

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE R. NARAYANA PISHARADI

TUESDAY, THE 29TH DAY OF MAY 2018 / 8TH JYAISHTA, 1940

Bail Appl..No. 2150 of 2018

CRIME NO.900/2017 OF NADAKKAVU POLICE STATION, KOZHIKODE DISTRICT  
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PETITIONER/ACCUSED:

ASHIK MUHAMMAD MOHIYUDHEEN A.M.,  
AGED 38 YEARS, S/O.MUHAMMAD A.M.,  
AYATTAYIL VEEDU, KARIKKAD (P.O.),  
THRISSUR DISTRICT.

BY ADV.SRI.NIREESH MATHEW

RESPONDENT/COMPLAINANT :

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

BY PUBLIC PROSECUTOR SMT.K.K.SHEEBA

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION  
ON 23-05-2018, THE COURT ON 29-05-2018 PASSED THE  
FOLLOWING:

sts  
29/5/2018

**R.NARAYANA PISHARADI, J**

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B.A.No.2150 of 2018  
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Dated this the 29<sup>th</sup> day of May, 2018

**ORDER**

The petitioner is the accused in the case registered as Crime No.900/2017 of the Nadakkavu police station under Sections 7 read with 8, 9(l), 9(m) and 9(n) read with 10 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as 'the Act'). He seeks the protection envisaged under Section 438 of the Code of Criminal Procedure, 1973 in the event of arrest by the police in the case.

2. The petitioner is the father of the victim child, who is a boy aged six years. The allegation against the petitioner is that one day in the month of November, 2015, when the petitioner and his son resided together in a room at the Calicut Tower Hotel in Kozhikode, he touched and held the penis of his son in his hand with sexual intent. It is alleged that even before this incident,

on several dates, the petitioner used to do such act. The case against the petitioner was registered on the basis of the statement given to the police by the victim boy on 19.11.2017.

3. Heard the learned counsel for the petitioner and the learned Public Prosecutor. Perused the case diary.

4. The mother of the victim is a teacher in a school. On 17.11.2017, she gave a complaint against the petitioner to the Co-ordinator of the Childline Authority in which she narrated the acts of sexual assault committed by the petitioner on the child. Then the Childline Authority informed the matter to the police. Then the statement of the victim boy was recorded by the police in the presence of his mother and the case against the petitioner was registered. The statement of the victim was subsequently recorded by the Magistrate concerned under Section 164 Cr.P.C.

5. The statements of the victim boy recorded by the police and also by the Magistrate, prima facie, reveal the commission of the offences alleged against the petitioner. Section 29 of the Act states that where a person is prosecuted for committing or abetting or attempting to commit any offence under Sections 3, 5, 7 and 9 of the Act, the Special Court shall presume, that such person has committed or abetted or attempted to commit the offence, as the case may be unless the contrary is proved. While considering the bail application, the Court has to take into consideration the effect of this provision (See State of Bihar v. Rajballav Prasad : AIR 2017 SC 630). At this stage, proof contrary to replace the presumption under Section 29 of the Act can be adduced by the accused by highlighting circumstances which may make the allegations against him highly improbable or false.

6. As per the statements of the witnesses recorded

by the police, the petitioner had committed the acts of sexual assault on the victim boy in the month of November, 2015 and during the earlier period. The statement given to the police by the mother of the victim boy reveals that she was aware of the acts of sexual assault committed by the petitioner on her son in the year 2015 itself. Then she did not give complaint against the petitioner to any authority. It is to be noted that she is a teacher by profession. It was only on 19.11.2017 that she informed the matter to the Childline Authority. By that time, the relationship between her and the petitioner had become strained. She filed a complaint against the petitioner and his relatives and a case has been registered against them under Section 498A I.P.C. There are other cases filed by her against the petitioner in the Family Court. It is pertinent to note that the petitioner has filed an application in the Family Court for getting custody of

the child. The filing of the complaint against the petitioner alleging sexual assault on the minor son, two years after the alleged incident, has to be considered in the backdrop of the aforesaid circumstances.

7. Learned counsel for the petitioner submitted that the petitioner is ready to co-operate with the investigation of the case. It is submitted that though he was earlier working abroad, he is now permanently residing in Kerala. In the circumstances of the case, custodial interrogation of the petitioner appears to be not necessary to have an effective investigation of the case. The apprehension of the prosecution is that on getting bail, the petitioner may try to intimidate and influence the prosecution witnesses including the mother of the boy. Appropriate conditions can be imposed to avoid such a contingency. In these circumstances, I am of the view that the discretion of the Court can be exercised in favour

of the petitioner to grant him the benefit of pre-arrest bail.

8. In the result, the application is allowed and it is ordered as follows:

1) The petitioner shall be released on bail on executing a bond for Rs.50,000/- (Rupees fifty thousand only) with two sureties each for the like amount in the event of his arrest by the police in Crime No.900/2017 of the Nadakkavu police station.

2) Before releasing the petitioner on bail, the investigating officer is entitled to interrogate the petitioner. The petitioner shall co-operate with the investigation of the case.

3) The petitioner shall appear before the investigating officer between 9 a.m and 11 a.m on all Saturdays for a period of three months from the date of his release on bail.

4) The petitioner shall not influence or intimidate the prosecution witnesses in any manner. He shall not make any attempt to tamper with the evidence in the case.

5) The petitioner 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 to disclose such facts to the court or to any other authority.

6) The petitioner shall not leave the State of Kerala without the prior permission of the jurisdictional Court concerned.

7) The petitioner shall surrender his passport in the jurisdictional court concerned within three days of his release on bail. If he does not possess any passport, he shall file an affidavit to that effect in that court within that period.



8) The petitioner shall appear before the investigating officer as and when directed in writing to do so.

(9) If the petitioner violates any of the conditions of bail, the Court having jurisdiction over the case is at liberty to cancel his bail without any further orders of this Court but in accordance with law.

*Sd/-*  
**R.NARAYANA PISHARADI, JUDGE**

*//True Copy//*

*P.A. To Judge*