



2024:KER:97026

BAIL APPL. NO. 4562 OF 2024

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

FRIDAY, THE 20TH DAY OF DECEMBER 2024 / 29TH AGRAHAYANA,

1946

BAIL APPL. NO. 4562 OF 2024

CRIME NO.0/0 OF NEDUMBASSERY POLICE STATION, Ernakulam

PETITIONER/ACCUSED:

OMAR ABDUL WAHAB @ OMAR LULU,
AGED 39 YEARS
S/O.ABDUL WAHAB, ALAKATH, PUTHANPURAKKAL HOUSE,
MUNDOOR, THRISSUR DISTRICT, PIN - 680541

BY ADVS.
BABU S. NAIR
SMITHA BABU
P.A.RAJESH
PRANAV
SIDDHARTH KARUN PISHARODY

RESPONDENT/STATE & COMPLAINANT:

- 1 STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM, KOCHI, PIN -
682031
- 2 THE STATION HOUSE OFFICER ,
NEDUMBASSERY POLICE STATION,
ERNAKULAM DISTRICT, PIN - 683585

ADDL.R3 XXXXXXXXXXXX
XXXXXXXXXXXX XXXXXXXXXXXX



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ADDL.R3 IMPEADED AS PER ORDER DATED 21.06.24 IN
CRL.MA 2/204

BY ADVS.
B.SIBI
MARIAN G.M.THARAKAN
KRISHNA S.

OTHER PRESENT:

SRI C.K SURESH SR,PP

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON
20.12.2024, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:



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P.V.KUNHIKRISHNAN, J.

B.A.No.4562 of 2024

Dated this the 20th day of December, 2024

ORDER

This Bail Application is filed under Section 482 of Bharatiya Nagarik Suraksha Sanhita.

2. Petitioner is the accused in Crime No.580/2024 of Nedumbassery Airport Police Station. The above case is registered against the petitioner alleging offences punishable under Section 376 and 376(2)(n) of the Indian Penal Code (for short, IPC).

3. The prosecution case is that the petitioner who is a film director sexually abused the defacto complainant on a promise that he will marry her. The sexual assault started from January 2023.

4. Heard the counsel for the petitioner, Public Prosecutor and the counsel for the 3rd respondent.



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5. The petitioner is a Malayalam movie Director. According to the petitioner, he directed five Malayalam movies from 2016 and he is presently in the production of his 6th movie. The defacto complainant was the heroine in a movie released in the year 2022. It is the case of the petitioner that, during the course of the production of the movie, an intimate relation had developed between the petitioner and the defacto complainant. The relationship continued for more than a year until December, 2023 is the submission. When the relationship was developed, the defacto complainant had shown suspicion towards the petitioner in each and every small things by saying that she is very possessive is the submission. The defacto complainant started suspecting the petitioner whenever he speaks to anyone and at times, even she had taken away the cellular phone of the petitioner, to verify the calls and chats. It is alleged that the behavior of the defacto complainant became hysteric and the same was totally suffocative to the petitioner. The relationship was broken on 10.12.2023. When the defacto complainant had taken away the mobile phone of the petitioner, she called the wife of the petitioner and disclosed the relationship between the



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petitioner and the defacto complainant is the further submission. It is submitted that now the complaint filed by the defacto complainant before the Police is that the petitioner had taken the defacto complainant to different hotels, on multiple occasions with a promise to give another opportunity in his movie. According to the petitioner, it is consensual relationship between the petitioner and the defacto complainant. The petitioner produced Annexure-B, the details showing that the petitioner was staying with the survivor at different hotels like Lotus 8 Apartment Hotel near Cochin International Airport, Diana Heights Hotel, Nedumbassery, Transit Suites By Grant West, Nedumbassery, Hotel Surya, near Angamaly, Hotel Air Link Castle, Aluva, Hotel A.S. Airport Inn, Aluva, Niya Regency, Thrissur, Hotel White House, Thrissur etc. The petitioner also stated the days on which he stayed with the victim. The period starts from 2022 onwards. Annexure-C are the photographs produced by the petitioner to show the close relationship between the petitioner and the victim. The petitioner submitted that during the stay in the above hotels, the petitioner and the victim produced their identity cards. Copy of the same is also



produced. Therefore, it is a consensual relationship between the petitioner and the victim is the submission. According to the petitioner, no criminal offence is made out in the facts and circumstances of the case.

