

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

FRIDAY, THE 15TH DAY OF MAY 2020 / 25TH VAISAKHA, 1942

BA NO.1446 OF 2020

(Crime No. 36/2020 of Chockly Police Station, Kannur within the jurisdiction of the Judicial Magistrate of First Class, Thalassery)

PETITIONER / ACCUSED:-

Nijesh T K, Aged 38 Years, S/o. Kunhikannan, Theyyathral Thazhe Kuniyil (H), Peringathur, Pullukkara, Thalassery Taluk, Kannur District.

ADV. SRI.K.DILIP

RESPONDENT/STATE OF KERALA:-

The State of Kerala, rep. by the Sub Inspector of Police, Chockly Police station, Kannur through the public Prosecutor High court of Kerala at Ernakulam.

By P.P. Sri.B.JAYASURYA (SR) & C.K.PRASAD

THIS BAIL APPLICATION HAVING BEEN FINALLY HEARD ON 15.05.2020, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER

This Bail Application filed under Section 438 of Criminal Procedure Code was heard through Video Conference.

2. The petitioner is the sole accused in Crime No.35 of 2020 of Chockly Police Station, Kannur District. The above offence is registered against the petitioner alleging offences punishable under Sections 354 and 354A of the Indian Penal Code.

3.The prosecution case is that on 03.02.2020 at 5.35 p.m., the de facto complainant who is an 18 year old girl student, while returning from Peringathur to Kadavathur by travelling in a bus, a male passenger in the said bus caught hold of her hand with the intention to outrage her modesty and softly rubbed his finger on her palm.

4. The learned counsel for the petitioner submitted that even if the entire allegations are accepted, no offence under Section 354 IPC is made out. According to the learned counsel, the incident is not happened as alleged by the Prosecution and the petitioner is ready to abide any conditions imposed by this

Court if this Court grants him bail.

5.The learned Public Prosecutor submitted that the facts revealed that it is a clear case of Section 354 IPC. The learned Public Prosecutor further submitted that the maximum punishment that can be imposed under Section 354 IPC is 5 years. Therefore, if this Court is granting bail to the petitioner, stringent conditions may be imposed on the petitioner.

6. After hearing both sides, considering the facts and circumstances of the case and considering the fact that the maximum punishment that can be imposed under Section 354 IPC is 5 years and also considering the special situation prevailing now, I think, this Bail Application can be allowed.

7. Moreover, considering the need to follow social distancing norms inside prisons so as to avert the spread of the novel Corona Virus Pandemic, the Hon'ble Supreme Court in **Re: Contagion of COVID-19 Virus In Prisons case (Suo Motu Writ Petition(C) No.1 of 2020)** and a Full Bench of this Court in **W.P(C)No.9400 of 2020** issued various salutary directions for minimizing the number of inmates inside prisons.

8. Moreover, it is a well accepted principle that the bail is the rule and the jail is the exception. The Hon'ble Supreme Court in **Chidambaram. P v Directorate of Enforcement (2019 (16) SCALE 870)**, after considering all the earlier judgments, observed that, the basic jurisprudence relating to bail remains the same inasmuch as the grant of bail is the rule and refusal is the exception so as to ensure that the accused has the opportunity of securing fair trial.

9. Considering the dictum laid down in the above decision and considering the facts and circumstances of this case, this Bail Application is allowed with the following directions:

1. The petitioner shall appear before the Investigating Officer within ten days from today and shall undergo interrogation.

2. After interrogation, if the Investigating Officer propose to arrest the petitioner, he shall be released on bail executing a bond for a sum of Rs,.50,000/-(Rupees Fifty Thousand only) with two solvent sureties each for the

like sum to the satisfaction of the officer concerned.

3. The petitioner shall appear before the Investigating Officer as and when required. The petitioner shall co-operate with the investigation and shall not threaten or attempt to influence the witnesses or tamper with the evidence.

4. The petitioner shall strictly abide by the various guidelines issued by the State Government and Central Government with respect to keeping of social distancing in the wake of declared lock-down.

5. If any of the above conditions are violated by the petitioner, the jurisdictional Court can cancel the bail in accordance to law, even though the bail is granted by this Court.