

BEFORE THE HON'BLE HIGH COURT OF KERALA AT

ERNAKULAM

Crl M.A. NO. _____ of 2020

In

Crl. Appeal No. 401 of 2019

AFFIDAVIT

I, Goerge Pulikuthiyil, 68 years S/o. Late Ulahanan Pulikuthiyil, Jananeethi, Mannuthy Post, Thrissur 680651, Kerala, do hereby solemnly affirm and state as follows:

1. I am not a party to the above Criminal Appeal. I am the 1st Petitioner in the above impleading petition. I am swearing to this affidavit on behalf of the 2nd petitioner also as specifically authorised by them.
2. The above petition is for impleading the impleading petitioners as Additional Respondents in the above Criminal Appeal. I am an Advocate practicing in this Honourable Court. I am also a social activist and human right activist. I and my organisation Jananeethi has intervened in a number of pro bono litigations and also in a number of human right and social action movements in Kerala.
3. Brinelle D'souza, the 2nd petitioner, is an academic and activist from Mumbai. Her areas of expertise are public health, health rights and gender based violence. She is a founding and core committee member of Voices Against Sexual Abuse in the Church (VASAC). VASAC is a national level network of Christian feminist activists, mental health health professionals, faith leaders, lawyers, youth, etc who have come together to address the issue of sexual abuse with the church (Catholic, Reformed and Orthodox) in India.

Its a networking platform to share knowledge, skills and resources (legal, advocacy, capacity building, information, educational and communication strategies and materials, best practices, therapeutic and other support services in relation to the issue) Members of the network provide counselling, therapeutic and legal support to victims/ survivors of sexual abuse within the church. Another important mandate of the network is to undertake advocacy with church hierarchy to put in place a robust zero tolerance policy with regards to sexual abuse in the church and to set up institutional mechanisms for prevention, mental health, financial and legal support for victims/survivors. Building capacities of local church institutions to develop zero tolerance policies and programmes in relation to sexual abuse is another important mandate. An important role of VASAC is to monitor the compliance of church based organizations with regards to national laws/policies related to sexual harassment at the workplace and child safety. VASAC as a network and individual members too partner with civil society organizations, women's organizations, child rights groups and others working on human rights for the elimination of sexual abuse of minors and adults in the church and the elimination of all forms of violence against children, women and vulnerable adults. Brinelle D'souza is involved in human rights work at the local and national level. She works closely on social issues within the Archdiocese of Mumbai and is also the Co-Convenor of Jas Swasthya, Mumbai - the local chapter of the national people's health movement. As western region coordinator for Justice Coalition of Religious (JCoR) she is

involved in building capacities of Catholic sisters, brothers and priests on human rights advocacy in relation to the sustainable development goals. Brinelle D'souza has been working for a number of years now on gender based violence both in the secular and ecclesiastical spaces for some years now both at policy and programme level. She is an active member of Peoples' Union for Civil Liberties, a premier human right organisation founded by Jayaprakash Narain.

4. The impleading petitioners seek to intervene in the above Appeal in view of the public importance of the case. The offence for which the Appellant/accused has been convicted and punished is a malady widely prevalent and is assuming alarming proportion.
5. Mr. Robin Mathew, (hereinafter referred to as 'Appellant') was convicted in Sessions Case No. 460/2017, Additional Sessions Judge-I, Thalassery, vide judgment dated 16.02.2019, under Sections 376(2)(f) IPC, Section 3(a) r/w Section 4, and Section 5(f), 5(j)(ii) r/w Section 6 of The Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as 'POCSO'), and was sentenced to rigorous imprisonment for 20 years on each count along with fine.
6. The Appellant was the Vicar (Parish priest in-charge) of St. Sebastian Church, Kottiyoor, and also the local manager of Kottiyoor IJM Higher Secondary School. The victim in the case was a student in the aforesaid school, and a member of St. Sebastian Church. At the time of commission of offence, the victim was a minor. The learned Trial Court in this regard held in Para 94 of the impugned judgment: "*I hold that the prosecution succeeded in proving that AI being the Vicar of the church and*

being in a position of authority towards the victim committed rape on the victim and thereby committed offence punishable u/s.376(2)(f) of IPC and the prosecution succeeded in proving that A1 committed penetrative sexual assault on the victim and thereby committed offence punishable u/s.3(a) r/w Sec.4 of the POCSO Act and A1 committed aggravated penetrative sexual assault on the victim punishable u/s.5(f) and 5(j)(ii) r/w Sec.6 of the POCSO Act.” (Emphasis supplied).