6. The counsel for the 3rd respondent seriously opposed the bail application and submitted that when this Court granted interim bail on 30.05.2024, there was a condition that the petitioner shall not directly or indirectly induce the victim. It is the definite case of the counsel appearing for the 3rd respondent that the petitioner directly and indirectly contacted the victim to compromise the case and therefore, there is violation of condition No.(iii) of the interim order. It is submitted by the counsel for the 3rd respondent that the ingredients of Section 376 IPC is made out in this case. The photographs produced by the petitioner are edited one and these are photographs taken during the shooting of the movie. The Public Prosecutor vehemently opposed the bail application and supported the contentions of the 3rd respondent.

7. This Court considered the contentions of the petitioner, 3rd respondent and the Public Prosecutor. This Court



carefully perused the First Information Statement and the statement narrated by the petitioner in his bail application and supporting documents. I do not want to make any observation about the merit of the case because the investigation is going on. But prima facie I am of the opinion that it is a consensual relationship between the parties. But I make it clear that the Investigating Officer is free to investigate the matter and collect materials. This is a fit case in which the petitioner is to be released on bail invoking the powers under Section 438 of the Code of Criminal Procedure.

8. Moreover, it is a well accepted principle that the bail is the rule and the jail is the exception. The Hon'ble Supreme Court in *Chidambaram. P v Directorate of Enforcement* [2019 (16) SCALE 870], after considering all the earlier judgments, observed that, the basic jurisprudence relating to bail remains the same inasmuch as the grant of bail is the rule and refusal is the exception so as to ensure that the accused has the opportunity of securing fair trial.

9. Recently the Apex Court in **Siddharth v State of Uttar Pradesh and Another [2021(5)KHC 353]**



considered the point in detail. The relevant paragraph of the above judgment is extracted hereunder:

“12. We may note that personal liberty is an important aspect of our constitutional mandate. The occasion to arrest an accused during investigation arises when custodial investigation becomes necessary or it is a heinous crime or where there is a possibility of influencing the witnesses or accused may abscond. Merely because an arrest can be made because it is lawful does not mandate that arrest must be made. A distinction must be made between the existence of the power to arrest and the justification for exercise of it. (Joginder Kumar v. State of UP and Others (1994 KHC 189: (1994) 4 SCC 260: 1994 (1) KLT 919: 1994 (2) KLJ 97: AIR 1994 SC 1349: 1994 CriLJ 1981)) If arrest is made routine, it can cause incalculable harm to the reputation and self-esteem of a person. If the Investigating Officer has no reason to believe that the accused will abscond or disobey summons and has, in fact, throughout cooperated with the



investigation we fail to appreciate why there should be a compulsion on the officer to arrest the accused.”

10. In **Manish Sisodia v. Central Bureau of Investigation [2023 KHC 6961]**, the Apex Court observed that even if the allegation is one of grave economic offence, it is not a rule that bail should be denied in every case.

11. Considering the dictum laid down in the above decision and considering the facts and circumstances of this case, this Bail Application is allowed with the following directions:

1. The petitioner shall appear before the Investigating Officer within two weeks from today and shall undergo interrogation.
2. After interrogation, if the Investigating Officer propose to arrest the petitioner, he shall be released on bail on executing a bond for a sum of Rs.50,000/- (Rupees Fifty Thousand only) with two solvent sureties each for the like sum to the satisfaction of the arresting officer concerned.



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3. The petitioner shall appear before the Investigating Officer for interrogation as and when required. The petitioner shall co-operate with the investigation and shall not, directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer.
4. Petitioner shall not leave India without permission of the jurisdictional Court.
5. Petitioner shall not commit an offence similar to the offence of which he is accused, or suspected, of the commission of which he is suspected.
6. If any of the above conditions are violated by the petitioner, the jurisdictional Court can cancel the bail in accordance to law, even though the bail is granted by this



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Court. The prosecution and the victim are at liberty to approach the jurisdictional Court to cancel the bail, if any of the above conditions are violated.

JV

sd/-
P.V.KUNHIKRISHNAN
JUDGE