

**X vs State of Kerala,**

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**SooperKanoon Citation :** [sooperkanoon.com/1358761](https://sooperkanoon.com/1358761)

**Court :** Kerala Orders

**Decided On :** Jun-02-2023

**Judge :** Honourable Mr.Justice Ziyad Rahman a.a.

**Appeal No. :** Bail Appl./3614/2023

**Appellant :** X

**Respondent :** State of Kerala,

**Judgement :**

B.A.No.3614/2023 1

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.  
FRIDAY, THE 2ND DAY OF JUNE 2023 / 12TH JYASHTA, 1945 BAIL  
APPL. NO. 3614 OF 2023 AGAINST THE ORDER/JUDGMENTSC  
65/2023 OF ADDITIONAL DISTRICT COURT & SESSIONS COURT  
(ATROCITIES & SEXUAL VIOLENCE AG PETITIONER/ACCUSED:  
XXXXXXXXXX BY ADV.D.VIMAL DEV RESPONDENTS: 1 STATE OF  
KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH  
COURT OF KERALA, KOCHI, PIN - 682 031. 2 XXXXXXXXXXXX  
SRI.C.S.HRITHWIK -SR.PUBLIC PROSECUTOR THIS BAIL  
APPLICATION HAVING COME UP FOR ADMISSION ON 02.06.2023,

THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

B.A.No.3614/2023 2

## **ORDER**

The petitioner is the accused in Crime No.1444 of 2022 of Attingal Police Station. The offences alleged against the petitioner are punishable under Sections 376(3), 376(2)(f)(k), 354B IPC, Section 3(a), 3(d), r/w 4(2), 5(n)(p) r/w 6, 9(1)(n)(p) r/w 10, 11(iv) r/w 12 of the POCSO Act and Section 67 of Information Technology Act.

2. The prosecution case is as follows: The victim is a girl aged 13 years, and the petitioner is the

stepfather. The allegation is that on 03.10.2022 during the night, while she was sleeping, the petitioner trespassed into her room and lifted her T-Shirt, caressed her breast, stripped off her pants and undergarments, and started rubbing his genitals against her genitals. He also kissed her private parts. The petitioner also sent obscene pictures and videos to her mobile phone. The matter was informed by the child to the teacher at the school, whereupon it was reported to the police, and the crime was registered based on the same. In connection with the investigation of the said case, the petitioner was arrested on 14.10.2022; since then, he has been under judicial

detention. This application for regular bail is submitted in such circumstances.

B.A.No.3614/2023 3

3. Heard Sri.Vimal Dev learned counsel for the petitioner, Sri.C.S.Hrithwik, learned Public Prosecutor for the State and Sri.V.Srinath, learned counsel for the de facto complainant.

4. The learned counsel for the petitioner submits that the

petitioner is innocent of all the allegations. The complaint was submitted based on some family dispute pending between the 2 nd respondent and the petitioner herein. It is also pointed out that now all the disputes have been settled at the instance of the well-wishers, and the 2nd respondent also swore an affidavit to

substantiate the same.

5. On the other hand, the learned Public Prosecutor would oppose the aforesaid application by pointing out that the allegations against the petitioner are very serious. Investigation in this case is

over, and the final report is submitted. However, considering the nature of the allegations and the relationship between the parties, the probability that the witnesses are likely to be influenced or intimidated if the petitioner is released on bail cannot be ruled out. In such circumstances, dismissal of the bail application is sought.

6. The learned counsel for the 2nd respondent submits that the matter is settled between the parties, and the 2nd respondent confirms the contents of the Annexure-A1 affidavit produced before this Court. B.A.No.3614/2023 4

7. From a perusal of the materials placed on record, it can be seen that the allegations are grave in nature. The petitioner is the stepfather of the child, and he is the guardian also. In such circumstances, sexual assault committed upon the child has to be taken very seriously. In the statement given by the victim before the police and also in the statement recorded under Section 164

Cr.P.C., a clear description of the sexual assaults are mentioned. Even though the matter was reportedly settled, considering the fact that the victim is a minor and also taking note of the close

relationship between the parties, I am of the view that, the settlement by itself cannot be taken as a legal ground for granting bail to the petitioner. On the other hand, the aforesaid settlement fortifies the apprehension voiced by the learned Public Prosecutor to the effect that if the petitioner is released on bail, he is likely to

influence the witnesses. In such circumstances, I do not find any reason to grant bail to the petitioner. In the result, this bail application is dismissed. Sd/- ZIYAD RAHMAN A.A. JUDGE DG/2.6.23