

IN THE COURT OF ADDITIONAL SESSIONS JUDGE -VII
AT THIRUVANANTHAPURAM

Present:- Prasun Mohan, Additional Sessions Judge-VII

On Thursday 20th day of October 2022/ 28th Aswina 1944

Criminal MC 2145/2022

(Crime No.629/2022 of Ayiroor Police station,
Thiruvananthapuram)

Petitioner:-

Abdul Shukoor, aged 67 years,
S/o Mahmood, A1-Azar, Edava,
Manthara, Varkala

By Advocate:- Smt. Jaina.J.S. Parippally

Counter Petitioners:-

1. State of Kerala represented by the
Public Prosecutor, Thiruvananthapuram
2. The Station House Officer,
Ayiroor Police Station,
Thiruvananthapuram

By Advocate:-Sri.K.L. Hareeshkumar, Additional Public Prosecutor,
Thiruvananthapuram

This Crl. MC came up for hearing on 17.10.2022 and the court on the 20/10/2022 passed the following:-

ORDER

1. This is an application filed by the petitioner/ accused u/s.438 of Cr.PC for anticipatory bail.

2. **Gist of the averments in the petition is as follows:-**

The petitioner is the accused in Crime No.629/2022 of Ayiroor Police Station of offences punishable u/ss.294(b), 323, 341, 354 and 506(i) of IPC. The petitioners are ready to abide by any conditions and they may be enlarged on bail.

3. **Crux of the prosecution case is that:-** Due to the previous animosity of the accused towards the defacto complainant, the accused restrained the defacto complainant and mother at 7 Am on 13.08.2022 in Sanghammukku Junction and uttered obscene words. Since then, the accused pushed on the chest of defacto complainant and she fell down and thereby outraged her modesty. Hence, the accused is alleged to have committed the offences punishable u/ss.294(b), 323, 341, 354 and 506(i) of IPC.

4. Both sides are heard and they would urge in tune with those contentions in the bail application and the prosecution case respectively.
5. The learned Additional Public Prosecutor produced the police report and opposed the application.
6. On hearing the learned counsel for the petitioner, learned Additional Public Prosecutor and after perusal of the police report and documents tendered with the bail application, it is made out that the defacto complainant as well as accused are at logger heads in the past. A copy of FIR in crime No.854/2022 of Peroorkada Police Station is tendered by the petitioner owing to reveal that the petitioner filed a criminal complaint against Shaiju, Nadiya and Sameera alleging offences punishable U/Ss.294(b) and 341 r/w 34 of IPC for an offence committed at 4 Pm on 12.08.2022. Thus, the petitioner's counsel would allege that the aforesaid case is filed as a retaliation to counter the other case registered on the prior date by Peroorkada Police Station with respect to an incident occurred in the office of RDO. Nature and gravity of

the aforesaid case ought to reveal that the same would be punishable below seven years and therefore, the dictum laid down by the Hon'ble Supreme Court in **2014(8) 8CC 273, Arnesh Kumar V. State of Bihar** is applicable to the facts of this case. No criminal antecedents are reported against the petitioner/ accused, aged 67 years and there is no likelihood of the petitioner to abscond on bail or flee from justice.

7. As far as a court considering a pre-arrest bail application is concerned, the dictum of the Hon'ble Supreme Court in **AIR 1980 SC 1632, Gurubaksh Singh Sibbia and Another V. State of Punjab** holds the legal position that appropriate conditions can be imposed under sub section 2 of S.438 of Cr.PC so as to ensure an uninterrupted investigation and the court can even incorporate conditions that in the event of the police, making out a case of a likely discovery u/s.27 of Evidence Act, the person who is granted with an anticipatory bail can be taken into police custody for facilitating such discovery.

8. Having considered the case and counter allegations by both sides and taking into account of the arguments tendered by both sides, I do hold that this is a fit case to invoke the discretion of pre arrest bail in favour of the petitioner subject to imposition of stringent conditions to co-operate with investigation.
9. In the result, the Criminal MC is allowed subject to the conditions as follows:-
 - (i) *The petitioner shall surrender and appear before the investigating officer on 23.10.2022 and subject himself for interrogation from 09.00 am to 4.00 pm., if required by the investigating officer. The petitioner shall be deemed to be under custody during the aforesaid period for facilitating the requirements of investigation.*
 - (ii) *The petitioner shall further co-operate with the investigating officer for facilitating with the investigation as and when required by the investigating officer.*

- (iii) *The petitioner shall not commit any similar offence while on bail.*
- (iv) *The petitioner shall not do any acts to intimidate any witnesses or any other persons acquainted with the facts of the case so as to tamper with the evidence.*
- (v) *In compliance of condition No.(i) to (ii), the investigating officer is at liberty to interrogate the petitioner and if required, take appropriate steps for obtaining specimen writing/signature and for effecting any recovery inclusive of mobile phones as provided under law and the 2nd part of this condition will not stand as an embargo in the investigation and interrogation. On completion of such steps required for interrogation and investigation and in the event of any arrest, the petitioner shall be released on bail on the same day of their executing the bond for a sum of Rs.50,000/- (Rupees fifty thousand only) together with two solvent sureties for the like sum.*

(vi) The petitioner shall not leave India and in compliance of said condition, the original passport, if any, to be surrendered before the Jurisdictional Magistrate.

(Dictated to the Confidential Assistant, typed by her, corrected by me and pronounced in Open Court on this, the 20th day of October, 2022).

Sd/-

**PRASUN MOHAN
ADDITIONAL SESSIONS JUDGE-VII**

//True copy//

(By Order)

Sheristadar

Fair copy: 1, Copies:4,
Dated: 20/10/2022,
Typed by:Reshmy Thankachy
Compared by:Sreelekshmi

ORDER IN
CRIMINAL MC 2145/2022
Dated: 20/10/2022