

(2021) 06 KL CK 0187
In the High Court Of Kerala
Case No : Bail Appl. No. 3910 Of 2021

Muhammed Ubais

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision : 02-06-2021

Acts Referred:

Code of Criminal Procedure, 1973 — Section 167(2)(a)(i), 439
Indian Penal Code, 1860 — Section 342, 376(2)(b), 376(3), 449
Protection of Children from Sexual Offences Act, 2012 — Section 3(a), 4, 5(1), 6(1)

Citation : (2021) 06 KL CK 0187

Hon'ble Judges : Raja Vijayaraghavan V, J

Bench : Single Bench

Advocate : J.R.Prem Navaz, Sumeen, Sreeja P

Final Decision : Dismissed

Judgement

Raja Vijayaraghavan V, J

1. The above captioned application seeking regular bail has been filed under Section 439 of the Code of Criminal Procedure(Code for short)

by the accused in Crime No.47 of 2021 of Kalpakanchery Police Station registered interalia under Sections Section 449, 376(3), 376(2)(b), 342, of the Indian Penal Code and under Section 4 r/w 3 (a), 6(1) r/w 5(1) of the POCSO Act.

2. Prosecution allegation is that during the last week of September, 2020 the petitioner entered the residential home of the minor victim and subjected her to rape.

3. The learned counsel appearing for the applicant submitted that the applicant was arrested and remanded on 27.2.2021 and though more than 90

days have elapsed, final report has not been laid after completion of the investigation. According to the learned counsel, he has an indefeasable right to

be enlarged on statutory bail and prays for appropriate orders. The learned counsel has relied on the decision of the Apex Court in Rakesh Kumar

Paul v. State of Assam, wherein it was held that in matters of personal liberty, the court cannot and should not be too technical.

4. The learned Senior Public Prosecutor does not controvert the said submissions.

5. I have considered the submissions advanced. The records reveal that more than 90 days have elapsed from the date of remand of the applicant.

The investigation has not been completed till date. Section 167(2)(a)(i) of the Cr.P.C. would squarely apply and the applicant is entitled to default bail.

In the result, this application will stand allowed. The applicant shall be released on bail on his executing a bond for Rs.50,000/- (Rupees Fifty thousand

only) with two solvent sureties each for the like sum to the satisfaction of the court having jurisdiction. The above order shall be subject to the

following conditions:

a) The applicant shall appear before the Investigating Officer on every Saturdays between 10 a.m. and 1 p.m., for a period of 2 months or till final report is filed, whichever is earlier.

b) He shall not intimidate or attempt to influence the witnesses; nor shall he tamper with the evidence. He shall in no manner make any attempt to contact the victim.

c) He shall not commit any offence while on bail.

In case of violation of any of the above conditions, the jurisdictional Court shall be empowered to consider the application for cancellation, if any, and pass appropriate orders in accordance with the law.