7. This case represents a deep malaise in society, and once again unmasks the ugly reality that spiritual places, religious institutions and persons holding significant positions often abuse and exploit their power and authority to sexually abuse and exploit young, vulnerable women and girls, and use their institutional social and cultural position and influence to defeat the ends of justice.
8. Indian Parliament expressed its intention to strictly punish rape by persons in positions of authority and control through Section 376(2)(f), and the Appellant has been convicted under the same. The Vicar of the Church is meant to be the moral and spiritual leader of the congregation. The offence committed by the Appellant shocks the public consciousness, and the gravity of the offence is very high with widespread ramifications for society, and especially for Christian women.
9. The Appellant has sought interim bail for a period of 2 months in the petition under Section 389(1) of the Cr.P.C., citing that he wishes to marry the prosecutrix and make arrangements for claiming the joint custody of the child from the Child Welfare Committee. On a perusal of the records of the case, it becomes abundantly clear that this is a shocking and devious attempt to

subvert the ends of justice, defeat the mandate of POCSO, undo decades of Supreme Court jurisprudence on rape, and abuse the process of Court. The averment that the Appellant has intense love for the prosecutrix, is a scheming tactic to overwhelm the judicial process, as the records of the case speak to the complete disregard shown by the Appellant for the prosecutrix and her child till the case of the prosecution became watertight, after which the Appellant wisened up and started disingenuously expressing a desire to marry the victim, which he hopes would set the stage for him to escape the rigours of law and the sentence imposed on him by the learned Trial Court.

10. The Hon'ble Supreme Court of India has time and again emphasised that Courts are not to encourage "compromise" between the rapist and his victim. Further, the Hon'ble Supreme Court has warned that in cases where such compromise is arrived at, there can be no impact of the same on the outcome of the case or on sentencing. Any leniency shown towards a rape convict on account of his offer to marry the victim is an *anathema* to law and has no place inside courtrooms. The Hon'ble Supreme Court held as much in a catena of judgments including in a 3 Judge Bench decision in *Shimbu vs State of Haryana*(2014) 13 SCC 318 where it held: "Further, a compromise entered into between the parties cannot be construed as a leading factor based on which lesser punishment can be awarded. Rape is a non-compoundable offence and it is an offence against the society and is not a matter to be left for the parties to compromise and settle. Since the Court cannot always be assured that the consent given by the victim in compromising the case is a genuine consent, there is every chance

that she might have been pressurised by the convicts or the trauma undergone by her all the years might have compelled her to opt for a compromise. In fact, accepting this proposition will put an additional burden on the victim. The accused may use all his influence to pressurise her for a compromise. So, in the interest of justice and to avoid unnecessary pressure/harassment to the victim, it would not be safe in considering the compromise arrived at [pic]between the parties in rape cases to be a ground for the Court to exercise the discretionary power under the proviso of Section 376(2) IPC.” (Emphasis supplied).

11. The observations made in *Shimbhu* (Supra) are pertinent to the present case, as the Hon’ble Supreme Court has judicially recognized that the compromise arrived at in rape cases cannot always be assured to have resulted from free consent of the victim, and thus it is best for Courts to not rely on the same. In the present case, it is a matter of fact that the Appellant was in a position of trust, supervision, authority and control over the victim. Not only was the Appellant the local manager of the prosecutrix’s school, but also the Vicar of the church where the prosecutrix and her entire family were members. The footprint of the deceitful manipulations by the Appellant can be seen all over the case, including the manner in which the victim had given false statements to the police, claiming that the rape was committed by her father and not the Appellant; as well as the fact that during trial the victim and her parents (PW-1, 2 and 3) deposed falsely to protect the accused from punishment. This demonstrates conclusively the extraordinary control the Appellant exercises over the victim. By using his exceptional position, clout and

authority , the Appellant also manipulated to separate the newborn child from the victim/mother, immediately after birth in order to conceal the crime and shield himself. Despite having knowledge of the pregnancy, at no point prior to the trial did the Appellant make any efforts to denounce ecclesiastical life and marry the victim. It is plain to see that the expression of intent to marry the victim and care for the child is not borne out of love or care, but is a malicious, desperate and devious attempt to reduce or escape penal liability, and amounts to abuse of the process of court to subvert the ends of justice.

