

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

FRIDAY, THE 24TH DAY OF JULY 2020 / 2ND SRAVANA, 1942

Bail Appl..No.3861 OF 2020

CRIME NO.478/2020 OF ERNAKULAM SOUTH POLICE STATION , ERNAKULAM

PETITIONER/ACCUSED:

FATHIMA A.S.
AGED 34 YEARS
W/O.MANOJ, C-1, BSNL QUARTERS, PANAMPALLY NAGAR,
ERNAKULAM, KERALA - 682 036.

BY ADV. SRI.RENJITH B.MARAR

RESPONDENT/COMPLAINANT AND DE FACTO COMPLAINANT IN CRIME NO.2067
OF THIRUVALLA POLICE STATION:

- 1 STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, ERNAKULAM.
682031
- 2 ADDL. A.V.ARUN PRAKASH,AGED 40 YEARS
S/O A.K. VASU PILLAI ,
S.N. HARIKRISHNAN ASSOCIATES,ROOM NO.11, CELLAR
FLOOR, REVENUE TOWER, THIRUVALLA, PATHANAMTHITTA
DISTRICT

IS IMPEADED AS ADDL. R2 AS PER ORDER DATED 16/7/2020
IN CRL. MA 1/2020

R1 BY PUBLIC PROSECUTOR
R1 BY SRI.SUMAN CHAKRAVARTHY, SENIOR GOVT.PLEADER
R2 BY ADV. M.R.SASITH
R2 BY ADV. SRI.M.R.SARIN
R2 BY ADV. SRI.V.VINAR
R2 BY ADV. SMT.NEELANJANA NAIR
R2 BY ADV. SMT.VIDYA G NAIR
R2 BY ADV. SMT.YAMUNA C.
R2 BY ADV. SMT.ROSHINI UDAYAKUMAR
R2 BY ADV. SMT.N.RENJU
R2 BY ADV. SHRI.RANJITH E N

THIS BAIL APPLICATION HAVING BEEN FINALLY HEARD ON 24.07.2020,
ALONG WITH Bail Appl..4041/2020, THE COURT ON THE SAME DAY PASSED
THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

FRIDAY, THE 24TH DAY OF JULY 2020 / 2ND SRAVANA, 1942

Bail Appl..No.4041 OF 2020

CRIME NO.2067/2020 OF THIRUVALLA POLICE STATION , PATHANAMTHITTA

PETITIONER/ACCUSED:

FATHIMA A.S.
AGED 34 YEARS
W/O. MANOJ, C-1, BSNL QUARTERS, PANAMPALLY NAGAR,
ERNAKULAM, KOCHI, KERALA, PATHANAMTHITTA, PIN -
682 036.

BY ADV. SRI.RENJITH B.MARAR

RESPONDENT/COMPLAINANT:

PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM, PIN - 682 031.
682031

BY SRI.SUMAN CHAKRAVARTHY, SENIOR GOVT.PLEADER

THIS BAIL APPLICATION HAVING BEEN FINALLY HEARD ON
24.07.2020, ALONG WITH Bail Appl..3861/2020, THE COURT ON THE
SAME DAY PASSED THE FOLLOWING:

O R D E R

These Bail Applications filed under Section 438 of the Criminal Procedure Code (Cr.P.C) were heard through Video Conference.

2. The petitioner, a mother asked her two minor children, aged 14 (boy) and 8 (girl) to paint on her naked body above the navel. The children painted on her naked body. The petitioner recorded it as a video. After that, the video is uploaded in social media with the heading "Body Art and Politics."

3. When this video was found by the Cyber dome, Kochi City Police, they submitted a report before the Inspector General of Police and the Commissioner of Police, Kochi stating that this is a child pornography related crime in social media. The Inspector General of Police and the Commissioner of Police, Kochi City, forwarded the report to the Station House Officer, Ernakulam Town South Police Station for necessary action. Based on the report, Crime No.478 of 2020 was registered by the Ernakulam Town South Police Station alleging offences punishable under Sections 13, 14 and

15 of the Protection of Children from Sexual Offences Act,2012 ('POCSO Act') and under Section 67B(d) of the Information Technology Act,2000 (I.T.Act). Section 75 of the Juvenile Justice (Care and Protection of Children) Act, 2015 is also alleged against the petitioner. Crime No.2067 of 2020 was registered at Thiruvalla Police Station for the same set of facts against the petitioner. Therefore, B.A. No.3861 of 2020 and B.A. No.4041 of 2020 are filed by the petitioner under Section 438 of the Code of Criminal Procedure (Cr.PC). When these applications came up for consideration, the learned Public Prosecutor submitted that the Crime registered at Thiruvalla Police Station is clubbed with Crime No.478/2000 of the Ernakulam Town South Police Station. Therefore, B.A. No.4041 of 2020 is infructuous.

