

**(2023) 10 KL CK 0237**

**High Court Of Kerala**

**Case No:** Bail Application No. 9225 Of 2023

XXX

APPELLANT

Vs

State Of Kerala

RESPONDENT

**Date of Decision:** Oct. 27, 2023

**Acts Referred:**

- Code of Criminal Procedure, 1973 - Section 164
- Indian Penal Code, 1860 - Section 354D(1)(i), 376(2)(f), 376(2)(n)
- Protection of children from Sexual Offences Act, 2012 - Section 5j(ii), 5(l), 5(n), 6, 11(iv), 12

**Hon'ble Judges:** Gopinath P., J

**Bench:** Single Bench

**Advocate:** Renjith B.Marar, P.Rajkumar, Lakshmi.N.Kaimal, Preetha S Chandran, Arun Poomulli, Anand Remesh, Abhijith Sreekumar, Keshavraj Nair, Abhiram.S., T.K.Babu, C.R.Rekha, G. Sudheer

**Final Decision:** Dismissed

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**Judgement**

Gopinath P., J

1. This is an application for regular bail.
2. Petitioner is the accused in Crime No.566/2023 of Chavakkad police station, Thrissur district, alleging commission of offences under Sections 354D(1)(i), 376(2)(f) and 376(2)(n) of the Indian Penal Code and Sections 6, 5j (ii), 5(l), 5(n), 12, 11(iv) of the Protection of children from Sexual Offences Act.
3. Allegation against the petitioner is that, the petitioner entered into sexual relationships with the minor victim and also impregnated her and forced her to undergo abortion and thereby, he committed the offences alleged against him.

4. Learned counsel appearing for the petitioner would submit that the petitioner is a 23 year old boy and the victim is aged 17½ . It is submitted that the petitioner and the victim were in a relationship for some time. It is submitted that the petitioner is involved in two cases registered under the NDPS Act and therefore, the family of the victim was opposing the relationship of the petitioner with the victim. It is submitted that the First Information Statement of the mother of the victim/de facto complainant would indicate that the victim still desires to live with the petitioner after she attains the age of majority. It is submitted that the victim will attain the age of majority on 17.11.2023. It is submitted that the petitioner has been in custody from 22.07.2023 and has therefore, he has completed more than 98 days in custody. It is submitted that the investigation has been completed and final report has been filed. Therefore, the continued detention of the petitioner is not necessary in the facts and circumstances of the case.

5. Learned Public Prosecutor opposes the grant of bail. He submits that, there are clear allegations against the petitioner, both in the First Information Statement given by the mother of the victim as also in the statement recorded under Section 164 Cr.P.C from the victim. It is submitted that allegations against the petitioner are serious and bail was denied to him by the Special Court on account of the fact that he had criminal antecedents. It is submitted that, after the registration of the aforesaid crime, yet another crime has been registered as Crime No.567/2023 at the very same police station where the allegation is that the mother and other relatives of the petitioner kidnapped the victim. It is submitted that, according to the prosecution, the victim was kidnapped from the lawful custody of her parents to intimidate her and to withdraw from the statement given against the petitioner.

6. Learned counsel appearing for the petitioner , in reply, would submit that the petitioner was in custody at the time when Crime No.567/2023 was registered. It is submitted that the relatives of the petitioner had accompanied the victim, who had expressed her desire to meet the petitioner (who was in custody at that time) and the crime came to be registered on a false allegation that the victim had been kidnapped by the mother and other relatives of the petitioner. It is also submitted that, after the victim attains the age of majority, the petitioner intends to formally marry the victim.

7. Having heard the learned counsel appearing for the petitioner and the learned Public Prosecutor and taking into account the facts and circumstances of the case, I am of the opinion that the petitioner can be released on bail subject to strict conditions. The petitioner has been in custody from 22.07.2023 and has completed more than 98 days in custody. The fact that the petitioner is accused in two cases under the NDPS Act, does not compel me to hold that the petitioner cannot be granted bail. The investigation has been completed and final report has already been filed. The only apprehension is that the petitioner may intimidate the victim and her family. This can be taken care of by imposing suitable conditions.

Accordingly, this application for regular bail is allowed and it is directed that the petitioner shall be released on bail subject to the following conditions:-

- (i) The petitioner shall execute 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 jurisdictional Court;
- (ii) Petitioner shall appear before the investigating officer in Crime No.566/2023 of Chavakkad Police station on every Saturday at 11 am until further orders;
- (iii) The petitioners shall not attempt to influence or intimidate the victim or any witness in Crime No.566/2023 of Chavakkad police station;
- (iv) The petitioner shall not enter the local limits of the Chavakkad police station where the de facto complainant is residing except for the purpose of complying with condition No.(ii) above;
- (v) 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.566/2023 of Chavakkad police station may file an application before the jurisdictional court, for cancellation of bail.