

IN THE COURT OF THE JUDICIAL I CLASS MAGISTRATE II, ERNAKULAM
Present: Ms.ABHIRAMI A., Judicial First Class Magistrate

Dated this the 09th day of January, 2025

Order in C.M.P. No.104/2025 in Crime No.31/2025 of Central Police Station

Petitioner/Accused : C.D.Boby @ Dr.Boby Chemmanur, aged 60 years, S/o. C.I.Devasykutty, Chemmanur House, Avenue Road, Thrissur, Pin – 680005.

(By M/s.B.Raman Pillai & Associates, Adv.R.Anil, Adv.V.B.Sujesh Menon, Adv.Geo Paul, Adv. M.R.Dhanil, Adv.Anilkumar, Adv.Ressil Lonan, Adv.Ananth Krishna, Adv.Joel George, Adv.Mahesh Bhanu.S & Adv.Senitta P. Jojo)

Respondent/Complainant: State represented by the Sub Inspector of Police, Central Police Station, in Crime No. 31/2025.

(By A.P.P, Smt.Honey Jacob)

Offence : U/s. 75 (1) (i), 75 (1) (iv) of Bharatiya Nyaya Sanhita, 2023 and Section 67 of Information Technology Act.

Order : Dismissed.

This petition having heard on 09.01.2025, the Court, on this day passed the following.

ORDER

This is the petition filed by the accused seeking bail under Section 480 of the Bharatiya Nagarik Suraksha Sanhita, 2023.

2. The gist of the prosecution case is that on 07.08.2024 at the inauguration of Chemmannur International Jewellers Showroom, located at Alacode, Kannur, the accused sexually harassed the informant, who was invited as a guest for the event. The accused adorned the informant with a necklace in front of thousands of people and caught hold of her hand without her consent and twirled her around. The accused again turned her around to show the back of the necklace, which was a sexual overture. On the same day itself, the accused also made other sexually coloured remarks about the informant. The prosecution also alleges that after the said incident the informant refused

to participate in other functions, for which invitation was also extended to the accused. The accused who was disgruntled by the same made several sexually coloured remarks about the informant in various Youtube channels and other social media platforms and thereby harassed her sexually. The accused thereby committed the offences punishable under Section 75 (1) (i), 75 (1) (iv) of Bharatiya Nyaya Sanhita, 2023 (herein after referred as 'BNS') and Section 67 of Information Technology Act (herein after referred as 'I.T Act').

3. The petitioner/accused was arrested on 08.01.2025 and he was produced before the Court on 09.01.2025.

4. Report was also filed by the Investigating Officer through learned Assistant Public Prosecutor objecting the bail application.

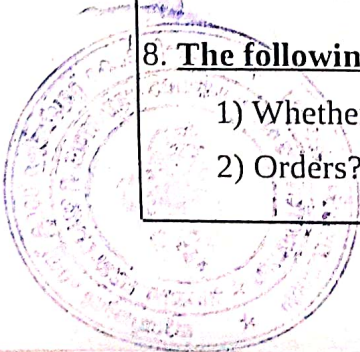
5. Learned counsel for the petitioner/accused submitted that he is innocent. It is also submitted that he is ready and willing to obey any conditions imposed by this Court, if bail is granted to him.

6. Learned A.P.P. has opposed the application stating that the petitioner/accused involved in Crime No.60/2024 U/s.406, 410, 411, 415, 418, 420, 465, 129 B r/w 34 IPC of Palluruthy Police Station and Crime No.235/2024 U/s.420, 294 A IPC, S.4 (e), 4(h), 4(i), 7(3), 9 (2) of Lotteries (Regulation) Act, 1998 of Wayanad Meppadi Police Station and there is a possibility that the petitioner/accused might influence and threaten the witnesses and destroy the evidence. It was further argued that the investigation is in its preliminary stage and that he might repeat similar offences and abscond, if he is released on bail.

7. The Court heard the learned counsel for the petitioner/accused and the learned A.P.P. and perused the records.

8. The following points arise for consideration:

- 1) Whether the petition is liable to be allowed?
- 2) Orders?

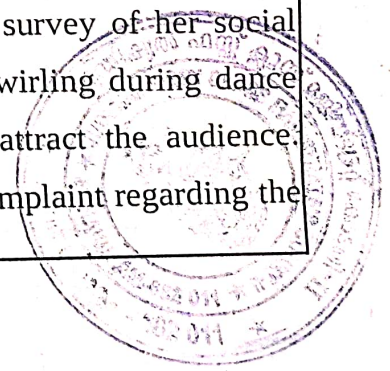


Point No.1

9. The offences alleged against the petitioner/accused are punishable under Section 75 (1) (i), 75 (1) (iv) of BNS and Section 67 of the I.T Act. Out of the said offences, the offences that are punishable under Section 75 (1) (i) & 75 (1) (iv) of BNS are non-bailable and exclusively triable by the Hon'ble Court of Sessions. The allegation levelled against the petitioner/accused is that he made physical contact and advances involving unwelcome and explicit sexual overtures and made sexually coloured remarks about the informant. The prosecution alleges that on 07.08.2024, the accused without the informant's consent caught hold of her hand and twirled her around to expose her behind under the guise of showing the back of the necklace, which was worn by the informant.

