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**BEFORE THE HONOURABLE HIGH COURT OF KERALA AT
ERNAKULAM.**

B. A. No.

of 2018

Bishop Dr. Franco Mulakkal

:

Applicant/Accused

Vs.

State of Kerala

:

Respondent/Complainant

SYNOPSIS

Sl. No.

Particulars Events

1. That the Applicant is the accused in Crime No.746/2018 of the Kuravilangadu Police Station, Kottayam District. The offence alleged to have been committed by the Applicant is under Sections 342, 376(2) (k), 376 (2) (n), 376C(a), 377, 506 (1) of the I.P.C
2. That the defacto complainant gave a complaint to the District Police Chief, Kottayam which in turn was forwarded to Kuravilangadu Police Station for action and the present crime registered. The prosecution case is that the Applicant had on several occasions during the period between the years 2014 to 2016 raped the defacto complainant in the room attached to St. Francis Mission Home Kuravilangadu.
3. Since the applicant apprehended his arrest he had filed a petition before the Hon'ble High Court of Kerala under section 438 of CrPC seeking anticipatory bail which is numbered as B.A No. 6381/2018. On 18.09.2018 when the case came up for admission before this Hon'ble Court, notice was given to the state and this Hon'ble Court had directed the state to get instructions in the matter and was posted to 25.09.2018 for final hearing. The applicant appeared before the investigating officer pursuant to notice under section 41A Crpc. Unfortunately, without any justifiable grounds, the applicant was arrested on 21.09.2018 at 20:00 hours. The applicant was arrested on 21.09.2018 and was produced before the Court of the Judicial First Class Magistrate, Pala on 22.09.2018 and was remanded to custody. The applicant had moved CMP 7913/2018 before the said court, which however was dismissed vide order dated 22.09.2018

Hence, this Application for Regular Bail.

Dated this the 24th day of September, 2018.

Counsel for the Applicant

BEFORE THE HONOURABLE HIGH COURT OF KERALA AT
ERNAKULAM.

B. A. No.

of 2018

(Under Section 439 of Cr.P.C.)

Crime No. 746/2018 of Kuravilangadu Police Station, Kottayam District

Applicant Accused:

Bishop Dr. Franco Mulakkal, aged 54 years,
S. a. M.P. Aippunty
Bishop House, Civil Lane,
Jalandhar Rural, Jalandhar,
Punjab.

Vs.

Respondent/Complainant:

State of Kerala, represented by
Public Prosecutor,
High Court of Kerala, Ernakulam-682 031.

MEMORANDUM OF APPLICATION FOR REGULAR BAIL preferred
under Section 439 of the Code of Criminal Procedure by **VIPIN NARAYAN** and
SRUTHY N. BHAT, Advocates, Veekshanam Road, Ernakulam for and on behalf
of the applicant.

STATEMENT OF FACTS

1. That the Applicant is arrayed as the Accused in Crime No.746 /2018 of Kuravilangadu Police Station, Kottayam District. The offences alleged to have been committed by the Applicant are under sections 342, 376(2) (k), 376 (2)(n), 376C(a), 377, 506 (1) of I.P.C.
2. That the case on hand was registered on the basis of a complaint given by the defacto complainant to the District Police Chief, Kottayam, who in turn forwarded the same to Kuravilangadu Police Station for action. On receipt of the complaint, the statement of the defacto complainant was recorded by a Woman Senior Civil Police Officer attached to the Kuravilangadu Police Station. A true copy of the First Statement of the defacto complainant recorded by the Woman Senior Civil Police Officer attached to the

Kuravilangadu Police Station is produced herewith and marked as Annexure A

3. That the allegation raised by the defacto complainant is that on 05-05-2014 and on 06-05-2014 and till the year 2016, the defacto complainant was raped by the Applicant 15 times in the room attached to St. Francis Mission Home, Kuravilangadu. It was specifically alleged in Annexure A that there was no forced sexual intercourse.