12. The Hon'ble Supreme Court in its judgment in ***State of MP vs Madanlal (2015) 7 SCC 681*** has held: *“We would like to clearly state that in a case of rape or attempt of rape, the conception of compromise under no circumstances can really be thought of. These are crimes against the body of a woman which is her own temple. These are offences which suffocate the breath of life and sully the reputation. And reputation, needless to emphasise, is the richest jewel one can conceive of in life. No one would allow it to be extinguished. When a human frame is defiled, the “purest treasure”, is lost. Dignity of a woman is a part of her non-perishable and immortal self and no one should ever think of painting it in clay. There cannot be a compromise or settlement as it would be against her honour which matters the most. It is sacrosanct. Sometimes solace is given that the perpetrator of the crime has acceded to enter into wedlock with her which is nothing but putting pressure in an adroit manner; and we say with emphasis that the Courts are to remain absolutely away from this subterfuge to adopt a soft approach to the case, for any kind of*

liberal approach has to be put in the compartment of spectacular error. Or to put it differently, it would be in the realm of a sanctuary of error. We are compelled to say so as such an attitude reflects lack of sensibility towards the dignity, the elan vital, of a woman. Any kind of liberal approach or thought of mediation in this regard is thoroughly and completely sans legal permissibility.”
(Emphasis supplied).

13. The trial court has categorically arrived at the finding that the prosecutrix was a minor at the time of the incident of rape / aggravated sexual assault. The Appellant, now in his 50s, was in a position of such authority and control that out of fear of the consequences of telling the truth, the victim had to falsely accuse her father of rape, and the parents of the victim also deposed falsely in court regarding the prosecutrix’s age. There is nothing on record to demonstrate that the Appellant ever cared about the prosecutrix or her well being. The subterfuge being attempted by the Appellant in camouflaging the interest to avoid his stay in prison as a sign of love must not be allowed to pass, as the same would be a mockery of justice.
14. It is pertinent to highlight the objective behind the enactment of POCSO Act, which is a constant guide for Courts while dealing with cases such as the present one. The Objects and Reasons for enactment of POCSO Act inter-alia states, “***Whereas it is imperative that the law operates in a manner that the well being and best interest of the child are regarded as being of paramount at every stage...***” The victim, being a minor at the time of the offence, is in need of economic, emotional and mental support, as well as protection and care, which the State must extend to her, to

ensure that she is not vulnerable to any intimidation or overtures being made by the Appellant. It is reported that the victim is presently pursuing her studies outside the State of Kerala, and the machinations of the Appellant threaten to jeopardise her future, yet again. In light of the above, this Hon'ble Court must protect the victim and secure her future in light of the guiding principle of her "best interest" as provided for in POCSO Act.

15. The Appellant was the Vicar of a church, and as such, is a person who enjoys unparalleled patronage and support within the local community, especially among the believers in the congregation. The Vicar enjoys a disparate control over the members of his church, and his authority is almost unquestioned. It is undeniable that there is a power differential and structural asymmetry of power which operates between the Vicar and members of the congregation. It is thus a relevant concern that if the Appellant escapes his just desserts it would have a bone chilling impact on other women and girls who are victims of such offences, by men hiding behind religious cloaks. These exploitative power structures ought to be dismantled by the rule of law and not fortified by it, which is more reason why the Appellant's application ought to be dismissed.

16. If the Appellant secures relief at this stage citing his desire to marry the victim, it will open the door for many such men who commit the offence of rape or aggravated sexual assault to force or coerce their victims into a compromise in order to escape the rigours of law. Such practices have been categorically looked down upon by the Hon'ble Supreme Court, and must not be encouraged in any judicial proceeding or stage.

17. Unfortunately it is not unknown that some men holding positions of moral, spiritual and religious authority and dominance have misused their clout to sexually exploit young girls and boys. The malaise within the Church runs deep, and this makes it incumbent upon this Hon'ble Court to not allow the subterfuge attempted by the Appellant in the name of marriage. The dignity and personhood of victims is protected by Article 21 of the Constitution and cannot be weighed by the scales of justice against the strategic plea of marriage to wriggle out of penal liabilities. Other instances of such sexual exploitation by priests in churches have been reported, however it is evident that these accused persons use their significant clout to try and evade justice. The rampant reports which have emerged over the last 5-10 years of sexual abuse in churches hints at systemic and institutional problems which perpetuate the commission of such offences by persons in positions of authority. This requires the iron hand of criminal law to strictly deal with the problem and not show any mercy to the Appellant and other such men who have abused their position of trust in the most foul manner there is. Given below are some instances of priests abusing their position of authority and sexually abusing / raping women and young girls.

i). In 2014, Raju Kokkan, the Vicar of the Saint Paul's Church in Thaikkattussery, Thrissur, Kerala, was arrested on charges of raping a nine-year-old girl. According to Kerala Police, Kokkan had raped the child on several different occasions, including at least thrice in his office during the month of April. Kokkan promised to gift the child expensive vestments for her Holy Communion

ceremony before sexually assaulting her. The abuse was revealed after the victim informed her parents that she had been raped by Kokkan on 25 April 2014. The priest subsequently fled to Nagercoil in the neighbouring state of Tamil Nadu, and was arrested by police on 5 May.

