

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

BA NO.1917 OF 2020

(Crime No. 83 of 2020 of Edakkara Police Station, Malappuram District

Petitioners/ Accused 3 & 4:-

1. Faris T., son of Jamal, aged 32 years, Thandupura House, Kunnummel P.O., Narokavu, Malappuram District.
2. Abdulla T., aged 42 years, son of Ummer, Thottiyil House, Edakkara P.O., Malappuram District.

By Adv. Ramprasad Unni T.

Respondents/State & Complainant:-

1. State of Kerala represented by the Public Prosecutor, High Court of Kerala, Ernakulam, Kochi – 682 031.
2. The Station House Officer, Edakkara Police Station, Edakakra, Malappuram District, Pin – 679 331.

By P.P. Sri.Ajith Murali & Santhosh Peter(Sr)

**THIS BAIL APPLICATION HAVING BEEN FINALLY HEARD ON 11.05.2020,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

P.V.KUNHIKRISHNAN, J

B.A.No.1917 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. Petitioners are the accused nos.3 and 4 in Crime No.83 of 2020 of Edakkara Police Station. The above case is registered against the petitioners and others alleging offences punishable under Sections 376 read with Sections 450, 354 A(1), 115, 376 D read with Section 34 of IPC.

3. The prosecution case is that the victim is aged 25 years. The 1st accused is a lady. The 1st accused met the victim from a market on 20.01.2020. Because of that acquaintance, 1st accused took the victim to her house for the purpose of baby sitting. It is alleged that

on 23.01.2020, the 3rd and 4th accused committed rape on the victim from the house of the 1st accused. Thereafter, the victim girl was taken to Ernakulam. From Ernakulam, the victim girl was raped by some other accused. In connection with that a separate case is registered in which accused nos. 1 and 2 are common.

4. The learned Senior Counsel who appeared for the petitioners submitted that the victim girl is aged 25 years. From a reading of the complaint, it is clear that, there is an element of consent on the part of the victim girl. He also submitted that the 2nd accused in this case is already released on bail. According to the Senior Counsel the petitioners are implicated in this case based on the statement of the co-accused.

5. The learned Public Prosecutor opposed the bail application. According to the Public Prosecutor, grievous offence is committed by the petitioners herein. The

learned Public Prosecutor submitted that, there are materials to implicate the petitioners in this case. According to the Public Prosecutor, the name of the petitioners are mentioned in First Information Statement itself. According to him, this is not a fit case in which the extraordinary jurisdiction under Section 438 of Cr.P.C. is to be invoked.

6. After hearing both sides, I think this bail application can be allowed for the reasons stated below. The admitted case is that, the victim girl went to the house of the 1st accused on 20.01.2020. Victim girl is aged 25 years. The prosecution case is that, the petitioners herein committed rape on the victim girl on 23.01.2020. Admittedly, the complaint was submitted by the defacto complainant after a month, that is on 23.02.2020. Even though, the Senior Counsel for the petitioners submitted that the petitioners were implicated based on the statement of the co-accused,

of course, the learned Public Prosecutor opposed the same. But, it is the fact to be noted after 23.01.2020, the victim girl is going to Ernakulam, with the 1st accused. Admitted case is that, the victim girl stayed in a hotel at Ernakulam. From the hotel at Ernakulam, the victim girl was again raped by some others. I am not in a position to say whether there is consent of the victim girl is there at this stage. Considering the facts and circumstances of this case and considering the fact that the victim girl is aged 25 years and she is voluntarily going with the 1st accused to Ernakulam and also considering the fact that the petitioners have no criminal antecedents, I think the bail application of this petitioners can be considered at this stage. I am not making any observation regarding the alleged consent of the victim, raised by the counsel for the petitioners. It is a matter to be investigated by the Investigating Officer and to be decided finally by the

trial court. I make it once again clear that, what I stated in this order is only for the purpose of deciding this bail application. Considering the facts and circumstances, I think the bail can be granted to the petitioners in this case.

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

4. The petitioners 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 petitioners, the jurisdictional Court can cancel the bail in accordance to law, even though the bail is granted by this Court.

6. Petitioners will appear before the Investigating Officer for potency test and other

test, if any, as an when required by the Investigating Officer.

7. The petitioners will appear before the Investigating Officer on all Mondays and Saturdays at 10.00 a.m. till final report is filed.

8. The petitioners shall not enter the jurisdiction limit of Edakkara Police Station till final report is filed in this case.

P.V.KUNHIKRISHNAN, JUDGE

VPK