4. The Applicant is served with a notice under section 41A of Criminal Procedure Code to appear before the investigating officer on 19-09-2018. Since the applicant apprehended his arrest he had filed a petition before the Hon'ble High Court of Kerala under section 438 of CrPC seeking anticipatory bail which is numbered as B.A No. 6381/2018. On 18.09.2018 when the case came up for admission before this Hon'ble Court, notice was given to the state and this Hon'ble Court had directed the state to get instructions in the matter and was posted to 25.09.2018 for final hearing.
Pursuant to the notice, the applicant most obediently came from Punjab and appeared before the investigating officer on 19.09.2018 for co-operating with the investigation. The applicant appeared and was questioned for more than 8 hours at Crime branch office, Tripunithura by the investigating officer and District Police Chief, Kottayam. After the questioning on 19.09.2018, the applicant was asked to appear again on 20.09.2018. The applicant appeared at crime branch office Tripunithura on 20.09.2018 and co-operated with the investigation. Thereafter, he was asked to appear before the investigating officer again on 21.09.2018 and the petitioner promptly appeared. Unfortunately, without any justifiable grounds, the applicant was arrested on 21.09.2018 at 20:00 hours. Arrest of the petitioner is a high handed exercise to interfere with the judicial process. This Hon'ble Court had seized off the matter and it is highly illegal and unjust for the police to arrest the applicant on 21.09.2018, especially considering the fact that applicant was co-operating with the investigation even when he was in Jalandhar and that he had come to Kerala from Punjab to co-operate with the investigation. Arrest of the applicant is virtually interfering with the powers of this Hon'ble Court. The arrest of the applicant without having his anticipatory bail application considered by this Hon'ble Court is a violation of his fundamental right to approach constitutional courts for relief.

5. The applicant was arrested on 21.09.2018 and was produced before the Court of the Judicial First Class Magistrate, Pala on 22.09.2018. The applicant had moved CMP 7913/2018 before the said court, which however was dismissed vide order dated 22.09.2018 and was remanded to custody. True copy of the order in CMP 7913/2018 of the Court of the Judicial First Class Magistrate, Pala is produced herewith and marked as Annexure B. True copy of the Remand report filed by the investigating officer before the Court of Judicial First Class Magistrate, Pala is produced herewith and marked as Annexure C.
6. Highly aggrieved by the illegal act of the police in arresting the applicant while his application for anticipatory bail was to be considered by this hon'ble court and aggrieved by Annexure B order, the applicant prefers this application for regular bail.

GROUNDS

1. That the Applicant is absolutely innocent of the allegations leveled against him. The Applicant has been falsely implicated in this case with ulterior motive and vexatious intention. The allegations made by the defacto complainant is wholly concocted and cooked up only to wreak vengeance for the actions taken by the Applicant against the defacto complainant in the various complaints received against the defacto complainant. The said complaint is nothing but a fictional story by the defacto complainant. The complaint is an afterthought and part of a vicious program to bring down the Applicant who is holding a very high post in the congregation.
2. The arrest of the applicant is illegal and against the provisions of section 41A of Code of Criminal Procedure.
3. It is humbly submitted that the act of the police in arresting the applicant while his application for anticipatory bail was pending and without getting orders from this Hon'ble Court is discourteous, improper and cannot be justified.
4. It is submitted that the applicant has been given to police custody for 3 days. Hence further detention in custody is not required. The applicant has throughout co-operated with the investigation. The applicant was interrogated

for 9 hours in Jalandhar, 8 hours each on 3 continuous days pursuant to his appearance complying with Section 41 A CrPC notice.