10. The learned counsel for the petitioner/accused argued that the petitioner/accused had not caught hold of the informant's hand, but had only extended his hand to her, which was graciously accepted by her and then he had twirled her around, only as a part of entertaining the crowd that was gathered there. The allegation raised by the informant that the petitioner/accused caught hold of her, without her consent, cannot be heeded to as after the said incident, the informant had made a speech before the media where she was seen to be celebrating and commenting about the two decade long acquaintance with the petitioner/accused. It was also argued that the informant herself had shared the videos of the said incident through her social media accounts, which she would not have done, had she been bothered by the act of the petitioner/accused.

11. It was also argued by the learned counsel for the petitioner/accused that the informant is in the habit of showing her whole body and that a survey of her social media posts would show that she is in the habit of rotating or twirling during dance performances at inauguration functions or events, in order to attract the audience. Moreover, it was also contented that the informant has raised a complaint regarding the

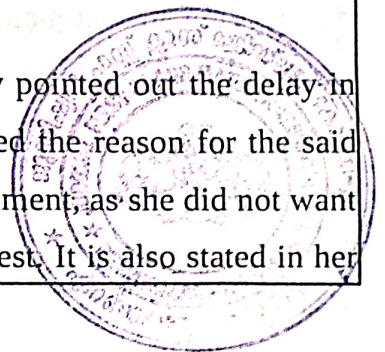


said incident after a delay of five months, which was again pointed out by the learned counsel for the petitioner/accused to be nothing but a promotional stunt by her, for her new film, which is scheduled to be released this week.

12. Upon perusal of the FIS and the report submitted by the prosecution, it is clearly mentioned that the petitioner/accused has not only twirled the informant once, but turned her around again by uttering 'ഒരിക്കൽ കൂടി മാലയുടെ പിൻവശം കാണൂ'. The said act of the petitioner/accused can be *ex facie* understood to be a sexual innuendo, as his sole intention was to display the informant's behind to the crowd. Furthermore, during the said event, the petitioner/accused also addressed her as 'Kunthidevi', which again is another sexual innuendo. The learned counsel for the petitioner/accused attempted to justify the comment made by the petitioner/accused by stating that the said remark was made by him as the informant reminded her of an actress, who played the role of 'Kunthidevi' in a television serial. However, it can be *prima facie* understood that the said comment made by him is indeed a sexual innuendo, smartly disguised in the form of a poorly worded compliment.

13. The prosecution also alleges that the petitioner/accused made sexually coloured remarks and made inappropriate gestures, which depicted the informant's body, during an interview, that was published by a Youtube channel named Jango Space T.V. The learned Assistant Public Prosecutor also relied on **Ramachandran Nair v. State of Kerala** reported in 2025 KER 356, wherein the Hon'ble High Court of Kerala has opined that even commenting on the body structure of a woman will attract the offence of sexual harassment.

14. The learned counsel for the petitioner/accused has rightly pointed out the delay in lodging the FIR. However, the informant has herself explained the reason for the said delay in her FIS. According to her, she did not react at that moment, as she did not want to create a scene and as she had attended the function as a guest. It is also stated in her



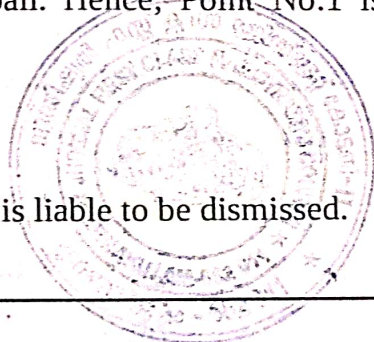
FIS that on the same day itself, her mother had informed the programme co-ordinator one Mr. Shanavas Khan as to the mental agony faced by her due to the alleged actions of the petitioner/accused. Though, she did not take any legal steps against the petitioner/accused, he continuously made inappropriate and sexually coloured remarks against her at various instances. This prompted the public at large to also make sexually inappropriate comments about her on her social media posts and other online platforms, which became unbearable to her and thus, she was forced to approach the police.

15. It is trite that at the time of adjudication of bail application, this Court need not appreciate the evidence, but only has to consider whether the accused appears to have committed the crime and whether he is entitled to bail or not. Upon hearing the prosecution and the learned counsel for the petitioner/accused in detail, this Court is of the opinion that a well established *prima facie* case has been brought forth against the petitioner/accused. The petitioner/accused has made physical contact and advances at the informant without her consent and indeed made remarks that are *prima facie* sexually coloured. The quality of the informant's consent and the word-by-word scrutiny of the remarks and comments made by the petitioner/accused can be only done after proper appreciation of evidence.

16. Moreover, the report from the Investigating Officer clearly states that the investigation is in its preliminary stage and the petitioner/accused is a highly affluent businessman, who has the capability to influence and intimidate the witnesses involved in this case. It is also reported that he might commit similar offences and abscond, if he is enlarged on bail. Considering all the aforementioned facts, this Court is of the view that the petitioner/accused cannot be released on bail. Hence, Point No.1 is found against the petitioner/accused.

Point No.2

17. In the light of findings in Point No.1, this petition is liable to be dismissed.



18. In the result, the petition is dismissed.

Typewritten, corrected and pronounced in open Court on this the 09th day of January, 2025.

Sd/-

Judicial I Class Magistrate - II
Ernakulam

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Judicial I Class Magistrate - II
Ernakulam