News report to this incident is available here: <https://www.indiatoday.in/india/south/story/raju-kokken-kerala-churuch-priest-molesting-girl-191620-2014-05-05>

ii) In 2016, a 41-year-old Latin Catholic priest Edwin Figarez was sentenced to rigorous imprisonment by the Additional District and Sessions Court in Kochi for raping a 14-year-old girl on several occasions, with the court saying he had misused his position, had gone to extent of attributing bad character to the victim and betrayed the believers of the Church. News report to this incident is available here : <https://www.onmanorama.com/news/kerala/keralite-priest-double-life-term-molesting-teenaged-girl-kochi.html>.

iii) A 70-year old Catholic priest George Padayatty, Vicar of a Syrian Catholic Church allegedly molested three minor girls when they visited him to seek blessings at his church office in Chendamangalam in Ernakulam. As per the available news reports, he was absconding and the police are looking for him. News report of this incident: <https://www.ndtv.com/kerala-news/keralapriest-charged-under-pocso-act-for-allegedly-molesting-minors-girls-2104316>.

18. Given the skewed power dynamics and the nature and history of the case, the possibility of the victim's consent being vitiated by fear, intimidation or trauma cannot be ruled out - an apprehension that received judicial recognition by the Hon'ble Supreme Court in *Shimbu* (Supra). In view of the same, it is submitted that this Hon'ble Court must disallow the Appellant's attempt at a notional marriage by rejecting the prayer for interim bail, as the same would not be in the interest of justice and would result in an abuse of the process of court.
19. A convict, sentenced by the Trial Court to 20 years' rigorous imprisonment on multiple counts under POCSO and the IPC, cannot seek the benefit of interim bail, after serving just a year of his sentence. The Application of the Appellant is not only *malafide* and motivated but also bald, vague and lacks any material particulars to establish the pressing need for the extraordinary grant of interim bail. It is pertinent to note that the ground taken in the present interim bail application was already taken at the stage of sentencing by the Appellant, and with due consideration for the same the Ld. Trial Court has given a lesser sentence than imprisonment for life, as stated in Paras 167-169 of the impugned order. As such, the present interim bail application has not been moved citing any new grounds, other than the factors already considered by the Ld. Trial Court while awarding the sentence.
20. In the aforesaid circumstances having regard to the wide ramifications the case is going to make in the society and in wider public interest, it is humbly prayed that this Honourable Court may be pleased allow the impleading petitioners to come on to the party

array in the above Appeal as Additional Respondents and contest the matter, in the interest of justice and fair play. It is also prayed that the application for bail filed by the Appellant be rejected in the interest of justice.

All the facts stated above are true.

Dated this the day of July, 2020.

Deponent

Solemnly affirmed and signed before me by the literate deponent who is personally known to me on this the _____ day of July, 2020 in my office at Ernakulam.

P.Chandrasekhar
Advocate

**BEFORE THE HON'BLE HIGH COURT OF KERALA AT
ERNAKULAM**

**CrI. M.A. NO. _____ of 2020
In
CrI. Appeal No. 401 of 2019**

(Against the conviction and sentence passed in the judgment in Sessions Case No. 460/2017 on the files of the Additional Sessions Judge-I, Thalassery)

PETITIONERS/INTERVENORS

1. Goerge Pulikuthiyil, 68 years
S/o. Late Ulahanan Pulikuthiyil, Jananeethi,
Mannuthy Post, Thrissur 680651, Kerala
2. Brinelle DSouza, D/o. Noel D'Souza,
407, Suparshav Apartments, Opposite Jain Mandir,
Sarvodaya Nagar, Mulund
Mumbai 400080, Masharashtra.

RESPONDENTS/ACCUSED/STATE

1. Robin Mathew, S/o Mathew VT
Aged 52 years, Vadakumcheril House,
Nadavayal P.O. Mananthavady,
Wayanad District.

2. The State of Kerala
Represented by Public Prosecutor,
High Court of Kerala, Ernakulam.PIN 682031.

**PETITION FILED UNDER SECTION 482 OF THE CODE OF
CRIMINAL PROCEDURE, 1973.**

For the reasons stated in the accompanying affidavit it is most humbly prayed that this Hon'ble Court may be pleased to:

- A. To implead the petitioners as Additional Respondents in the above Criminal Appeal and in the interlocutory applications filed by the 1st Respondent in the above Criminal Appeal;
- B. Dismiss Criminal Application No.1 of 2020 filed by the Respondent/ Appellant for grant of bail in the above criminal appeal.

Dated this the day of July, 2020.

Counsel for the Petitioners.