2025:KER:17067

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

FRIDAY, THE 28TH DAY OF FEBRUARY 2025/9TH PHALGUNA, 1946

BAIL APPL. NO. 2409 OF 2025

CRIME NO.346/2025 OF KODUNGALLUR POLICE STATION, THRISSUR

PETITIONER:

ACCUSED
XXX

BY ADVS.
C.A.CHACKO
C.M.CHARISMA
BABU V.P.
SHAHBAS AMAN C.M.

RESPONDENT/COMPLAINANT:

STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, PIN – 682 031.

BY ADV
NOUSHAD K.A, SR.PP

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 28.02.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.V.KUNHIKRISHNAN, J

B.A.No.2409 of 2025

Dated this the 28th day of February, 2025

O R D E R

This Bail Application is filed under Section 482 of Bharatiya Nagarik Suraksha Sanhita.

2. Petitioner a mother of a breast feeding child aged 1½ years. She is now an accused in Crime No.346 of 2025 of Kodungallur Police Station, Thrissur. The above case is registered against the petitioner alleging offences punishable under Section 8 read with Section 7 and Section 10 read with Sections 9(m) and 9(n) of the Protection of Children from Sexual Offence Act (for short 'POCSO Act'), alleging that, she committed aggravated sexual assaulted to her own child.

3. There is a matrimonial dispute between the petitioner and her husband. There is a dispute

regarding the custody of the child also between them. The husband of the petitioner filed a complaint stating that the mother sexually assaulted 1½ year old child!. Of course it is a matter of investigation. But, the way the matrimonial disputes are going in our society is shameful to all of us.

4. Heard counsel for the petitioner and the Public Prosecutor.

5. It is unfortunate that a case like this is registered against a mother of a 1½ year old kid. She is a mother of a breast feeding child. She delivered a child in the relationship with the defacto complainant. It is alleged that the mother sexually abused her own daughter. Admittedly there is matrimonial dispute, and dispute about custody of the child between the father and mother. This case is to be considered in the light of the above circumstances.

6. This Court directed the Public Prosecutor to get the First Information Statement The case is registered based on a complaint filed by the husband of

the petitioner, who is the father of the child. According to him, he obtained a hearsay statement from another lady stating that the petitioner used to commit sexual assault to her own child. Based on such hearsay evidence, the above FIR is registered against the petitioner, the mother, alleging the offences punishable under the POCSO Act. It is surprising to see that, an FIR like this is registered based on hearsay. The Sub Inspector of Police submitted a report, which is made available by the Public Prosecutor. In the report itself it is stated that more enquiry is to be conducted before proceeding with the case. That itself shows that even the Investigating Officer is not convinced about the statement of the defacto complainant. In the order dated 24.02.2025, in B.A No.2241 of 2025, this Court observed that, there cannot be any unilateral investigation based on the complaint of a lady, treating it as gospel truth. The same principle is applicable vice versa too. The complaint of men against women need not be treated as gospel truth. In this case, the petitioner has

got a case that, the child is taken away by the defacto complainant forcefully and police is not taking any action. After that, the present complaint is filed. I am of the considered opinion that, it is a fit case in which, if the petitioner is arrested, she should be released on bail on her own self bond. I also make it clear that, if the Investigating Officer, after investigation, found that the allegation against the petitioner is false, appropriate steps in accordance to law should be taken against the defacto complainant.

Therefore, this bail application is allowed. If the petitioner is arrested in connection with Crime No.346/2025 of Kodungallur Police Station, she shall be released on bail after executing a self bond for Rs.50,000/-.

Sd/-

P.V.KUNHIKRISHNAN

JUDGE

AMR