5. Now the investigating team is making efforts to create false scientific evidence. The dress worn by the applicant during police custody has been forcibly seized. The applicant thoroughly apprehends that there is an attempt on the part of the investigating officer to create false evidence.
6. It is submitted that the health of the applicant is fastly deteriorating and he has been taken to Medical College as he experienced severe chest pain after his arrest. Further period in prison might endanger the health of the applicant.
7. That the Applicant seeks the indulgence of this Hon'ble Court to notice the real facts and circumstances of the case. The defacto complainant was the Superior General of the Missionaries of Jesus from the year 2004 to 2013. The post of the Superior General is highest post in India in the Missionaries of Jesus congregation. The defacto complainant was assigned as the Mother Superior and was posted at St. Francis Mission Home, Kuravilangadu. She was also the Kerala in- charge till 2017.
8. That in November 2016, a lady approached the Superior General, Sr. Regina at Jalandhar and orally complained that the defacto complainant is having an illicit affair with her husband and the lady wanted the congregation to take action against the defacto complainant. The Superior General, Sr. Regina requested the lady to give a written complaint as the congregation cannot act against its members without written complaints. The lady sent a detailed email with attachments to the Superior General narrating the entire incidents. The attachments contained a hand written complaint, copies of the chat messages and also a photograph of the defacto complainant, which was all retrieved from her husband's phone.
9. That since the lady, who was none other than the cousin sister of the defacto complainant who had threatened to publish everything to the media, the Superior General along with the councilors met the Applicant and informed about the complaint received against the defacto complainant. The Applicant after consultation requested the Superior General to conduct an enquiry and submit a report. A copy of the letter dated 10-12-2016 issued by the Applicant to the Superior General is produced herewith and marked

as Annexure D. The Applicant again sent a letter dated 13-03-2017 to the Superior General seeking for the enquiry report. A copy of the letter dated 13-03-2017 is produced herewith and marked as Annexure E. On the basis of the interim enquiry report, the defacto complainant was removed from her post of the Kerala in-charge. Thereafter Sr. Tincy M.J. was appointed as the Mother Superior of St. Francis Mission Home, Kuravilangadu on the basis of the decision taken by the General council held on 06-05-2017. Resentful, the defacto complainant preferred an Application for Dispensation from religious vows. A copy of the Application for Dispensation dated 26-05-2017 is produced herewith and marked as Annexure F. The said application was cancelled by the defacto complainant vide another letter. A copy of the letter for cancellation of the Application of Dispensation is produced herewith and marked as Annexure G. The defacto complainant was still disgruntled and started creating lots of issues at the mission home at Kuravilangadu. Unable to manage the issues created by the defacto complainant and other sisters, Sr. Tincy preferred a complaint to the Superior General about the issues. A copy of the complaint written by Sr. Tincy to Superior General is produced herewith and marked as Annexure H. The Superior General and Sr. Maria Vadakamparambil visited the Mission Home, Kuravilangadu for a meeting with the inmates. They prepared a report about the same. A copy of the report dated 25-08-2017 of the visit and meeting prepared by the Superior General is produced herewith and marked as Annexure I. Thereafter, the Superior General issued a letter to the defacto complainant directing her to appear in person before the general council for clarifications and defence. A true copy of the letter dated 28-11-2017 issued by the Superior General to the defacto complainant directing her to appear in person before the general council for clarifications and defence is produced herewith and marked as Annexure J. The Superior General and the general council decided to form a committee to enquire into the complaint. The Superior General appointed three sisters to visit the home and give a report. They visited the Mission Home, Kuravilangadu on 20-01-2018 and interacted with the community and filed a report to the Superior General. A true copy of the enquiry report dated 23-01-2018 submitted to the Superior General is produced herewith and marked as Annexure K. For better administration, the defacto complainant was transferred and directed to take charge at St. Clare's Mission Home, Pariyaram. A copy of the letter addressed to the defacto complainant dated 23-03-2018 issued by the

Superior General is produced herewith and marked as Annexure L. Thereafter, the defacto complainant preferred a letter to the Superior General informing her unwillingness to accept the transfer in the guise of medical treatment. A true copy of the letter dated 15-04-2018 is produced herewith and marked as Annexure M. It is pertinent to note that the defacto complainant has not reported at St. Clare's Home, Pariyaram, till date. Further, the Superior General had visited the Mission Home, Kuravilangadu on 02-06-2018 and she had to face very unpleasant situations created by the defacto complainant and her family members. The Superior General had prepared a report about the visit. A copy of the report dated 12-06-2018 prepared by the Superior General is produced herewith and marked as Annexure N.

