

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.2666 OF 2020

(Crime No.193/2020 of Mathilakam Police Station, Thrissur District)

Petitioner/Accused

Akshay Kumar M.P, aged 25
S/o Pradeep Kumar,
Mullassery House, Vemballur P.O
Kodungallur, Thrissur- 680671

Respondents/State & Complainant

1. State of Kerala, rep. by Public Prosecutor,
High Court of Kerala,
Ernakulam-682 031.
2. The Sub Inspector of Police,
Mathilakam Police Station, Block Road,
Mathilakam, Thrissur District-680 685.

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.2666 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 sole accused in Crime No. 193 of 2020 of Mathilakam Police Station registered alleging offence punishable under Sections 376 & 506(1) of IPC.

3.The prosecution case is that during the period from 1.12.2014 to 30.11.2018 the petitioner committed rape on the victim. Thereafter, on 19.3.2020 a complaint is filed alleging rape and accordingly, the present case is registered.

4. The counsel for the petitioner submitted that the

petitioner is innocent of the case. Moreover, he also submitted that the victim is aged 24 and he is aged 25. He submitted that the petitioner and the victim were friends and subsequently, there was some dispute between them and hence the present case is registered.

5.The learned Public Prosecutor submitted that the facts stated above regarding the prosecution case is correct. But he submitted that the custody of the petitioner is necessary for the purpose of the Potency Test. If sufficient conditions are imposed in that regard, the petitioner can be released on bail.

6.After hearing both sides, I think this bail application can be allowed. Admittedly, the alleged incident happened during the period 1.12.2014 to 30.11.2018. The victim aged 24 and the petitioner is aged 25. Admittedly, they are friends. The petitioner is

working as an employee of a cargo clearance company at Cochin Airport. There is no criminal antecedents against the petitioner. The alleged complaint was filed after about four years of the alleged incident. Considering the facts and circumstances of this case, I think 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 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. The petitioner will appear before the Investigating Officer for Potency test as and

when required.

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

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