

(2023) 02 KL CK 0154

In the High Court Of Kerala

Case No : Bail Application No. 10105 Of 2022

Sreela P. Mani @ Lekshmi Deeptha

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision : 15-02-2023

Acts Referred:

Code of Criminal Procedure, 1973 — Section 438
Indian Penal Code, 1860 — Section 34, 354, 354B, 420, 468, 471, 506(i)
Information Technology Act, 2000 — Section 67A

Citation : (2023) 02 KL CK 0154

Hon'ble Judges : A.Badharudeen, J

Bench : Single Bench

**Advocate : R.Sanjith, C.S.Sindhu Krishnah, B.A. Aloor, K.P.Prasanth,
T.S.Krishnendu, Archana Suresh, Jinson Jacob, Emil Shaju, T.V.Neema**

Final Decision : Allowed

Judgement

A.Badharudeen, J

1. This is an anticipatory bail filed under Section 438 of the Code of Criminal Procedure by the petitioner, who is the sole accused, in Crime No.1062/2022 of Vizhinjam Police Station, Thiruvananthapuram, where she alleged to have committed offences punishable under Sections 420 and 506(i) of the Indian Penal Code.

2. Heard the learned counsel for the petitioner Advocate Sri R.Sanjith as well as the learned counsel for the defacto complainant Sri B.A.Aloor and the learned Public Prosecutor Smt.Neema T.V.

3. The prosecution case is that the petitioner who is the Director of Yessma OTT platform, with the intention to cheat and defraud the defacto complainant so as to make unlawful enrichment to her shot a sexual film on 1st and 2nd October, 2022 at Aroma Gardens Resort in Aruvikkara Village in violation of the agreement entered into between the defacto complainant and the petitioner.

Thereafter, the said film has been exhibited in the OTT Platform showing the nudity of the petitioner.

4. While pressing for anticipatory bail to the petitioner, the learned counsel for the petitioner would submit that earlier crime was registered by Kovalam Police Station, as per Crime No.1025/2022 alleging commission of offences punishable under Sections 468, 471, 420, 354, 354B and 506(i) r/w Section 34 of IPC by the accused including the petitioner, on same sets of fact. The petitioner herein is the 1st accused in the said case. This Court granted anticipatory bail to her as per order in B.A.No.9179/2022 dated 23.12.2022. Similarly, Crime No.55 of 2022 of Cyber Police Station, Thiruvananthapuram also was registered for offence punishable under Section 67A of the Information Technology Act, 2000, by the petitioner on the same facts, wherein also the petitioner was granted anticipatory bail by this Court as per order in B.A.No.9456/2022. According to the learned counsel for the petitioner, on the same sets of fact the present complaint also was lodged. According to the learned counsel for the petitioner, the defacto complainant herein agreed to act in a film to be published in the OTT platform and an agreement dated 01.10.2022 has been entered into between the defacto complainant and the petitioner. Annexure-A3 is the copy of the said agreement. According to the learned counsel for the petitioner as per Annexure-A3, the defacto complainant herein agreed to act in the film to be published in Yesssma OTT platform after receiving Rs.10,000/- as remuneration and acted in the film without any hesitation, which included nudity, since such films are not restrained in the OTT platform. It is submitted further that since the defacto complainant had acted in the film voluntarily without hesitation, that too, in terms of the agreement, after receiving remuneration, the entire case is foisted and, therefore, the petitioner is entitled to get anticipatory bail.

5. Whereas the learned counsel for the defacto complainant filed detailed objection and submitted that the defacto complainant was compelled to sign Annexure-A3 agreement without understanding the terms and that the defacto complainant raised objection at the time of shooting the film showing his nudity. But the accused and her mother threatened him and forcefully shot his nudity and thereafter his nudity was exhibited in the film. In the objection filed, these contentions are dealt in detail. The relevant paragraphs extracted as para.20(k) to (n) are extracted hereunder:

"k) The Respondent No.3 was compelled and constrained to sign in an agreement without reading for a nominal amount for shooting.

l) The Respondent No.3 realized that while progressing the shooting of the Web Series, the Respondent No.3 came to know that the percentage of the nudity of acting in the Web Series increasing on time to time.

m) The Respondent No.3 was raised the voice about the contrary of the terms of shooting, meanwhile the Petitioner and their henchmen were intimidated and threatened the Respondent No.3 in order to complete the We-series as their own

whims and wishes.

n) The Respondent No.3 further submits that apart from, the Respondent No.3 forced to complete the acting in the web series by threatening and by making unnecessary allegation.”

6. According to the learned counsel for the defacto complainant, the defacto complainant was cheated on the promise of getting fame by acting in an OTT platform film after giving a nominal sum of Rs.10,000/- as remuneration. Since the exhibition of film, his integrity in the society as well as in his family has been tarnished and defamed. Therefore, this is a clear case of cheating, after threatening the defacto complainant. Thus anticipatory bail cannot be granted.

7. The learned Public Prosecutor also highlighted the points canvassed by the learned counsel for the defacto complainant while opposing grant of anticipatory bail to the petitioner, while highlighting the necessity of custodial interrogation.

8. To be on the crux of this matter, there is an agreement, copy of which is produced as Annexure-A3. As per Annexure-A3 the defacto complainant agreed to act in the film in the OTT platform and he had received Rs.10,000/- as remuneration. Even though the defacto complainant would contend that he was compelled to sign Annexure-A3, the same could not be believed even at the first blush, because he had acted in the film without hesitation showing his nudity after receiving Rs.10,000/- as remuneration, in terms of Annexure-A3. Although the learned counsel for the defacto complainant and the learned Public Prosecutor argued that the defacto complainant objected the same, no materials available to see that he did raise objections within a reasonable time till exhibition of the film or thereafter. In so far as the allegations are concerned, the same would require detailed investigation and I leave the same to the domain of the Investigating Officer for a fair investigation. It is noticed that somewhat on similar facts, 2 more crimes were registered and this Court granted bail to the petitioner after discussing the facts led to registration of the above crimes. Since it is found that investigation in this matter can be ensured by directing the petitioner to subject herself for interrogation, I am of the view that the petitioner can be granted anticipatory bail on imposing such conditions. Accordingly, the petition stands allowed on the following conditions:

i. The petitioner shall surrender before the Investigating Officer within ten days from today and on such surrender, the Investigating Officer can question the petitioner. In the event of her arrest, the Investigating Officer shall produce the petitioner before the jurisdictional court on the date of arrest itself.

ii. On such production, the jurisdictional court shall release the petitioner on bail, on executing bond for Rs.30,000/- (Rupees thirty thousand only) by herself and by two solvent sureties, each for the like sum to the satisfaction of the jurisdictional court.

iii. The petitioner shall co-operate with investigation and shall be made available

for interrogation on every Tuesdays and Wednesdays in between 9 a.m and 12 noon for a period of six weeks and also appear before the Investigating Officer as and when directed.

iv. The petitioner, shall not, intimidate the witnesses or interfere with the investigation in any manner.

v. 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.