

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

TUESDAY, THE 12TH DAY OF MAY 2020 / 22ND VAISAKHA, 1942

BA NO.2714 OF 2020

(In Crime No.54/2020 of Anchuthengu Police Station, Thiruvananthapuram District)

Petitioner/Sole Accused:

Libu@Kannan, aged 19 years, S/o Biju,
Karichattimoolaputhenveetil,kettupura,
Anchuthengu,Nalparavattom
Kadakkavoor,Thiruvananthapuram District

BY Adv M.Kiranlal
Rajesh Varkala

Respondent/Complainant-State:

State of Kerala, represented by the Public Prosecutor,
High Court of Kerala, Ernakulam, Pin – 682 031.

By P.P. Sri.Ajith Murali & Santhosh Peter(Sr)

THIS BAIL APPLICATION HAVING BEEN FINALLY HEARD ON 12.05.2020,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

P.V.KUNHIKRISHNAN, J

B.A.No.2714 of 2020

Dated this the 12th day of May, 2020

O R D E R

This Bail Application filed under Section 439 of Criminal Procedure Code was heard through Video Conference.

2. Petitioner is the accused in Crime No.54 of 2020 of Anchuthengu Police Station registered alleging offence punishable under Sections 450, 376 of Indian Penal Code and Section 4 read with 3(a), 6 read with 5j(ii)(I) of the Protection of Children from Sexual Offences Act, 2012 (for short, POCSO Act). Petitioner was arrested on 15.2.2020 and he is in custody.

3.The allegation is that the petitioner aged 19 years administered some noxious drink to the victim and when she lost her consciousness committed sexual

assault on her. The case of the prosecution is that the victim is now pregnant.

4. The counsel for the petitioner submitted that, he is only aged 19. He submitted that he is in custody from 15.2.2020 and now 88 days over. He also submitted that, the alleged incident happened on 23.12.2019 and the complaint was submitted only on 14.2.2020. He has got a further case that the petitioner and the victim girl were in a love affair.

5.The learned Public Prosecutor opposed the bail application. But the learned Public Prosecutor submitted that, since the petitioner is in custody for about 88 days, stringent conditions may be imposed, if this court grant bail to the petitioner.

6.After considering the contentions of the petitioner and the learned Public Prosecutor, I think this bail application can be allowed. The petitioner is aged 19

and the victim is aged 17. There is a case to the petitioner that, the petitioner and the victim were in love and he proposed to marry her. He also submitted that, the alleged incident had happened on 23.12.2019 and the complaint was filed only on 14.2.2020. These are matters to be proved at the time of trial. It is an admitted fact that the petitioner is in custody for about 88 days. The Public Prosecutor submitted that no final report is filed in this case. 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 Superintendent of Jail concerned

where the petitioner is incarcerated is directed to release the petitioner on bail on executing a self bond ensuring that he will appear before the Court concerned as and when required, if he is not in detention in any other case. It is further directed that the Superintendent of Jail should get the bail bond from the petitioner as stipulated in Section 441 Cr.P.C.

2. The Superintendent of Jail concerned shall also get the phone number and the address at which the petitioner would be residing after his release.

3. The Superintendent of Jail concerned, immediately after release of the petitioner will forthwith forward the bail bond obtained from the petitioner to the jurisdictional Court.

4. The petitioner immediately after

release from the prison, report before the Station House Officer of the Jurisdictional Police Station and shall furnish his phone number and the place where he is going to reside. The Station House Officer concerned shall keep a vigil on the whereabouts of the petitioner and shall ensure that the petitioner does not violate the terms of the undertaking.

5. 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.

6. The petitioner shall within one week from the commencement of the functioning of the jurisdictional court, if the court is not

functioning at present, execute a bond for Rs.50,000/- (Rupees Fifty Thousand only) with two solvent sureties each for the like sum to the satisfaction of the jurisdictional Court.

7. The petitioner shall strictly abide by the various guidelines issued by the State Government and Central Government with respect to keeping of social distancing and other directions in the wake of declared lock-down.

8. If any of the above conditions are violated by the petitioner, the jurisdictional Court can cancel the bail in accordance with law, even though the bail is granted by this Court.

P.V.KUNHIKRISHNAN, JUDGE

