

**Bail Application No. 2028 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

**Bail Application No. 2028 OF 2020**

**Crime No.166 of 2020 of the Kaipamangalam Police Station Police Station  
coming within the jurisdiction of the Sessions Court Thrissur, Thrissur District)**

**Petitioner/ Sole Accused :-**

**Nisthafir, aged 24, S/o. Ummer, Vaippinkattil House, Padakkulam Desom,  
Lokamalleswaram Village, Kodungallore Taluk, Thrissur District.**

**By Adv.Bitto N.L.**

**Respondent/State of Kerala:-**

- 1. The State of Kerala, rep. by the public Prosecutor,  
High court of Kerala at Ernakulam.**
- 2. Sakkeena, aged 44, W/o.Sageer, Kochiparambil House,  
Kottamkulam Desom, Pappinovattom Village, Kodungallore Taluk,  
Thrissur District.**
- 3. Sub Inspector of Police, Kaipamangalam Police station, Kaipamangalam  
P.O., Kodungallore Taluk, Thrissur district.**

By Public Prosecutor Sri.Amjad Ali

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.166 of 2020 of the Kaipamangalam Police Station. The petitioner is alleged to have committed the offences punishable under Sections 363, 370, 323, 324, 354 A(i), 376(2) and 506 (i) of the Indian Penal Code and Sections 4, 6, 8, 12 and 14 of the POCSO Act.

3. The prosecution case, in brief, is that: the petitioner took the victim in a car and sexually assaulted her. He also videographed and took photos of the victim on his mobile phone and extracted a sum of Rs.46,000/- from the victim. Thereafter, the petitioner assaulted the victim and threatened exhibiting the videographed images. Thus, the petitioner has committed the above offences.

4. The petitioner was arrested on 31.1.2020. His application for bail was dismissed by the Additional Sessions Court, Thrissur on

9.3.2020 in CrI. M.P. No.847 of 2020.

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 the petitioner has been in detention for the last 81 days. The dispute between the petitioner, the victim and her family has been settled. The victim's mother has filed Annexure A3 affidavit dated 12.3.2020 emphatically stating that the dispute between the parties has been settled, and that the petitioner and the victim are getting married, on the victim attaining majority. Hence, the victim and her family members has no objection in the petitioner being granted bail.

7. The learned Public Prosecutor, on instructions, submitted that the investigation in the case has been completed. The petitioner may be granted bail on stringent conditions.

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 of the case, particularly the fact that that the petitioner has been in detention for the last 81 days; and that investigation in the case is practically completed and that the petitioners continuous detention is unnecessary and also the fact that the petitioner fulfils the propositions laid down by the Honourable Supreme Court in granting bail and 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

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

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**