

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

MONDAY, THE 11TH DAY OF MAY, 2020 / 21ST VAISAKHA, 1942

B.A.No. 1815 /2020

(Crime No. 126/2020, of Keezhvaypur Police Station, Pathanamthitta District)

Petitioners/ 3rd Accused

Jinumon . T J, Aged 44 Years, S/o Moly Jose,

Thekkekkara, Nooranmavu P.O,

Anickad Village, Thiruvalla Taluk,

Pathanamthitta District – PIN- 689 589.

By Adv. T P. PRADEEP

Vs.

Respondents / Complainants:

1. State of Kerala, represented

By the Public Prosecutor, High Court of Kerala. PIN 682031

2. Sub Inspector of Police,

Keezhvaypur Police Station,

Keezhvaypur P.O, Pathanamthitta District. PIN 689587

SRI. AJITH MURALI, PP

SRI. SANTHOSH PETER SR.PP

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 11.05.2020, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

P.V.KUNHIKRISHNAN, J.

B.A.No.1815 of 2020

Dated this the 11th day of May, 2020

O R D E R

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

2. Petitioner is the 3rd accused in Crime No.126 of 2020 of Keezvaypur Police Station registered alleging offences punishable under Sections 450, 376(2)(n), 376(D), 323, 506 (j) and 384 of the Indian Penal Code (IPC) and Section 66 (E) of the Information Technology Act.

3.The prosecution case is that from 2014 onwards, the 1st accused is in illegal sexual relationship with the de facto complainant. Subsequently, the 2nd accused also had sexual intercourse with the victim. It is further alleged that, in 2019, the de facto complainant went along with the petitioner herein and the petitioner had sex with the de facto complainant from his house. It is also the prosecution case that, the victim

collected an amount of Rs.10,000/- from the petitioner. But the amount was misappropriated by the 1st accused.

4. The counsel for the petitioner submitted that, even if the entire allegations are accepted no offence under Section 376 of IPC is made out. He submitted that, he is ready to abide any condition, if this court grant bail.

5.The learned Public Prosecutor submitted that the facts narrated above is the prosecution case. According to Public Prosecutor, the victim collected an amount of Rs.10,000/- from the petitioner after sex with him and this Rs.10,000/- is taken away by the 1st accused.

6.After considering the entire facts and circumstances of this case, I think this bail application can be allowed. It is admitted fact that the victim is aged 35 years and a married woman with two children. It is admitted fact that the 1st accused is having sexual relationship with the victim from 2014 onwards. It is also an admitted fact that the victim girl went with the petitioner herein in 2019 to his house and from there the petitioner had sex with the victim. Thereafter, the victim

collected an amount of Rs.10,000/- from the petitioner. In the light of the facts and circumstances of the case, I cannot rule out the elements of consent in this case. Of course this is a matter to be investigated by the police. I make this observation only for the purpose of considering the bail application. This is a matter to be decided by the trial court at the appropriate stage. In the facts and circumstances of the case, 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 on 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 with law, even though the bail is granted by this Court.

6. The petitioner shall appear for potency test before the investigating officer as and when required by the investigating officer and he shall also co-operate with the investigation.

7. The petitioner shall appear before the investigating officer on all Mondays and Saturdays at 10 am, till the final report is filed in Crime No.126 of 2020 of Keezvaypur Police Station.

P.V.KUNHIKRISHNAN, JUDGE