

B.A. NO. 1923 OF 2020

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.S. DIAS

TUESDAY, THE 21st DAY OF APRIL 2020/1st VAISAKHA , 1942

B.A. NO. 1923 OF 2020

(CRIME NO.22/2020 OF KUMBALA POLICE STATION, KASARAGOD DISTRICT)

Petitioner/Accused:

Siyad.S., S/o.Sharafudheen, aged 38 years,
Nooriya Manzil, Panankottu, Pappanamkode,
Peringamala, Thiruvananthapuram District.

By Advocate Latheesh Sebastian

Respondents/State & Complainant:

1. State of Kerala, Represented by
Public Prosecutor, High Court of Kerala, Ernakulam - 682031.
2. Station House Officer,
Kumbala Police Station, Kasaragode- 671321

BY Public Prosecutor Smt.Sreeja.V

THIS B.A. HAVING BEEN FINALLY HEARD ON 21.04.2020, THE COURT
ON THE SAME DAY PASSED THE FOLLOWING:

ORDER

This is an application filed under Section 439 of the Code of Criminal Procedure.

2. The petitioner is the accused in Crime No.22 of 2020 of the Kumbala Police Station. The petitioner is alleged to have committed the offences punishable under Sections 354, 354A, 354D and 376(2)(d)(f) of the Indian Penal Code.

3. The prosecution case, in brief, is that: on 14.12.2019 the petitioner, who is a teacher in Markasul Ithkan at Bandiyod in Mangalpady Village, caught hold the victim and outraged her modesty and committed sexual assault on her. Hence, the petitioner has committed the above offences.

4. The petitioner was arrested on 23.1.2020. His application for bail was dismissed by the Judicial First Class magistrate, Kasaragod, as per its order dated 27.1.2020. This Court by order dated 25.2.2020 dismissed B.A. No.1034 of 2020, on the ground that investigation was not completed.

5. Heard the learned counsel for the petitioner and the learned Public Prosecutor via video-conferencing.

6. The learned counsel for the petitioner argued that in a connected crime, this court was pleased to grant the petitioner bail on 27.2.2020 in Bail Application No.1371 of 2020. Moreover, in the present case, it is 89 days since the petitioner has been in judicial custody. The investigating officer has not till date filed the final report. Hence the petitioner is entitled to the benefit under Section 167 (2) of the Cr.P.C. with effect from 22.4.2020.

7. The learned Public Prosecutor, on instructions, submitted that it is a fact that the Investigating Officer has not filed the final report. There is no likelihood of filing the final report by tomorrow, in view of Covid-19 pandemic. She conceded that the investigation is complete and petitioner's further detention is no longer required.

8. The Hon'ble Supreme Court in ***Sanjay Chandra v. CBI*** [2012 (1) SCC 40] held as follows:

"27. This Court, time and again, has stated that bail is the rule and committal to jail an exception. It is also observed that refusal of bail is a restriction on the personal liberty of the individual guaranteed

under Article 21 of the Constitution".

9. Recently, the Honourable Supreme Court in ***Nikesh Tarachand Shah v. Union of India*** [2018 (11) SCC 1] after going back to the days of the Magna Carta and after referring to Gurbaksh Singh Sibbia v. State of Punjab [(1980) 2 SCC 565] has reiterated the same view in ***Sanjay Chandra v. CBI (supra)***. Again, in ***P.Chidamabram v. Directorate of Enforcement*** [(2019) SCC Online SC 1549] the above proposition has been fortified.

10. After the outbreak of the Novel Corona Virus (COVID -19) pandemic in the country, the Hon'ble Supreme Court in In Re: Contagion of COVID-19 Virus In Prisons case (Suo Motu Writ Petition (C) No.1 of 2020) observed that the issue of overcrowding of prisons is a matter of serious concern. The State Governments were directed to take adequate measures to de-congest the prisons. Following the above direction, the Home Department, Government of Kerala has promulgated order dated 25.03.2020, *inter alia*, directing the release of under-trial prisoners alleged to have committed offences punishable with punishment for seven years or less. Later, a Full Bench of this Court by order dated 25.03.20202 in W.P.(C) No.9400 of 2020 (Suo

Motu), has issued directions to de-congest the prisons in the State, keeping in mind the proposition that bail is the rule and jail is the exception.

11. Having regard to the facts and circumstances, particularly the fact that that the petitioner has been in incarceration for the last 89 days; and there is no likelihood of Investigating Officer filing the final report by 22.4.2020, therefore the petitioner is entitled for statutory bail as provided under Section 167 (2) with effect from 22.4.2020; the legal proposition laid down by the Honourable Supreme Court in granting bail and also the directions of the Hon'ble Supreme Court to decongest prisons in view of Covid-19 pandemic, I am inclined to allow this bail application.

12. In the result this bail application is allowed, on the following conditions:-

(i) Due to the present National lock-down and the closure of Courts, the Jail Superintendent, where the petitioner is incarcerated, is directed to release the petitioner on him furnishing his permanent address and phone number and the addresses and phone numbers of his proposed

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sureties/immediate relatives. The petitioner shall also file an undertaking to the Jail Superintendent that he and his sureties will execute the bail bond before the jurisdictional Court within one week of its re-opening. The Jail Superintendent after ensuring the compliance of the above conditions, shall release the petitioner to the Station House Officer of the Police Station where the crime has been registered, who shall after noting down the above details, release the petitioner. The Investigating Officer shall keep a close vigil on the whereabouts of the petitioner.

(ii) The petitioner shall within one week from the re-opening of the jurisdictional Court, if not already re-opened, execute a bond for a sum of Rs.50,000/- (Rupees fifteen thousand only) with two solvent sureties for the like sum each to the satisfaction of the jurisdictional Court.

(iii) The petitioner shall appear before the Investigating Officer on all Saturdays between 10.00 a.m and 11 a.m till final report is filed.

(iv) The petitioner shall not tamper with the evidence or

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influence the witnesses in the case, in any manner, whatsoever.

(v) The petitioner shall not commit any offence while on bail.

(vi) The petitioner shall not leave the State of Kerala without the permission of the jurisdictional court.

(vii) Needless to mention that, if the petitioner violates any of the above conditions, the Station House Officer shall be at liberty to approach the jurisdictional Court and file appropriate application seeking for cancellation of the bail.

C.S.DIAS, JUDGE

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