4. What now remains is Crime No.478 of 2000 of Ernakulam Town South Police Station. The learned counsel for the petitioner submitted that, even if the entire allegations in the F.I.R. are accepted in toto, no offence under Sections 13, 14, and 15 of the POSCO Act is made out. The learned counsel also submitted

that, the offence under Section 67B (d) of the I.T. Act and Section 75 of the Juvenile Justice (Care and Protection of Children) Act, 2015 is also not made out.

5. The petitioner's submission is that she is an Activist and has been fighting her battle against body discrimination. The petitioner submitted that, it is her firm belief that, there needs to be openness so far as the discussion on body and body parts is concerned, and there is nothing to be hidden within and outside the family about the same. According to the petitioner, the children should be given sex education, and they also need to be made aware of the body and body parts as well. In which event, they would mature themselves to view the body and body parts as a different medium altogether rather than seen it as a sexual tool alone. According to her, she uploaded the above video with such an intention. The petitioner contends that, morality of the society and public outcry cannot be a reason and logic for instituting a crime and prosecuting a person. Hence, the petitioner filed this Bail Application under Section 438 Cr.P.C apprehending arrest in the above case.

6. This court issued notice to the Public Prosecutor. The de facto complainant in Thiruvalla Crime filed a petition for impleading him in the case and the same was allowed.

7. Heard the learned counsel for the petitioner Advocate Renjith B. Marar, the learned counsel for the 2nd respondent Advocate Sasith Panicker and the learned Public Prosecutor Suman Chakravarthy.

8. The learned counsel for the petitioner, the learned Public Prosecutor and the learned counsel for the de facto complainant filed separate argument notes before this court.

9. The counsel of the petitioner submitted that, the petitioner uploaded the video with a write up. The petitioner extracted the English translation of the same in his argument note which is extracted hereunder:

"In a moral fascist society that look towards the female body as mere illusions. Exposing the views which the society seek to conceal is also a political Act. In today's society where a female is restricted or Censored from opening her mouth or utter a word with regards to Nudity or Sexuality, brave political act against it is what time demands. When Compare to Male body, Feminine body and her Nakedness has been considered as a mere 55kg of Flesh

is just because of the wrong Sexual Education put forward by our society. Society has Customized the Mindset of people in such a way that while looking at a woman who wear a legging make you Sexual arousal whereas the man Stands Macho with his Chest-Hair Exposed as well as showing naked legs by folding the dhoti he wears as a statuesque, doesn't Connect to Sexual Arousal is just because of the wrong sexual consciousness that is currently being injected by the society. Just as beauty is in the eye of the beholder, so is obscenity in the eyes of the beholder.

Currently, the situation demands people to learn nudity, sex or even kissing from Porn Site. In the modern era, digital female nudity are just eruptions of over-expectation. When porn magazines and related sites exaggerate and amplify about the female body and the sexuality of the woman. It's the same what our children are forced to learn from such kind of nudity as well as sexuality. In there minds and hopes female body has been potraited as marble stones which has been carved into perfection, which is actually against the reality. Hanging breasts, landing belly and bigger things may not satisfy their expectations for the future.

To what extent can a woman satisfy a man who approaches her with all these high expectations? Tomorrow, when their partners are worried about their bodies becoming too sturdy and sexy, if they need to confidently tell that this naturality is your real beauty. They have to grow up seeing the natural women bodies. These seeds need to be sown when they are young with proper sex education as well as Sexual Consciousness. No child who has grown up seeing his

mother's nakedness and body can abuse another female body. Therefore, vaccines against these false preceptions and expectation about women's body and sexuality should be initiated from home itself.

Within the current family situation of our society, there is only little room for openness associated with sexuality or nudity. While in school, the feminism of untouchability divides people into girls and boys. That is where the fear of the female body begins for girls. As well as curiosity of the female body begins for boys.

When the right path to love and sexuality is eliminated, it becomes a criminal and social disaster. The answer to the question of why nudity should be exposed? is the question of why a woman should be naked? Despite being covered up, women's bodies are being attacked every minute.

