

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

WEDNESDAY, THE 13TH DAY OF MAY 2020 / 23RD VAISAKHA, 1942

BA NO.2669 OF 2020

(In Crime No. 429/2020 of Hill Palace Police Station, Thripunithura,
Ernakulam District)

PETITIONER/Accused:-

Jayadeep Menon,
Aged 52 years, S/o. P.K. Krishna Menon,
House No. III, Rajivji Road, Palliparambil House,
Thomaspuram, Maradu, Ernakulam – 682 304.

By Advocates Sri. Dr. K.P. Satheesan (Sr.), P. Mohandas, K. Sudhinkumar,
S.K. Adhithyan, Sabu Pullan & Gokul D.Sudhakaran

Respondent/State & Complainant:-

1. State of Kerala,
Represented by the Public Prosecutor,
High Court of Kerala, Ernakulam, Kochi - 682 031.
2. The Sub Inspector of Police,
Hill Palace Police Station,
Thripunithura, Ernakulam – 682 301.

By P.P. Sri.B.Jayasurya (Sr) & Sri. C.K.Prasad

THIS BAIL APPLICATION HAVING BEEN FINALLY HEARD ON
13.05.2020, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

P.V.KUNHIKRISHNAN, J.

B.A.No.2669 of 2020

Dated this the 13th 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 accused in Crime No.429 of 2020 of Hill Palace Police Station, Ernakulam. The above case is registered alleging offences punishable under Sections 363, 354, 376 and 420 IPC.

3. The prosecution case is that the petitioner went to Kozhikode on 14.3.2020 and asked the defacto complainant to come to the railway station. Accordingly the defacto complainant came to the railway station and accompanied the petitioner in a car to a hotel for having lunch. On the way, the defacto complainant gave 18 sovereigns of gold worth Rs.5.5 lakhs on the belief that the petitioner will marry her. Subsequently, it is alleged that the petitioner withdrew from the promise and hence the complaint is filed.

4. The counsel for the petitioner submitted that, even if the entire allegations are accepted, no offence is made out in this case. According to the learned Senior Counsel, the petitioner submitted a complaint before the Cyber Cell on 2.4.2020 against the victim in this case. Annexure 1 is the complaint. He narrated all the incidents in the complaint. He got a reply on 17.4.2020 from the Cyber cell saying that the offence is a non cognizable offence and the Cyber cell is not in a position to proceed. Thereafter on 27.4.2020 the present complaint is filed by the victim and the FIR is registered against the petitioner. In the present FIR, the alleged occurrence was on 14.3.2020.

5. The learned Public Prosecutor opposed the bail application. He submitted that the petitioner committed serious offences and hence anticipatory bail may not be granted.

6. After hearing both sides, I think this bail application can be allowed. A reading of the prosecution case, I am not in a position to believe the same at this stage. I make it clear that, this is a matter to be investigated by the investigating officer in detail. It is an admitted case that the victim is aged 50 years and the petitioner is aged 52 years. It is an admitted case that the petitioner went to Kozhikode and met the alleged victim at Kozhikode Railway Station. It is also

admitted that thereafter she went with the petitioner in a hotel. It is also the case of the victim that during the journey to the hotel, the victim gave about 18 sovereigns of gold worth Rs.5.5 lakhs to the petitioner on a promise from the petitioner that he will marry her. Now the present case is filed alleging that the petitioner withdrew from the marriage.

7. It is also to be noted that the petitioner filed Annexure 1 complaint before the Cyber Cell on 2.4.2020 against the victim. The Cyber cell replied as per Annexure 2 dated 17.4.2020 saying that the offence made out is a non-cognizable offence and hence Cyber Cell is not in a position to proceed. Thereafter the present complaint is filed by the victim before the police on 27.4.2020 for an alleged incident happened on 14.3.2020. I am not in a position to accept the case of the victim at this stage. I once again make it clear that this is a matter to be investigated by the prosecution in detail. I observed these things only for the purpose of considering this bail application. The investigating officer is free to investigate the matter in accordance with law. In the light of the facts and circumstances of the case, I think this bail application can be allowed.

8. 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.

9. 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.

10. 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 on all Mondays at 10 am. for a period of one month.

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.

B.A.No.2669 of 2020

7

P.V.KUNHIKRISHNAN
JUDGE

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