

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MRS. JUSTICE M.R.ANITHA

TUESDAY, THE 31<sup>ST</sup> DAY OF AUGUST 2021 / 9TH BHADRA, 1943

BAIL APPL. NO. 5700 OF 2021

CMP 1626/2021 OF ADDITIONAL SESSIONS COURT - I, KASARAGOD

CRIME NO.230/2021 OF MELPARAMBA POLICE STATION, KASARGOD

PETITIONER/ACCUSED

XXX

BY ADVS.

K.M.FAISAL (KALAMASSERY)

P.U.VINOD KUMAR

STIYA SIVAN

RESPONDENT/COMPLAINANT

STATION HOUSE OFFICER,

MELPARAMBA POLICE STATION, KASARGODE DISTRICT, PIN-671

317, REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF  
KERALA.

SMT SEETHA S-PP

THIS BAIL APPLICATION HAVING BEEN FINALLY HEARD ON  
25.8.2021, THE COURT ON 31.08.2021 DELIVERED THE FOLLOWING:

**M.R. Anitha, J.**

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B.A.5700 of 2021  
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Dated : 31<sup>st</sup> August, 2021

**ORDER**

1. Petitioner is the sole accused in Crime No.230/2021 of Melparamba Police Station, Kasaragod District, which is registered under Section 354A(1)(i) of Indian Penal Code and Section 8 read with 7, 10 read with 9(m) of the Protection of Children from Sexual Offences ( in short POCSO) Act, 2012. It is alleged that while the petitioner was riding his motor cycle with the survivor and his younger sister for dropping them to their relatives' house in the month of December 2018, accused touched the private parts of the victim and also made her to touch on his private part and thereby accused committed the offences afore
2. Heard the learned counsel for the petitioner and the learned Public Prosecutor. Report of the SHO along with the copy of FIR and medical records had been

produced from the side of the respondent.

3. The learned counsel for the petitioner would contend that this is clearly a falsely foisted case against the petitioner who is a neighbour of the survivor. The complaint was filed against him only because of the enmity of the mother of the survivor. There is long delay in lodging the FIS and the entire allegations are false and fabricated. There had been good relationship between the family of the survivor and the petitioner till 2021. Thereafter the relationship strained and out of that grudge the mother of the survivor filed complaint which is alleged to have taken place before three years. It is also the contention of the learned counsel that the version given by the victim to the police, in the FIS, while giving 164 statement and at the time of medical examination are inconsistent and hence unbelievable. Petitioner/accused has been arrested on 9.6.2021 and thereafter he has been under confinement. So taking into account the long period of confinement undergone by the petitioner, she seeks

for grant of bail to the petitioner.

4. The learned Public Prosecutor on the other hand contended that the petitioner and the survivor are close neighbours and there is another crime registered against the petitioner for abusing sexually the younger sister of the survivor. Since they are neighbours, there is every possibility of intimidating the victim and hence the learned Public Prosecutor strongly objects in considering the petition for bail.

5. The records produced from the side of the petitioner and also the report filed by the SHO, Melparamba Police station, would show that Crime 230/2021 has been registered against the petitioner under Section 354A(1)(i) IPC and Section 10 read with Section 9(m) of the POCSO Act. It has also come out that the parties are close neighbours. The incident alleged to have taken place while the victim girl was travelling with the petitioner on a scooter. The learned counsel for the petitioner would contend that admittedly by the prosecution in between the petitioner and the

survivor younger sister of the survivor was sitting while travelling on the motor Cycle. According to her, it is highly improbable to have such an incident while travelling in the motor cycle run by the petitioner. But the statement given by the victim to the police and also the narration of the history of incident by her to the doctor are almost the same. More over, in the 164 statement also she has stated in corroboration that once he touched at her private parts and subsequently when he tried to do the act again, she pushed his hands. But in all the statements she stated in corroboration about his act of taking her hand and made to touch on his private parts. So there are *prima facie* material in support of the allegations made against the petitioner and more over there is one more crime against the petitioner. In that also, the victim is none other than the younger sister of the survivor. Report of the SHO would show that the investigation is not over. So this Court is not in a position to ascertain as to who are the witnesses and whether there is any

chance for the accused influencing the witness and tampering with the evidence. The victim girls are also close neighbours of the petitioner. So in the above circumstances and especially in view of the fact that two crimes of similar nature are pending against the petitioner, I do not think this is a fit case to grant bail to the petitioner at this stage.

In the result, Bail Application dismissed.

Sd/-

M.R.Anitha, Judge

Mrcs/27.8.