From infants to elderly person to animals, when they are subjected to such violence, the reality is that, female body is the best weapon to defend such acts. In a sexually Frustrated society, women simply do not feel safe in clothes. Its high time that you need to be open-up and open-about what the female body is all about and what Sex & Sexuality really means. The women have to start sharpen her weapons to sew the Cloth for nakedness."

According to the counsel, in the light of the write up uploaded along with the video, the intention of the petitioner is clear. The counsel argued that, even if the entire contents of the video along with the write up is accepted in toto, no offence is made out. In the

argument note, Sections 13 and 14 of the POCSO Act are extracted. The counsel submitted that, to attract an offence under Section 13(c) of the POCSO Act, the essential element is that, there needs to be 'indecent or the obscene representation of the child'. The counsel submitted that, the words 'indecent and obscenity' have not been defined under the POCSO Act or under the Indian Penal Code. In such situation, the counsel takes my attention to Section 2(c) of the Indecent Representation of Women (Prohibition) Act, 1986 by which indecent representation of women is defined. The counsel also relied the judgments of the Apex Court in *Ranjit D. Udeshi v. State of Maharashtra* (AIR 1965 SC 881) and in *Samaresh Bose & Anr. V. Amal Mitra* [(1985)4 SCC 289] to contend that, there is no indecent or obscenity even if the entire allegations against the petitioner are accepted. The counsel also relied the judgment of the Apex Court in *Aveek Sarkar v. State of West Bengal* [(2014)4 SCC 257]. The counsel for the petitioner relied two judgments of this court also which is reported in *P.P. Harris v. S.I. of Police* [2017(2) KLT 437] and *Felix v. Gangadharan* [2018(3) KLT

404]. The relevant portion of the judgment in Felix's case (supra) is quoted in detail in the argument note. According to the counsel, morality of the most puristic brahmanic society or the society that craves to be travelling back to the pre-Constitution Brahmin dominate era cannot be the touchstone for deciding the criminal act of indecency or obscenity. The crux of the argument of the petitioner is that, video cannot be watched in isolation as well without understanding the message which is being conveyed through the video as well as the write up along with the video. According to the counsel there is no indecency or obscenity involved in the video. Much less, according to the counsel, there is no indecent or obscene representation of the children. According to the counsel, going by the literal meaning of the provision, the offence is not attracted. The counsel extracted Section 67B of the Information Technology Act,2000 also in the argument note and contended that, the offence under Section 67B(d) is also not made out in this case. Section 75 of the Juvenile Justice (Care and Protection of Children) Act, 2015 is also extracted and contended that, the

offence under Section 75 is also not attracted. The counsel for the petitioner submitted that, there are two other cases registered against the petitioner as Crime No.2405 of 2018 by the Pathanamthitta Police Station and Crime No.334 of 2020 by the Ernakulam South Police Station. According to the counsel, these cases including the present case have been preferred by Right Wing Puritan Advocates either associated with the BJP or the Sangh Parivar, who wanted to either gain publicity or wanted to make sure that the petitioner is harassed for having taken a stand in favour of the gender equality she has been pursuing throughout her life. The counsel submitted that, the custody of the petitioner is not required in the facts and circumstances of the case.

10. The learned Public Prosecutor filed an objection to the Bail application on 1.7.2020. Thereafter, the Public Prosecutor submitted an argument note, also refuting the submissions of the counsel for the petitioner. The Public Prosecutor denied each and every contention of the petitioner with certain authorities from this Court, the Supreme Court, and

even decisions of the U.S. Supreme Court. The counsel who appeared for the additional respondent also filed a detailed argument notes refuting the submission of the petitioner. He also supported the contentions of the Public Prosecutor.

11. This is an application under Section 438 Cr.P.C. It is a settled position that while considering an application under Section 438 Cr.P.C., a detailed discussion about the merit of the case is not necessary. But in this case, the counsel for the petitioner argued that no offence is made out even if the entire allegations against the petitioner is accepted. The counsel argued that the ingredients of the offence are not made out. When the petitioner's counsel argued in such a fashion, I am forced to decide whether there is any offence prima facie made out in this case. But I make it clear that my decision on merit is only to decide this Bail Application. The Investigating Officer is free to investigate the matter in accordance to the law. The Investigating Officer or the trial court (if any final report is filed) should consider the case untrammelled by any of the

observations in this case. I once again reiterate that I am forced to make the following observations only to answer the contentions of the petitioner.

