

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

WEDNESDAY, THE 06TH DAY OF MAY 2020 / 16TH VAISAKHA, 1942

B.A.NO.2232 OF 2020

(CRIME NO.106 OF 2020 OF NADAKKAVU POLICE STATION, KOZHIKODE DISTRICT)

Petitioner/Accused:

Habeeb, S/o. Abdul Hameed,
Aged 20/20, Madappattil (H),
Valliyoth, Ekarool,
Balussery, Kozhikode.

By Adv. Sri. Salil Narayanan.K.A

Respondents/complainants:

State of Kerala, Represented by the
Public Prosecutor, High Court of Kerala,
Ernakulam, Kochi-682 031.

BY P.P.SRIAJITH MURALI & SANTHOSH PETER(SR)

THIS BAIL APPLICATION HAVING BEEN FINALLY HEARD ON 06.05.2020,
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 accused in Crime No.106 of 2020 of Nadakkavu Police Station registered alleging offences punishable under Sections 363 IPC and Section 7 r/w Section 8 of the Protection of Children From Sexual Offences Act, 2012.

3.The prosecution case is that on 14.02.2020 at 10.30 a.m., the petitioner kidnapped the minor girl from the lawful guardianship of her parents and sexually assaulted her.

4. The learned counsel for the petitioner submitted that the petitioner and the victim girl are neighbours. As agreed by the parents of the girl, the petitioner took the girl to a shop. Based on a complaint from somebody, the parents filed the complaint. The learned counsel for the petitioner also submitted that the victim girl have already submitted a statement under Section 164 of the Cr.PC denying the incident.

5.The learned Public Prosecutor opposed the Bail Application but submitted that if this Court is granting bail to the petitioner, the same may be on stringent conditions imposed on the petitioner.

6. After hearing both sides and considering the contentions raised by the learned counsel for the petitioner especially in the light of the fact that a statement under Section 164 Cr.PC is given by the victim girl denying the averments made in the complaint, I think that 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 appear before the Investigating Officer for potency test as and when required by the Investigating Officer.

5. 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.

6. 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.

P.V.KUNHIKRISHNAN, JUDGE

pkk