

**XX vs State of Kerala,**

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**SooperKanoon Citation :** [sooperkanoon.com/1326962](https://sooperkanoon.com/1326962)

**Court :** Kerala Orders

**Decided On :** Aug-02-2024

**Judge :** Honourable Mr.Justice C.S.Dias

**Appeal No. :** Bail Appl./4709/2024

**Appellant :** XX

**Respondent :** State of Kerala,

**Judgement :**

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE C.S.DIAS FRIDAY, THE 2ND DAY OF AUGUST 2024 / 11TH SRAVANA, 1946 BAIL APPL. NO. 4709 OF 2024 CRIME NO.373/2024 OF KASABA POLICE STATION, KOZHIKODE AGAINST THE ORDER DATED 30.05.2024 IN CrI.MC NO.198 OF 2024 OF ADDITIONAL DISTRICT COURT & SESSIONS COURT (ATROCITIES & SEXUAL VIOLENCE AGAINST WOMEN & CHILDREN), KOZHIKODE PETITIONER/ACCUSEDs: XXXXXXXXXXXX XXXXXXXXXXXX XXXXXXXXXXXX BY ADVS. SRI.P.V.ANOOP SRI.PHIJO PRADEESH PHILIP SMT.ANJU R S. SRI.ABIN BENNY SRI.K C MOHAMED RASHID RESPONDENTS/STATE: 1 STATE OF KERALA, REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF

KERALA, PIN - 682031 2 XXXXXXXXXXXX XXXXXXXXXXXX XXXXXXXXXXXX  
BY ADV. SRI C S HRITHWIK (SENIOR PUBLIC PROSECUTOR) THIS  
BAIL APPLICATION HAVING COME UP FOR ADMISSION ON  
02.08.2024, ALONG WITH Bail Appl..4714/2024, THE COURT ON THE  
SAME DAY PASSED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE C.S.DIAS FRIDAY, THE  
2ND DAY OF AUGUST 2024 / 11TH SRAVANA, 1946 BAIL APPL. NO.  
4714 OF 2024 CRIME NO.374/2024 OF KASABA POLICE STATION,  
KOZHIKODE AGAINST THE ORDER DATED 30.05.2024 IN CRMC  
NO.197 OF 2024 OF ADDITIONAL DISTRICT COURT & SESSIONS  
COURT (ATROCITIES & SEXUAL VIOLENCE AGAINST WOMEN &  
CHILDREN), KOZHIKODE PETITIONER/ACCUSED: XXXXXXXXXXXX  
XXXXXXXXXXXX XXXXXXXXXXXX BY ADVS. SRI.P.V.ANOOP SRI.PHIJO  
PRADEESH PHILIP SRI.ABIN BENNY SMT.ANJU R S. SRI.K C  
MOHAMED RASHID RESPONDENT/STATE:

1 STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR,  
HIGH COURT OF KERALA, PIN - 682031 2 XXXXXXXXXXXX  
XXXXXXXXXXXX XXXXXXXXXXXX BY ADV. SMT.SEETHA S (SENIOR  
PUBLIC PROSECUTOR) THIS BAIL APPLICATION HAVING COME UP  
FOR ADMISSION ON 02.08.2024, ALONG WITH Bail Appl..4709/2024,  
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

## **COMMON ORDER**

Dated this the 02nd day of August, 2024 The applications are filed under Section  
438 of the Code of Criminal Procedure, 1973, for orders of pre-arrest bail.

2. B.A.No.4709/2024 is filed by the petitioner

in Crime No.373/2024 of the Kasaba Police Station, Kozhikode and  
B.A.No.4714/2024 is filed by the same petitioner in Crime No.374/2024, which are  
both registered against him for allegedly committing the offences punishable under

Sections 377 and 506 of the Indian Penal Code, 1860 and Section 75 of the Juvenile Justice (Care and Protection of Children) Act, 2015 and Sections 6 read with Sections 5(d), 5(l), 5(m) and 5(n) and 11 (iv) read with Section 12 of the Protection of Children from Sexual Offences Act, 2012

(for short POCSO Act). As the petitioner is the same in the two crimes, the applications are consolidated, jointly and are disposed of by this common order.