12. The offences alleged in this case are mainly the offences under POCSO Act, 2012, Juvenile Justice (Care and Protection of Children) Act, 2015, and under the provisions of the Information Technology Act, 2000.

13. The POCSO Act, 2012 was received the assent of the His Excellency, the President of India, on 19.06.2012, and it was published in the Gazette of India on 20.06.2012. A reading of the statement of objects and reasons of the POCSO Act is relevant here. Article 15(3) of the Constitution, inter alia, confers upon the State powers to make special provisions for children. Article 39 of the Constitution, inter alia, provides that, the State shall, in particular, direct its policy towards securing that, the tender age of children are not abused and their childhood and youth are protected against exploitation and they are given facilities to develop in a healthy manner and in conditions of freedom and dignity. The United Nations Convention on the Right of Children, ratified by India

on 11th December, 1992, requires the State parties to undertake all appropriate national and bilateral and multilateral measures to prevent the exploitative use of children in pornographic performances and materials.

The POCSO Act was enacted by the parliament because of the increasing sexual offences against children, which are not adequately addressed by the other laws. The POCSO Act is enacted as comprehensive legislation, inter alia, to provide for the protection of children from the offences of sexual assault, sexual harassment, and pornography with due regard for safeguarding the interest and wellbeing of the child at every stage of the judicial process incorporating child friendly procedure for reporting, recording of evidence, investigation, and trial of the offences and provision for establishment of special courts for speedy trial of such offences. With such salutary objects POCSO Act was enacted.

14. In this case, the allegation against the petitioner is that she asked her children, aged 14 and 8 to paint on her naked body. In the video, the petitioner was lying naked and her two children, a boy

and a girl aged 14 and 8 are painting on her naked body. This video was shot by the petitioner and uploaded in social media. According to the petitioner, she is teaching sex education to her children by uploading the video! I can understand if the mother is doing these activities inside the four walls of her house. It is the freedom of every mother to teach sex education according to her will if it is not forbidden by law. Whether such a video can be uploaded in social media and the petitioner can escape by saying that she was trying to teach sex education to all children is the question to be decided. Whether any offence is attracted in such cases, is the question. Section 13 of the POCSO Act is one of the section alleged against the petitioner, which is extracted hereunder:

"13. Use of child for pornographic purposes:

Whoever, uses a child in any form of media (including programme or advertisement telecast by television channels or internet or any other electronic form or printed form, whether or not such programme or advertisement is intended for personal use or for distribution), for the purpose of sexual gratification, which includes-

(a) representation of the sexual organs of a child;

(b) usage of a child engaged in real or

simulated sexual acts (with or without penetration);

(c) the indecent or obscene representation of a child,

shall be guilty of the offence of using a child for pornographic purposes.

Explanation.- For the purpose of this section, the expression "use a child" shall include involving a child through any medium like print, electronic, computer or any other technology for preparation, production, offering, transmitting, publishing, facilitation and distribution of the pornographic material."[Emphasis supplied].

A reading of Section 13 of the POCSO Act, it is clear that, whoever uses a child in any form of media for the purpose of sexual gratification, it is punishable under Section 14 of the Act. The main ingredient of the Section is that, the child should be used in any form of medium for the purpose of sexual gratification. In Section 13(a) to (c) gives inclusive definitions. Section 13(c) says that, the offence includes the indecent or obscene representation of a child. Whether the action of the petitioner amounts to an offence under Section 13 is a question to be decided during the time of the investigation. What is now available is only an F.I.R. Whether an offence under Section 13 of the POCSO Act is attracted in this case, is a matter to

be decided at the time of the investigation. Prima facie, I am of the opinion that the petitioner uses the children for the purpose of sexual gratification because the children are represented in the video uploaded in an indecent and obscene manner because they are painting on a naked body of their mother. The Public Prosecutor made available the video to me with the consent of the counsel for the petitioner. I watched the video. The expression of the petitioner, while the children are painting on her breast, is also important. Whether that amounts to the use of the children for the purpose of sexual gratification can be finally decided only after a custodial interrogation of the petitioner. The explanation to Section 13, it is clearly stated that the expression of 'use a child' shall include involving a child through any medium like print, electronic, computer, or any other technology for preparation, production, offering, transmitting, publishing, facilitation and distribution of pornographic material. These are the matters to be investigated at the time of investigation. While considering a Bail Application under Section 438 Cr.PC,

I am not in a position to say that, no offence under Section 13, 14 and 15 of the POCSO Act is attracted in this case.

