

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE GOPINATH P.

MONDAY, THE 31<sup>ST</sup> DAY OF JANUARY 2022 / 11TH MAGHA, 1943

BAIL APPL. NO. 245 OF 2022

CRIME NO.944 / 2021 OF KUMALY POLICE STATION, IDUKKI

DISTRICT

**PETITIONER/ACCUSED:**

S.VIJAY,  
AGED 21 YEARS  
S/O.SUBU, WARD NO.3,  
KRISHNAPURAM NORTH THERUVIL BHAGOM,  
ATHIKARAPETTY KARA, PERAIYOOR TALUK,  
MADUHRA DISTRICT, TAMIL NADU.

BY ADV BIJU .C. ABRAHAM

**RESPONDENT/STATE:**

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

BY SRI.NOUSHAD K.A (SR.PP)

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON  
31.01.2022, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:

**ORDER**

This is an application for regular bail.

2. The petitioner is the accused in Crime No.944 of 2021 of Kumaly Police Station, Idukki District, alleging commission of offences under Sections 363, 370(A), 354(A)(1)(i) and 376(3) of the Indian Penal Code and Section 4(2) read with Section 3(a) and Section 8 read with Section 7 of the Protection of Children from Sexual Offences Act, 2012 and Section 3(1)(w)(i) and Section 3(2) (v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The allegation against the petitioner is that he kidnapped the minor victim, aged 17 years, from the lawful custody of her parents and committed penetrative sexual assault on her after taking her to Tamil Nadu.

3. The learned counsel for the petitioner would submit that the petitioner and the victim girl were in love with each other and she had gone with him without any compulsion. It is submitted that the petitioner is only 21 years of age and the victim is 15 years. It is submitted that the parents of the victim and the mother of the petitioner have executed affidavits, which indicate that the mother of the petitioner and the parents of the

victim girl have decided to solemnize the marriage of the petitioner with the victim, after she attains the age of majority. It is submitted that the father of the petitioner is no more. It is submitted that the petitioner has been in custody from 02.10.2021 and has completed 120 days in custody. It is submitted that the continued detention of the petitioner is not necessary as the final report has already been filed in the matter.

4. Heard the learned Public Prosecutor also. The learned Public Prosecutor has pointed out the circumstances of the case and that the question of consent does not arise as admittedly, the victim is a minor. It is submitted that this is a clear case where the offences alleged against the petitioner have been committed by him. It is submitted that the affidavits stated to have been executed by the parents of the victim and the mother of the petitioner cannot be taken into consideration, as such offences cannot be compounded even in exercise of jurisdiction under Section 482 of the Code of Criminal Procedure.

5. Having regard to the facts and circumstances of the case and considering the fact that the petitioner has been in custody from 02.10.2021, I am of the view that the petitioner can be granted bail. Though the question as to whether the case

registered against the petitioner can be quashed on the basis of the affidavits executed by the parents of the victim and the mother of the petitioner is a matter to be decided in other proceedings, I am of the opinion that those affidavits can be taken into account for the purpose of considering the entitlement of the petitioner for bail. I also take note of the fact that the petitioner is aged only 21 years.

6. In the result, this bail application is allowed and it is directed that the petitioner shall be released on bail subject to the following conditions:

- (1) The petitioner shall execute a bond for a sum of Rs.50,000/- (Rupees fifty thousand only) with two solvent sureties for the like sum to the satisfaction of the Jurisdictional Court;
- (2) The petitioner shall report before the investigating officer in Crime No.944 of 2021 of Kumaly Police Station, Idukki District, as and when called upon to do so;
- (3) The petitioner shall not attempt to interfere with the investigation or to influence or intimidate the de-facto complainant / the victim or any witness in Crime

No.944 of 2021 of Kumaly Police Station, Idukki District;

(4) The petitioner shall not involve in any other crime while on bail.

If any of the aforesaid conditions are violated, the investigating officer in Crime No.944 of 2021 of Kumaly Police Station, Idukki District, may file an application before the Jurisdictional Court for cancellation of bail.

Sd/-  
**GOPINATH P.**  
**JUDGE**

DK