

**HIGH COURT OF KERALA****Bench: Mr. Justice Gopinath P.****Date of Decision: 30 October 2023**

BAIL APPL. NO. 8307 OF 2023

CRIME NO.1774/2023 OF Hill Palace Police Station, Ernakulam

**SHIVA MOORTHY, AGED 22 YEARS ..... PETITIONER/ACCUSED****Versus****STATE OF KERALA ..... RESPONDENT/S****Sections, Acts, Rules, and Articles:**

Sections 354, 354A(1)(i), 354B, 376, 376(2)(n), 376(2)(h), and 506 of the Indian Penal Code

**Subject:** Application for Anticipatory Bail in connection with Crime No. 1774/2023 of Hill Palace Police Station, Ernakulam.**Headnotes:**

Anticipatory Bail – Application for anticipatory bail filed, covering multiple Sections of the Indian Penal Code including 354, 354A(1)(i), 354B, 376, 376(2)(n), 376(2)(h), and 506. [Para 2]

Counsel’s Argument – Defence argues allegations are false, highlighting the petitioner’s young age and the victim’s marital status. [Para 4]

Prosecution’s Stand – Opposition to the grant of bail by Public Prosecutor, emphasizing allegations of false promise of marriage and impregnation by the petitioner. [Para 5]

Consent & Subsisting Marriage – Consent in the context of a subsisting marriage examined, relying on a previous judgment. [Para 6]

Decision – Grant of anticipatory bail subject to strict conditions, finding no compelling need for custodial interrogation. [Para 6-7]

Bail Conditions – Various conditions laid down for the grant of anticipatory bail, including the furnishing of a bond and restrictions on contacting the victim. [Para 7]

**Referred Cases**

- Tino Thankachan V. State of Kerala [2023 (2) KHC 170]

Representing Advocates:

For the Petitioner: Vijay Sankar V.H., Saqib Rizwan, Amrutha K P, Amrutha P S, Jerin Joseph, Eldho Baby, Arya B. Venugopal, Sruthy Unnikrishnan, Sruthy K K

For the State: Sri Noushad K.A. (SR PP)

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THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 30.10.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

### **ORDER**

This is an application for anticipatory bail.

2. Petitioner is the accused in Crime No.1774/2023 of Hill Palace police station, Ernakulam district, alleging commission of offences under Sections 354, 354A(1)(i), 354B, 376, 376(2)(n), 376(2)(h) and 506 of the Indian Penal Code.

3. Allegation against the petitioner is that, the petitioner, with an intent to commit rape on the victim/de facto complainant, developed acquaintance with her and gave her a false promise of marriage that he would marry her, if she obtains divorce from her husband and on that pretext, had sexual relationships with her and therefore, he committed the offences alleged against him.

4. Learned Senior Counsel appearing for the petitioner, on the instructions of Adv. Sruthi K.K, would submit that the allegations against the petitioner are absolutely false. It is submitted that the petitioner is a 22 year old student ,who is a neighbour of the alleged victim. It is submitted that the victim is a married lady, even going by her First Information Statement. It is submitted that the alleged victim had actually induced the petitioner to enter into sexual relationships with her and thereafter, she has filed a false complaint against the petitioner. It is submitted that, as per the information available with the petitioner, the victim is presently in her fourth marriage and she has a 18 year old child in her first marriage. It is submitted that it is quite unbelievable that the petitioner aged 22 would agree to marry a woman who, according to the petitioner is aged 41 and in her fourth marriage.

5. Learned public Prosecutor opposes the grant of bail. It is submitted that, going by the First Information Statement of the victim, she is aged only 34 and the petitioner had compelled her into sexual relationships on the promise that he would marry her once she obtains divorce from her husband.

It is submitted that, there is nothing to suggest that the victim was living with her fourth husband and even if this were to be true, that does not change the nature of the allegations raised against the petitioner. It is submitted that the mere fact that there is age difference between the petitioner and the de facto complainant, is no ground to suggest that there was no false promise of marriage. It is submitted that, according to the victim, she was impregnated by the petitioner on two occasions and while on one occasion, a miscarriage was occasioned while on the other occasion, the victim gave birth to the child [born out of her relationship with the petitioner].

6. Having heard the learned Senior Counsel for the petitioner and the learned Public Prosecutor and considering the facts and circumstances of the case, I am of the opinion that anticipatory bail can be granted to the petitioner subject to strict conditions. A reading of the First Information Statement itself suggests that, according to the victim, she had consented to sexual relationship with the petitioner on the false pretext of marriage. The First Information statement also suggests that the victim was in a subsisting marriage at a time when she had sexual relationships with the petitioner. Going by the judgment of this Court in **Tino Thankachan V. State of Kerala [2023 (2) KHC 170]** , when one of the parties are in a subsisting marriage, it could not be said that consent for sexual relationship was obtained on the false promise of marriage. Taking the overall facts and circumstances of the case, no compelling reason is shown as to why the custodial interrogation of the petitioner is necessary.

In the result, this application is allowed. It is directed that the petitioner shall be released on bail, in the event of arrest in crime No.1774/2023 of Hill Palace police Station subject to the following conditions:-

(i) 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 arresting officer;

(ii) Petitioner shall appear before the investigating officer in Crime No.1774/2023 of Hill Palace Police station on 03.11.2023 and 04.11.2023 and thereafter, as and when summoned to do so;

(iii) The petitioner shall not attempt to contact the victim/de facto complainant or interfere with the investigation or to influence or intimidate any witness in Crime No. 1774/2023 of Hill Palace police station;

(iv) 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. 1774/2023 of Hill Palace police station may file an application before the jurisdictional court, for cancellation of bail.

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