3. The gist of the prosecution case in both the

crimes are that: the accused, who was a co-ordinator of Free Birds Shelter Home, had subjected the victim in Crime No.373/2024 to aggravated sexual assault from May, 2019 till 2022. In crime No.374/2024, the prosecution case is that the accused had subjected the victim to penetrative sexual assault from February, 2019, on-wards. Thus, the accused has committed the above offences.

4. Heard; Sri.P.V.Anoop, the learned counsel appearing for the petitioner and Sri.C.S.Hrithwik and Smt.Seetha S., the learned Public Prosecutors.

5. The learned counsel for the petitioner submitted that the petitioner is absolutely innocent of

the accusations leveled against him in both the crimes. The crimes have been registered solely at the instigation of the petitioners estranged wife, who is also an employee of the very same institution. There is a matrimonial litigation pending between the petitioner and his wife before the Family Court, Kozhikode as O.P No.1894/2024. It is subsequent to the filing of the said proceedings, that the three crimes have been registered against the petitioner by raising the very same allegation. The petitioner is a law abiding citizen without any criminal antecedents. It was the wife of the petitioner who has made the

victim make the false accusations against the petitioner. The petitioners custodial interrogation is not necessary and no recovery is to be effected. Hence, the applications may be allowed.

6. The learned Public Prosecutors vehemently

opposed the applications. They submitted that the petitioner is a habitual offender. The petitioner has committed three crimes of the very same nature by committing carnal intercourse as well penetrative sexual assault on the inmate boys of the institution. There are incriminating materials to substantiate the petitioners involvement in the crimes. If the petitioner is granted an order of pre-arrest bail, it would certainly hamper the investigation. Hence, the applications may be dismissed.

7. The allegation against the petitioner in the three crimes is that, the petitioner had committed carnal intercourse as well as aggravated sexual assault on three boys of the very same institution. In the first crime, the petitioner was arrested and remanded to judicial custody. It is thereafter that the petitioner was enlarged on bail. In the present two

crimes the very same set of allegation has been made against the petitioner that he has sexually assaulted the inmates of the institution. Whether or not, the crimes have been registered at the instance of the wife of the petitioner is a matter to be investigated and ultimately decided at the time of the trial. However, in view of Section 29 of the Act, the

presumption of the innocence cannot be drawn in favour of the petitioner.

8. In *Sujith v. State Of Kerala* [2018(3) KHC 641], this Court after considering Section 20 of the Act has observed as follows:

14. S.29 of the Act states that where a person is prosecuted for committing or abetting or attempting to commit any offence under S.3, S.5, S.7 and S.9 of the Act, the Special Court shall presume, that such person has committed or abetted or attempted to commit the offence, as the case may be, unless the contrary is proved. Therefore, the principle that an accused is presumed

innocent till found guilty, will not apply to a case under S.3, S.5, S.7 and S.9 of the Act with its full rigor. The Court shall take into consideration

the presumption under S.29 of the Act while dealing with an application for bail filed by a person who is accused of the offences under S.3, S.5, S.7 and S.9 of the Act (See *State of Bihar v. Rajballav Prasad*, 2016 KHC 6785 : AIR 2017 SC 630 : 2017 (2) SCC 178). True, a presumption in a criminal case can arise only when the prosecution has adduced the facts forming the foundation of the case. In the instant case, prima facie, there are sufficient materials to find the complicity of the petitioner in the crime.

9. On an overall consideration of the facts,

the rival submissions made across the Bar, and the materials placed on record, and on prima-facie finding that there are incriminating materials to substantiate the petitioners involvement in the crime, that the petitioner is a person with criminal antecedents since he is involved in three crimes of a similar nature, the petitioners custodial interrogation is necessary and his medical examinations have to be conducted, I am not satisfied that the petitioner has made out any convincing ground to invoke the discretionary jurisdiction of this Court under Section 438 of the Code. The applications are meritless and have to be dismissed. In the result, the applications are dismissed. Sd/- C.S.DIAS JUDGE NAB

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