15. Similarly, Section 67B (d) of the Information Technology Act, 2000 is also alleged against the petitioner. Section 67B of the Information Technology Act, 2000 is extracted hereunder:

"67B Punishment for publishing or transmitting of material depicting children in sexually explicit act, etc; in electronic form.-Whoever-

(a) publishes or transmits or causes to be published or transmitted material in any electronic form which depicts children engaged in sexually explicit act or conduct; or

(b) creates text or digital images, collects, seeks, browses, downloads, advertises, promotes, exchanges, or distributes material in any electronic form depicting children in obscene or indecent or sexually explicit manner; or

(c) cultivates, entices or induces children to online relationship with one or more children for and on sexually explicit act or in a manner that may offend a reasonable adult on the computer resource; or

(d) facilitates abusing children online, or

(e) records in any electronic form own abuse or that of others pertaining to sexually explicit act with children,

shall be punished on first conviction with imprisonment of either description for a term which

may extend to five years and with fine which may extend to ten lakh rupees and in the event of second or subsequent conviction with imprisonment of either description for a term which may extend to seven years and also with fine which may extend to ten lakh rupees:

Provided that provisions of section 67, section 67A and this section does not extend to any book, pamphlet, paper, writing, drawing, painting representation or figure in electronic form-

(i) the publication of which is proved to be justified as being for the public good on the ground that such book, pamphlet, paper, writing, drawing, painting representation or figure is in the interest of science, literature, art or learning or other objects of general concern; or

(ii) which is kept or used for bona fide heritage or religious purposes.

Explanation.- For the purposes of this section "children" means a person who has not completed the age of 18 years."[Emphasis supplied]

Section 67B(d) of the Information Technology Act says that whoever facilitates abusing children online shall be punished. The petitioner asked her children to paint on her naked body. Thereafter, the petitioner uploaded the video in social media. Whether the petitioner committed an offence under Section 67B(d) is a matter to be investigated. Prima facie, I am of the opinion that it cannot be ruled out that, no offence under

Section 67B(d) of the Information Technology Act, 2000 is made out. These are the matters to be investigated by the Investigating Officer after custodial interrogation of the petitioner.

16. The counsel for the petitioner also contended that Section 75 of the Juvenile Justice (Care and Protection of Children) Act, 2015 is also not attracted. On this point also, I am not making any observations at this stage. This matter is also to be investigated by the Investigating Officer. I cannot say at this stage that, the prosecution has established the offence under Section 75 of the Juvenile Justice (Care and Protection of Children) Act, 2015 as alleged. The Investigating Officer has to investigate the matter. Investigating Officer submitted that, he wants the custodial interrogation of the petitioner to complete the investigation. In such situation, I am not in a position to say that, custodial interrogation of the petitioner is not necessary in this case.

17. According to the petitioner, she is teaching her children sex education by uploading this video. As I said earlier, if this painting on the naked body of

the petitioner happened inside the four walls of the house of the petitioner, there cannot be any offence. After watching the picture painted by the children, I have no hesitation to appreciate the talents of the children. They deserve encouragement. But not in the way the petitioner encouraged them by uploading this video. The petitioner, when shot and uploaded these videos in social media, she also claims that she wants to teach sex education to the children in the society. I cannot accept this stand of the petitioner. I am aware of the decision of the Apex Court in Samaresh Bose and Another v. Amal Mitra and Another [(1985)4 SCC 289] in which the Hon'ble Supreme Court observed like this:

"In our opinion, in judging the question of obscenity, the judge in the first place should try to place himself in the position of the author and from the viewpoint of the author the Judge should try to understand what is it that the author seeks to convey and whether what the author conveys has any literary and artistic value. The Judge should thereafter place himself in the position of a reader of every age group in whose hands the book is likely to fall and should try to appreciate what kind of possible influence the book is likely to have in the minds of the readers. A Judge should thereafter apply his judicial mind dispassionately to decide whether the

book in question can be said to be obscene within the meaning of Section 292 IPC by an objective assessment of the book as a whole and also of the passages complained of as obscene separately. In appropriate cases, the court, for eliminating any subjective element or personal preference which may remain hidden in the subconscious mind and may unconsciously affect a proper objective assessment, may draw upon the evidence on record and also consider the views expresses by reputed or recognized authors of literature on such questions if there be any of his own consideration and satisfaction to enable the court to discharge the duty of making a proper assessment."

