

(2022) 02 KL CK 0012

High Court Of Kerala

Case No: Bail Application Nos. 9115, 9226 Of 2021

Brabushad @ Hassan

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision: Feb. 1, 2022

Acts Referred:

- Indian Penal Code, 1860 - Section 376D, 376(2)(n), 376(3) Protection of Children from Sexual Offences Act, 2012 - Section 5(1), 5(j)(ii), 6(1)

Hon'ble Judges: Gopinath P, J

Bench: Single Bench

Advocate: Y.Beyline Dasy, C.K. Suresh

Final Decision: Dismissed

Judgement

Gopinath P., J

1. These are applications for anticipatory bail.
2. The petitioners in these cases are accused Nos.4 and 5 in Crime No.1216/2021 of Poonthura Police Station, Thiruvananthapuram, alleging commission of offences under Sections 376D, 376(3), 376(2)(n) of the Indian Penal Code and Section 6(1) r/w. Section 5(1), 5(j)(ii) of the Protection of Children from Sexual Offences Act, 2012.
3. The allegation against the petitioners is that they along with other accused in the case had committed gang rape of a minor victim girl, aged 15 years and thereby they committed the offences alleged against them.
4. The learned counsel for the petitioners would submit that the petitioners are absolutely innocent in the matter and they have been roped in on the

basis of some misunderstanding. It is submitted that while both the petitioners were friends of the victim, they had not committed any rape on her as

alleged by the prosecution. It is submitted that the custody of the petitioners is not required for a proper investigation into Crime No.1216/2021 of

Poonthura Police Station.

5. The learned Public Prosecutor submits that the minor victim girl had become pregnant and thereafter, she had filed a complaint against one Faisal

stating that he was responsible for impregnating her. It is submitted that the Police conducted a thorough investigation, arrested the aforesaid Faisal

and also subjected him to DNA profiling. It is submitted that on finding that the DNA profile of the aforesaid Faisal did not match with the child born

to the victim, a further statement was recorded from the victim in which she revealed that six other persons including the petitioners herein had

committed rape on her. It is submitted that accused Nos.1 and 2 in the aforesaid crime have been arrested, while accused No.3 is absconding. It is

stated that the custody of the petitioners, who are accused Nos.4 and 5, is absolutely necessary for the purpose of a proper investigation. It is

submitted that the petitioners are not entitled to anticipatory bail taking into account the nature of the allegations against them.

Having heard the learned counsel for the petitioners and the learned Public Prosecutor for the State and considering the fact that the petitioners are

accused of very serious offences against the victim, aged 15 years, I am of the view that the petitioners are not entitled to anticipatory bail as their

custody may be required for the purposes of proper investigation

These bail applications, therefore, fail and are dismissed.