

**HIGH COURT OF KERALA****Bench : Justice A. Badharudeen****Date of Decision: April 8, 2024.**

BAIL APPLICATION NO. 80 OF 2024

CRIME NO.1800/2023 OF HOSDURG POLICE STATION, KASARGOD

**DILSHAD C.H. ....Petitioner****Versus****STATE OF KERALA. ....Respondents****Legislation and Rules:**

Sections 363, 370(4), 376(1) of the Indian Penal Code (IPC)

Section 4 read with Section 3 of the Protection of Children from Sexual Offences Act (POCSO Act)

Section 438 of the Code of Criminal Procedure

**Subject:** Application for anticipatory bail in a case involving alleged sexual offenses under IPC and POCSO Act.**Headnotes:**

Anticipatory Bail Application – Allegation of sexual assault on a minor – Petitioner seeks anticipatory bail under Section 438 of the Code of Criminal Procedure – Prosecution alleges offenses under Sections 363, 370(4), 376(1) of IPC and Section 4 read with Section 3 of the POCSO Act – Allegation is that petitioner sexually assaulted a minor girl, promising marriage – Petitioner contends innocence, stating he believed the victim was of legal age and deviated from marriage upon discovering her actual age – Allegation of extortion by a third party also raised – Court considers opposing arguments, including timing of complaint and events surrounding the marriage proposal – Emphasizes the need for effective investigation to ascertain truth – Grants anticipatory bail, directing petitioner to cooperate with investigation and appear for interrogation and medical test – Bail granted on conditions including bond and prohibition from contacting the victim or interfering with witnesses.

**Referred Cases: None.**

**Representing Advocates:**

**For Petitioner: Abdul Raof Pallipath, K.R. Avinash (Kunnath), E. Mohammed Shafi, Prajit Ratnakaran**

**For Respondents: I.V. Pramod, Sri. Renjith George, Sr. Public Prosecutor**

## **ORDER**

Dated this the 8<sup>th</sup> day of April, 2024

This application for anticipatory bail filed under Section 438 of the Code of Criminal Procedure is at the instance of the sole accused in crime No.1800/2023 of Hosdurg Police Station, Kasargod, where the prosecution alleges commission of offences punishable under Sections 363, 370(4), 376(1) of IPC and Section 4 read with Section 3 of the Protection of Children from Sexual Offences Act (hereinafter referred to as 'POCSO Act' for short).

2. Heard the learned counsel for the petitioner, the learned counsel for the defacto complainant as well as the learned Public Prosecutor in detail. Perused the records placed by the petitioner and the relevant documents form part of the case diary in detail.

3. In nutshell, the prosecution allegation is that, marriage between the accused and the minor girl, aged 17 years, was fixed and in the meantime, at 8.30 am on 28.06.2023, when the minor was going to school, the accused herein brought her into his car and she was subjected to sexual assault near Iqbal school.

4. According to the de facto complainant, she was sexually molested by the accused, on the promise of marriage. This is the premise on which the prosecution alleges commission of the above offences.

5. The learned counsel for the petitioner argued that the petitioner is innocent and there was an undertaking to marry the de facto complainant, on the bonafide believe that she was aged 18 years, when the first wife of the accused eloped with another man leaving a minor child. But when it was noticed by the petitioner that the victim was a minor, he deviated from the marriage and married another lady. At this juncture, one Noufal, who is the husband of the elder sister of the minor, at the junction of Adv.Nusaib, intervened and squeezed the petitioner to give money in this deal, threatening him to implicate in the offences under the POCSO Act. Thus, according to the learned counsel for the petitioner, the allegation of sexual molestation is a false story created for the purpose of squeezing money from the petitioner. It is also submitted that during continuation of the interim order passed by this Court, the petitioner was interrogated and he has been co-operating with the investigation. Accordingly, he pressed for grant of anticipatory bail.

6. Strongly opposing anticipatory bail to the petitioner, the learned counsel appearing for the de facto complainant argued that the minor was sexually molested on the premise of marriage and the accused thereafter deviated from the marriage and married another lady. Therefore, the prosecution case is well made out and in such a case, arrest, custodial interrogation and medical examination of the accused are necessary.

7. The learned Public Prosecutor also supported the argument of the de facto complainant while opposing bail. In this matter, the occurrence was on 28.06.2023 and according to the learned counsel for the petitioner, the same was a holiday and therefore, the statement of the de facto complainant, that she was taken into the car while she was going to school, is not believable. I am not inclined to address this regards that the holiday is in connection with the Bakrid celebration and the said holiday would change according to sighting of the moon.

8. Coming to the other argument, it is discernible that this FIR was registered at 22.57 hours (10.57 pm) on 27.12.2023 and before that the accused herein made a complaint before the Superintendent of Police as Annexure A4 and as per Annexure A2 receipt issued from the District Police Office, Kasargod, dated 27.12.2023 at about 1.57 pm, the same was received by the District Police Office hours before registration of the FIR. Going by the narration in paragraph No.3 of Annexure A3 reply

also, fixation of the marriage and a function in connection with the same on 02.07.2023 is admitted. Anyhow, as submitted by the parties, the accused married another lady on 21.12.2023. According to the learned counsel for the de facto complainant, no complaint lodged since marriage was fixed and complaint was lodged only on knowing about the marriage of the accused on 21.12.2023 and therefore, there is no delay in lodging the complaint.

9. Having gone through the relevant materials available, fixation of marriage of the victim with the petitioner and the subsequent events led to registration of this case. On going through the rival contentions, effective investigation is essential to unearth the truth of the allegations. I leave the same to the domain of the Investigating Officer.

10. On scrutiny of the case as discussed, I am of the view that facilitating proper investigation, the petitioner can be enlarged on anticipatory bail, by directing the petitioner to subject himself for interrogation and medical test on 12.04.2024 in between 10 am to 4 pm.

In the result, this bail application stands allowed. The petitioner is enlarged on bail on the following conditions:

- i. The petitioner shall appear before the Investigating Officer on 12.04.2024 in between 10 am to 4 pm for investigation and medical test. In the event of his arrest, the Investigating Officer shall produce the petitioner before the Special Court on the date of arrest itself.
- ii. On such production, Special Court shall release the petitioner on bail, on executing bond for Rs.30,000/- (Rupees Thirty thousand) by himself and by two solvent sureties, each for the like sum to the satisfaction of the Special Court.
- iii. The petitioner shall co-operate with investigation and shall be made available for interrogation and for the purpose of investigation, as and when the Investigating Officer directs so.
- iv. The petitioner, shall not, intimidate the witnesses or interfere with the investigation in any manner.
- v. The petitioner shall not disturb or deal with the victim during the currency of bail.

vi. The petitioner shall not commit any offence during currency of this bail and any such involvement is a reason to cancel the bail hereby granted.

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