11.00 a.m on every Saturday until further orders. The petitioner shall also appear before the investigating officer as and when required by him.

(iv) The petitioner shall not commit any offence of like nature while on bail.

(v) The petitioner 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 influence any witnesses or other persons related to the investigation.

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(vi) The petitioner shall not leave State of Kerala without the permission of the trial Court.

Sd/-

DR. KAUSER EDAPPAGATH

Rp True Copy

**JUDGE**

### PS to Judge