10. That it is respectfully submitted that the facts stated and documents produced in the preceding paragraphs makes it abundantly clear why an allegation of this nature is raised against the Applicant. The defacto complainant is under the firm belief that the Applicant is the one who is behind the actions taken against the defacto complainant. The defacto complainant is severely inimical and deleterious towards the Applicant and wants to bring down the Applicant at any cost.
11. That the defacto complainant and her family members have warned the Applicant of dire consequences, if he continues to take adverse actions against the defacto complainant. There were threats that he will be manhandled if he sets his foot in Kerala. The Public Relations Officer attached to the Bishop House, Jalandhar had submitted a complaint to the District Police Chief, Kottayam, about the threat to the Applicant. A copy of the complaint dated 21-06-2018 submitted by the Public Relations Officer, Bishop House, Jalandhar to the District Police Chief, Kottayam is produced herewith and marked as Annexure O. On the basis of the said complaint, a crime as Crime No.725/2018 of Kuravilangadu Police Station was registered on 23-06-2018. It is only thereafter that, the defacto complainant filed a false compliant before the District Police Chief, Kottavam on 26-06-2018.
12. That it is pertinent to note that in her first statement to police, the defacto complainant does not have a case that there was forceful sexual intercourse. In fact she specifically alleged that there was no forced sexual intercourse. The medical examination of the defacto complainant

was done thereafter. Realizing that the medical examination has produced unsavory report, the Applicant has known from media reports that the defacto complainant in her statement recorded under Section 164 Cr. P.C. claims that there was also forced sexual intercourse. This crucial aspect needs to be considered along with the complaint made by her own cousin alleging the defacto complainant of having illicit relationship with her husband. This crucial aspect casts serious suspicion on the credibility of the allegations raised by the defacto complainant.

13. That the Annexures produced clearly reveal that the defacto complainant is not an individual who can be cowed down by any authority. In such circumstances, the conspicuous silence of more than four years by the 44 year old defacto complainant is yet another indicator of the false nature of the allegations. The defacto complainant is not an ordinary nun as she held the highest post in the congregation as the Superior General for 9 years.
14. That another aspect which adds to the falsity is that the defacto complainant claims that she has given oral as well as written complaints to several authorities about the sexual assault by the Applicant. The Applicant understands that so far none of them has acknowledged receipts of any such complaints of sexual assault.
15. That it is the allegation of the defacto complainant that she was removed from the post of Mother Superior and Kerala in-charge as a consequence of her resent for the sexual advances made to towards her by the Applicant. The documents produced would clearly indicate that the defacto complainant was removed from the post due to the complaints received from her own cousin and from another nun.
16. That the humble prayer of the Applicant is that the reliefs available to an ordinary citizen of this country may not be denied to the Applicant because he happens to be a Bishop. The Applicant was arrested just to satisfy a section of general public who are unaware of true and the real facts of the case and to appease the protest.
17. That the Applicant has fully co-operated with the investigation conducted by the Kerala Police. The Applicant was interrogated by the investigating

officer and his team even at Bishop House, Jalandhar. The Applicant has divulged the entire facts within his knowledge to the police and has also handed over all the documents and materials in his possession. The Applicant is ready to co-operate with the investigation and ready to abide by any condition imposed by this Hon'ble Court.

18. That it is respectfully submitted that the Applicant has no criminal antecedents.
19. That the Applicant is ready and willing to abide by any reasonable conditions which this Hon'ble Court may deem fit to impose in the event of him being granted Bail.
20. That the Applicant has not preferred any other Application seeking similar relief before this Hon'ble Court or any other Court other than the one mentioned above.
21. That the Applicant undertakes that he will not prefer any other Bail Application during the pendency of this Bail Application before this Hon'ble Court or any other Court.

For these and other grounds that may be urged at the time of hearing it is most humbly prayed that this Hon'ble Court may be pleased to grant bail to the Applicant/Accused in **Crime No.7462018 of Kuravilangadu Police Station, Kottayam District**, on such terms and conditions as this Hon'ble Court may deem fit to impose in the facts of the case so as to secure the ends of justice.

Dated this the 24th day of September, 2018.

Counsel for the Applicant