I place myself in the position of the petitioner and from the view point of the viewers of every age group in whose hands this video is reached by uploading the same by the petitioner. After applying my judicial mind, I am not in a position to say that, there is no obscenity in the video when it is uploaded in the social media. I make this observation only for the purpose of deciding this Bail Application.

18. The concept of mother in our society is always great. The role of mother is always important in the life of a child. The mother will be a pillar of emotional support to the child. As a mother, it is her duty and responsibility to be the emotional anchor of

their children so that they can face the storms of life. The children are not born with a moral compass and it is the job of parents, especially of the mother, to build that compass for them. Be responsible enough to teach and demonstrate the values that your kids need in order to grow up as decent human beings. You are also responsible for living your life according to the same moral values that you preach, as that is the only way kids will learn. The petitioner has got the freedom to teach her child according to her philosophy. But, that should be within the four walls of her house and should not be forbidden by law. A good mother has outstanding qualities. No one can replace her in life to her children. Deep love for her children, sacrifice and dedication, protection and security etc.. are the qualities of a mother. When a baby is born, he is totally unaware of the outside world. The mother plays an important part in introducing him to the world. The outlook that the child will form towards life depends a lot on the mother. His attitude, his views - religious or otherwise - his perspective on life and its goals will all be gained from her. Eventually, he will mature

and perhaps form his own changed views. But in the initial years, what the child learns from their mother will always have a lasting impression on their mind. It is usually said that, the mother will be the window of the child to the world.

19. There may be a difference of opinion about several verses of Manusmriti. But the description of mother in it is excellent for which there may not be any controversy. In Manusmriti, there is a verse about mother and the English translation of the same is almost like this:

"From the point of view of reverence due, an Upadhyaya [A Guru who taught students in Gurukulam] is tenfold superior to a mere lecturer, a father is a hundredfold superior to a Upadhyaya, and a mother is a thousandfold superior to a father"

(See Chapter 2 Sloka 145 in Manusmriti)

20. In Holy Qur'an also, the greatness of the mother is mentioned in Chapter 31, verse 14 and Chapter 46, verse 15. The English translation of the same is almost like this:

Allah says in Sura huqman:

"And We have enjoined man in respect of his parents - his mother bears him with faintings upon faintings, and his weaning takes two years - saying :

"Be grateful to Me and to both your parents, to Me is the eternal coming. (31:14)

And in Sura Ahqaf He says:

And We have enjoined on man doing of good to his parents; with troubles did his mother bear him and with troubles did she bring him forth; and the bearing and the weaning of him was thirty months (46:15)

In both the above verses, although both parents are mentioned, the mother is singled out as she bears a greater responsibility.

21. I made these observations only to explain the role of a mother in the life of children. The petitioner feels that, she should teach sex education to her children. For that purpose, she asks her children to paint on her naked body and then uploading the same in social media. I am not in a position to agree with the petitioner that she should teach sex education to her children in this manner.

22. I once again make it clear that, I make these observations in this order only to resolve the contentions raised by the petitioner. The Investigating Officer should investigate the matter untrammelled by any of the observations in this order.

23. After hearing both sides, in my opinion, this is not a fit case, in which the extraordinary jurisdiction under Section 438 of the Cr.P.C. can be invoked.

24. Moreover, the jurisdiction to grant bail under Sec.438 Cr.P.C has to be exercised on the well settled principles laid down by the Hon'ble Supreme Court in Chidambaram P. v. Directorate of Enforcement (AIR 2019 SC 4198). The Anticipatory Bail is not to be granted as a matter of rule and it has to be granted only when court is convinced that exceptional circumstances exists to resort to the extraordinary jurisdiction.

25. It is true that, there is no hard and fast rule regarding grant or refusal to grant Anticipatory Bail. Each case has to be decided on the basis of the facts and circumstances of that case. In the light of the general principles laid down in the above judgment and considering the facts and circumstances of this case, I am of the opinion that this is not a fit case in which the petitioner can be released on bail under Sec.438 Cr.P.C. Hence Bail Application No.3861 of 2020 is dismissed.

Bail Application No.4041 of 2020 is dismissed as
infructuous.

Sd/-

P.V.KUNHIKRISHNAN

JUDGE

pkk